

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CC CASE NO: _____

In the matter between:

MUYIWA GBENGA-OLUWATOYE

Applicant

and:

RECKITT BENCKISER SOUTH AFRICA (PTY) LIMITED

First Respondent

NADEEM BAIG, N.O.

Second Respondent

**FOUNDING AFFIDAVIT
(Application for Condonation)**

I, the undersigned,

NDUMISO PEDRO VOYI

do hereby make oath and state as follows:

1. INTRODUCTION

1.1. I am a major male practising attorney and I practise as such at Ndumiso Voyi Incorporated, the Applicant's attorneys of record. I practise at Ground Floor, Building 5, Midrand Business Park, 563 Old Pretoria Main Road, Halfway House, Midrand, Gauteng Province.

1.2. I am duly authorised to depose to the present affidavit and launch this application on behalf of the Applicant.

1.3. The facts set out in this affidavit are within my own personal knowledge, save for where the context indicates to the contrary or where I expressly state otherwise.

1.4. These facts are to the best of my knowledge and belief both true and correct.

2. THE PURPOSE OF THE APPLICATION

2.1. This is an application for condonation of the late filing of the Applicant's application for leave to appeal, which was 1 (one) day late on its *filing* with this Honourable Court as required by Rule 19(2) of the Constitutional Court Rules.

2.2. In terms of the aforesaid Rules, the Applicant's application for leave to appeal had to be delivered within 15 days of the date of the Order against which leave to appeal is being sought.

3. EXPLANATION FOR THE DELAY

3.1. The application for leave to appeal was duly finalised on its due date of 24 February 2015.

3.2. It was duly and timeously served on the Respondents, it having been served on the afternoon of Wednesday 24 February 2016.

3.3. However and due to time constraints occasioned by administrative factors pertaining to its service and filing (ie copies to be made, loading of the papers on a flash drive, etc), the Application could not be filed with this Honourable Court on time. By the time service was effected, it was already late for the application to be filed with the Registrar of this Honourable Court.

3.4. The Applicant had, in earnest, endeavoured to deliver the Application on the due date but only service could be achieved due to time constraints as aforesaid.

4. DEGREE OF LATENESS

4.1. The judgment of the Labour Appeal Court and against which leave to appeal is being sought was handed down on Wednesday 3 February 2016.

4.2. The Applicant's application for leave to appeal was, therefore, due by no later than Wednesday 24 February 2016.

4.3. Only *service* was achieved on 24 February 2016. The *filing* of the application with this Honourable Court could not be achieved for the reasons more fully stated above.

4.4. The application is, accordingly, late in terms of *filing* by a mere 1 (one) day.

5. PREJUDICE

5.1. There can be no prejudice on the part of the Respondents as they were timeously *served* with the Applicant's application for leave to appeal on its due date of 24 February 2016.

5.2. It would only be the Applicant that would suffer immense prejudice if the present application was to be refused.

6. PROSPECTS OF SUCCESS

6.1. It is, respectfully, submitted that the Applicant enjoys excellent prospects of success in his application for leave to appeal.

6.2. In support of the aforestated submission, the Applicant refers to the contents of the founding affidavit in support of the application for leave to appeal.

6.3. In order not to inundate the present affidavit unnecessarily, the Applicant prays that the contents of the founding affidavit, in so far as they reveal the Applicant's prospects of success, be read as if they are incorporated herein.

7. CONCLUSION

7.1. In conclusion, it is respectfully submitted that the Applicant has made out a case for the relief sought in the Notice of Motion.

DEPONENT

I CERTIFY that this Affidavit was SIGNED and SWORN to before me at _____ on this the _____ day of **FEBRUARY 2016**, by the Deponent having acknowledged that he/she knew and understood the contents of this Affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who attached the following words:
"I swear that the contents of this affidavit are true, so help me God".

COMMISSIONER OF OATHS