

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case Number:

In the matter between:

ISAAC RASEPITJE PITJE

APPLICANT

and

JOSIAH OUPA SHIBAMBO

1ST RESPONDENT

ESTHER VELEMINAH SHIBAMBO

2ND RESPONDENT

CITY OF TSHWANE METROPOLITAN MUNICIPALITY

3RD RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

MTHEMBU VINCENT SIBIYA

do hereby state under oath and say the following:

1.

THE INTRODUCTION:

- 1.1 I am a major male person and the Applicant's duly authorized attorney of record in these proceedings.
- 1.2 The Applicant reside together with his family at **4157 BLOCK M MAMELODI-WEST, PRETORIA, GAUTENG PROVINCE.**
- 1.3 The facts and/or circumstances herein set out falls within my personal knowledge unless otherwise stated or from the context otherwise appears, and are further both true and correct.
- 1.4 Further to the extent that I proffer legal submissions, I do so based on legal advice also received from Counsel, and verily believe the same to be also, both true and correct.

2.

- 2.1 The First Respondent is **JOSIAH OUPA SHIBAMBO**, a major male person.
- 2.2. The latter resides at **714 BLOCK G, SOSHANGUVE, PRETORIA, GAUTENG PROVINCE.** His further particulars are to me unknown.

3.

- 3.1 The Second Respondent is **ESTHER VELEMINAH SHIBAMBO**, a major female person. Her further particulars are also to me unknown.
- 3.2 The latter also resides at **714 BLOCK G, SOSHANGUVE, PRETORIA GAUTENG PROVINCE.**

4.

- 4.1 The Third Respondent is the **CITY OF TSHWANE METROPOLITAN MUNICIPALITY**, a local municipality and an arm of government duly established in accordance with the laws of the **REPUBLIC OF SOUTH AFRICA.**
- 4.2 The latter has also its principal place of business at office premises situated at **BKS BUILDING, 373 PRETORIUS STREET, PRETORIA, GAUTENG PROVINCE** and is not opposing the main application in these proceedings.

5.

THE PURPOSE:

The major purpose of this motion is to humbly move this Court to condone the Applicant's late filing of his application for leave to appeal.

6.

THE BACKDROP:

6.1 On the **23RD JULY 2015** my office received a letter from our correspondent attorneys, **MPHAFI KHANG INCORPORATED** advising that the Supreme Court of Appeal has refused to grant the Applicant leave to appeal. Attached thereto was a copy of the Order which is dated the **14TH JULY 2015**.

6.2 A copy of such letter together with the order confirming is humbly attached hereto marked as **ANNEXURE "CA1"**, the contents whereof are incorporated herein as if specifically averred.

6.3 The **MAPHUTHAs** instantly resumed the eviction executions.

7.

THE MERITS:

- 7.1 I humbly submit that following the signing of the Founding Affidavit by the Applicant, my office attended to the making of the required sets of the copies of the application.
- 7.2 In the process of making such copies the machine experienced problems as it did not make proper copies and this forced my office to outsource the making of the balance of such copies.
- 7.3 Once the copies were made, my office then sent them the binders for the purpose of ring binding the same. All these steps took my office some 4 (four) days to have a complete set.
- 7.4 I need to mention that initially I had inadvertently calculated the 15 (fifteen) days period required to file the application for leave to appeal from the date of receipt thereof, the **23RD JULY 2015** instead of from the date of the order, the **14th JULY 2015**, however, we fortunately realized that the correct approach was to compute the days from the latter date.

- 7.5 On the **4TH AUGUST 2015** we urged the binders to finalize the copies, sent the application for leave to appeal to the Registrar of this Court via e-mail and sent our Candidate Attorney, **NGOANAMOGALE FRIDAH MAFOKWANE** to attend to lodge the same at this Court, however, sadly she was due to the volume of the road traffic and convoy not able to make it on time.
- 7.6 On the next morning, our Candidate Attorney returned to this Court for the purpose of lodging the application for leave to appeal, however, she was informed that such application was 1 (one) day late and that it needs to be accompanied by a condonation application prior to lodgment.
- 7.7 We immediately prepared this application and I was able to finalize the same upon my return from a trial hearing I had on the **6TH AUGUST 2015** and in the Magistrates' Court, Garankuwa.
- 7.8 It is thus abundantly clear from the circumstances that resulted in the lodgment of the Applicant's application for leave to appeal out of time that it was not done out of intent and that it was beyond the control of the Applicant and that he is thus not to blame for the same.

8.

THE CONCLUSION:

- 8.1 Given the foregoing circumstances, I humbly submit that a proper case for the relief that is humbly sought in these proceedings is made out.
- 8.2 I further submit that I have fairly provided all the information necessary to enable this Court to decide this application, and to humbly do so in the Applicant's favour.
- 8.3 The relevant legal criteria is whether the Applicant has a reasonable prospects of success with his case, and whether the case is of substantial importance to him, and that he is not in willful default to lodge his application for leave to appeal with the Registrar of this Court on time.
- 8.4 I submit further that given the Applicant's averments in these proceedings, it has been demonstrated that the prospects of the Applicant succeeding with this case are overwhelmingly in his favour, and that the case is of substantial importance to him

and his family members. His health is extremely worrying.

8.5 I, therefore humbly move this Court to find it just and equitable to accordingly grant the relief that is humbly sought in the accompanying Notice of Motion in these proceedings.

DEPONENT

THUS DONE, SIGNED AND SWORN TO BEFORE ME AT PRETORIA ON THIS THE _____ DAY OF AUGUST 2015 AFTER THE DEPONENT HAVING DECLARED THAT HE IS FAMILIAR WITH THE CONTENTS OF THIS AFFIDAVIT AND THAT HE REGARDS THE PRESCRIBED OATH AS BINDING ON HIS CONSCIENCE AND THAT HE HAS NO OBJECTION AGAINST TAKING OF THE PRESCRIBED OATH.

COMMISSIONER OF OATHS

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DATED AND DONE AT PRETORIA ON THE 7TH DAY OF AUGUST 2015.