**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

CC CASE NO:CCT 228/14

In the matter between:-

**TOYOTA SA MOTORS (PTY) LTD** Applicant

and

**CCMA** First Respondent

**COMMISSIONER TERRENCE SERERO** Second Respondent

**RAWU** Third Respondent

**MAKOMA MAKHOTLA** Fourth Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**LIEZL WIESE**

do hereby make oath and state:-

I am an adult female, candidate attorney, employed by Macgregor Erasmus Attorneys, attorneys for the Applicant herein, situated at, inter alia, Suite N102A, 1st Floor, Thrupps Illovo Centre, 204 Oxford Road, Illovo, Sandton.

2.

Save where the context clearly indicates the contrary or where otherwise stated, the facts herein deposed to, are within my personal knowledge and belief, true and correct.

3.

This is an application for condonation for the late filing of the hard copies of the Applicant's statement of facts supported by extracts from the record in terms of the practice directive of the Honourable Chief Justice of this Honourable Court, dated 25 March 2015.

4.

While Rule 32(1) of the above Honourable Court Rules provides for condonation being sought for a litigant's non-compliance with any Rules, the Office of the Registrar declined to accept the Applicant's statement of facts and record on the morning of 5 May 2015, without an application for condonation being prepared and delivered together with the copies of the record.

5.

An electronic copy of the statement of facts and supporting extracts from the record were delivered to the above Honourable Court by way of email and to the Third and Fourth Respondent's legal representatives on the afternoon of 4 May 2015. Copies of the covering mails enclosing such are annexed hereto marked "A1" and "A2".

5.

In terms of the directive the parties (Applicant and Fourth Respondent) were to attempt to reach consensus on the statement of facts by 29 April 2015. This was not achieved, and so a more comprehensive statement of facts (which included facts surrounding the filing of the record (in stages), the Applicant's efforts to compile the full record, and the filing of the supplementary affidavit, was prepared to deal with the facts in so far as the Labour Court and the Fourth Respondent were of the view that the Applicant had done "nothing" to prosecute the review application. This accounted for the extended extracts of the record, as the extracts in support of the facts before the CCMA were essentially contained in the small bundle of reconstructed evidence and the Applicant's bundle before the CCCMA. As agreement could not be reached on 29 April 2015, the Applicant had just two Court days to prepare the supplemented statement and extracts, to copy them and have them filed before Court. The 1st of May 2015 was a public holiday.

6.

This supplemented statement of facts and preparation of the extracts of the record, were finalised on the morning of the 4th of May 2015. This was also the first day of my employ with the Applicant's attorneys. The attorney in charge of that office was, as luck would have it, on leave on that day.

6.

I received the electronic version of the filing notice enclosing the Applicant's statement of facts together with the extracts of the record from the Applicant's attorney's Durban office, (where the attorneys dealing with the matter are situated) at 13h22 on the 4th of May 2015.

7.

In terms of the above Honourable Court's Rules, the parties are to file 25 correctly bound copies of the proceedings with the Registrar of the Court. Given the time of receipt of the documentation, I contacted the Registrar of the above Honourable Court to confirm the closing time, which I was advised is at 15h30.

8.

I attended at our local photocopy centre and had copies made and bound. By 15h29 the copies had only been completed and bound. I forwarded a photograph of the completed bundles at 15h29 to a colleague of mine at our Durban office for confirmation that same is in order for service and filing and was advised that the copies had not been bound correctly in terms of the Rules of the above Honourable Court.

9.

On this basis, an electronic copy was served on the Registrar of the above Honourable Court at 15h26 as well as the Third and Fourth Respondent's attorneys, Carrim Attorneys at 15h57.

10.

I left the balance of the bundles with the photocopy centre to correctly bind the copies.

11.

On the morning of the 05th of May 2015, at 08h30 I attended at the photocopy centre to collect the correctly bound bundles which I served on the Third and Fourth Respondent's correspondent attorneys, MM Baloyi Attorneys.

12.

On attempting to file the bundles with the Registrar at approximately 09h15 on 5 May 2015, I was advised that the Applicant had to bring an application for condonation of the late filing of these bundles as same was due to be served on the 4th of May 2015. I was further informed that the Applicant is to file the bundles together with the application for condonation which is to be served on the Third and Fourth Respondent's attorneys and filed with the Registrar of the above Honourable Court.

13.

It is my submission that there has been no prejudice suffered by the Respondents in this matter at all. Electronic copies of the statement and documents were already provided. It is respectfully submitted that the delay was not due to any dis-respect for this Honourable Court's practice directives but due to the practical reasons mentioned hereinbefore. The Applicant's attorneys apologise for any inconvenience which may have been caused and ask that the Applicant's non-compliance with the directive be condoned.

7.

This matter has already been set down, and irrespective of the Applicant's failure to file the hard copies on the 4th of May 2015, the Third and Fourth Respondents will be filing its their statement in terms of the directive. It is necessary for a proper and fair adjudication of the matter that the Applicant's documents be received. It is accordingly, with respect, in the interests of justice that the Applicant's delay in filing the hard copies be condoned. Certainly no blame can be laid at the door of the Applicant for the delay. The fault lies with its attorneys and the Applicant ought not, as a matter of fairness, to be prejudiced thereby.

**WHEREFORE** the Applicant pray for an order as per the notice of application prefixed hereto.

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DEPONENT

I certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at DURBAN on this the day of MAY 2015, the conditions contained in Government Notice No. R1258 dated 21 July 1992 and R1648 dated 19 August 1997 having been complied with.

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COMMISSIONER OF OATHS