

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO.: CCT 379/2024

In the matter between:

SOUTH AFRICAN RIDING FOR THE DISABLED ASSOCIATION Applicant

and

**THE REGIONAL LAND CLAIMS COMMISSION:
WESTERN CAPE** First Respondent

MAGHERDIEN SADIEN N.O.
(on behalf of the Imam Dout Sadien Family Trust
(IT 746/2014)) Second Respondent

THE ABDURAGHMAAN SADIEN FAMILY TRUST
(IT 20909/2014) Third Respondent

MOHAMED ALLIE EBRAHIM N.O.
(on behalf of the Bapa Sadien Family Trust
(IT 202039/2014)) Fourth Respondent

MAGHERDIEN SADIEN N.O.
(on behalf of the Boeta Toyer Sadien Family Trust
(IT 020531/2014)) Fifth Respondent

THE BOETA OMAR FAMILY TRUST
(IT 201155/2014) Sixth Respondent

SEDICK SADIEN Seventh Respondent

FILING NOTICE

Document filed: Answering Affidavit to SARDA's attempt to file a Replying Affidavit

DATED AT CAPE TOWN ON THIS THE 13 DAY OF MARCH 2025.

STATE ATTORNEY, CAPE TOWN

Per:



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**ANSWERING AFFIDAVIT TO SARDA'S (THE APPLICANT'S)
ATTEMPT TO FILE A REPLYING AFFIDAVIT**

I, the undersigned

LEBJANE HARRY MAPHUTHA

do hereby make oath and state that:

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1. I am a major male employed as the Regional Land Claims Commissioner, who is cited as the third respondent in this matter ("the Commissioner"), with offices situate at 163 Masemola Street, Pretoria, Gauteng Province.
2. The facts are within my personal knowledge, unless the contrary appears from the context and are true and correct.

PURPOSE OF THE AFFIDAVIT

3. The purpose of this affidavit is twofold, namely to :
 - 4.1 provide an answer to SARDA's application to file a replying affidavit and for condonation in that regard;
 - 4.2 deal with certain of the allegations contained in the replying affidavit, in the event of SARDA being granted leave to file the replying affidavit.

COMPETENCY OF THE RELIEF

4. The relief sought by SARDA is not competent. SARDA's application for leave to appeal to this Court is brought in terms of Rule 19 of the Constitutional Court Rules. There is no provision in Rule 19 for a replying affidavit to be filed.¹
5. *Cross-Border Road Transport Agency v Central African Road Services (Pty) Ltd*² stated that:

"[52] *The applicant attempted to file a replying affidavit with this court. The Rules of this court for good reason do not make provision*

¹ Superior Court Practice Vol. 1, p. B1-81

² 2015(5) SA 370 (CC) at p. 387 D-E para [52]

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for a replying affidavit to be filed. This court retains the discretion to admit further affidavits if it is in the interests of justice to do so.”

6. In *Ka Mtuze v Bytes Technology Group SA (Pty) Ltd*³ this Court held that:

“[15] The Rule does not make provision for the applicant to file a reply. The rationale for this is that, if it is in the interests of justice that this Court should entertain a litigant’s appeal, the Court should be able to decide that from the applicant’s application for leave to appeal and the respondent’s response without the applicant having to file a reply. In this regard it must be remembered that, even though rule 19 does not contemplate a reply by the applicant, the documents that the Court is required to have before it when it considers an application for leave to appeal include the judgment of the court against which the applicant seeks leave to appeal. This means that rule 19 contemplates that the Court will have one set of papers from each party to the dispute and the judgment from the court against which an appeal is sought. The Rule does not contemplate that any one party will file more than one set of papers.” (emphasis supplied)

7. In the circumstances, the filing of a replying affidavit is not competent. Therefore, the concomitant condonation application seeks condonation in respect of relief which is not competent and should therefore be dismissed

³ 2013(12) BCLR 1358 (CC) at p. 1362 I-J para [15]

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solely on that basis.

RESPONSE TO ALLEGATIONS

8. I deal with some of the allegations contained in the replying affidavit but do so only: (a) in the event of the Court allowing SARDA to file the affidavit; (b) to the extent necessary. The fact that I do not deal specifically with an allegation, should be construed as a denial of such allegations.

9. Ad paragraph 7

9.1. SARDA persists with its contention that *"this Court's decision of 23 February 2017 on the basis that it was clearly wrong"*.

9.2. This Court's decision of 23 February 2017, is final and binding and SARDA is estopped from contending that it is *"wrong"*.

9.3. This Court's decision that SARDA is *"only entitled to intervene for the purposes of determining quantum"* is *res judicata*, as it disposed of the issues that were placed in dispute before this Court.

10. In *Horowitz v Brock*,⁴ Smalberger JA stated the following:

"An issue, broadly speaking, is a matter of fact or question of law in dispute between two or more parties which a Court is called upon by the parties to determine and pronounce upon in its judgment, and is relevant

⁴ 1988(2) SA 160 (AD).

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to the relief sought. As pointed out by Innes CJ in the oft-quoted passage from Robinson v Randfontein Estates G M Co Ltd 1925 (AD) 173 at 198,

"(t)he object of pleading is to define the issues; and parties will be kept strictly to their pleas where any departure would cause prejudice or prevent a full enquiry".

11. Ad paragraph 8

11.1. SARDA contends that *"The Land Claims Court imposed on the applicant the duty of proving its right to compensation by way of an application"*; this contention has no substance on the basis that this Court's decisions are final and binding.

11.2. It is, however, only correct that SARDA was called upon to quantify the compensation that this Court ruled that it is entitled to pursue, so that the first respondent can provide an expert valuation report to assist the Court in determining compensation, if any can be proven.

12. Ad paragraph 9

With reference to the family trusts seeking leave to vary the claimant's court order, SARDA contends that *"it was this new application which provided the opportunity re-assess the applicant's interest in the order of 8 February 2013."*

It is unclear why the new application provided the opportunity to re-assess the order granted 12 years ago on 8 February 2013.

13. Ad paragraph 10

13.1. These allegations are contested. Nowhere in the founding affidavit in this matter did SARDA mention "*a series of one-year leases entered into between the applicant and the Western Cape Provincial Government.*" SARDA is merely seeking to bolster its case by referring to the one year leases when it had all the opportunity to raise the issue before and did not.

13.2. The rationale proffered is merely to provide the "*context for the undertaking of the 50 year lease given by the MEC of Transport and Public Works Mr Robin Carlisle in April 2011.*"

14. Ad paragraph 11

14.1. Any undertaking given by Mr Robin Carlisle carries no weight insofar as SARDA concedes that the four erven occupied by the applicant vested in the National Government in 2011 when Mr Carlisle gave the undertaking of the 50 year lease.

14.2. Moreover, no documentary proof of the one-year leases, that were allegedly concluded, have been provided.

15. Ad paragraph 12

The allegations in this paragraph have been thoroughly examined and the earlier proceedings herein confuse the matter, as SARDA accepts that Erf 142 was "*transferred to the National Government in 1990*".

16. Ad paragraph 13

These allegations are contested insofar as Annexure "RA3" to SARDA's "replying affidavit" carried no legally binding decision. A site meeting constitutes no binding concession.

17. Ad paragraph 14

17.1. SARDA in this passage seeks to repeat the contentions that "*the secret deliberations of Mpshe AJ termed by him as an exercise of his 'inquisitorial powers'*" and the "*grossly irregular, extra-curial interchange between counsel.*"

17.2. These contentions are repetitive and constitute nothing new.

18. Ad paragraph 15

18.1. SARDA's founding affidavit (paragraph 10, page 8) contains a bald statement to the effect that Cowen J's decision of 1 November 2024 "*reflect a thorough disregard of the provisions of the Restitution of Land Rights Act, 1998 the common law of property and succession. Material deviation from legislation infringed the principle of legality*". But it is not explained how the principle of legality or the common law of property and succession were disregarded. Furthermore, it is unclear which material deviation from legislation infringed the principle of legality.

18.2. The claim to the "*right to just administrative action under section 3 of*

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*the Constitution is misplaced insofar as the use of inquisitorial powers is derived from section 32(3)(b) of the Restitution Act.*⁵

18.3. Moreover, it is unclear how SARDA's right of access to the courts are being infringed under section 34 of the Constitution.

18.4. Furthermore, it is not explained how the Land Court disregarded or misinterpreted the provisions of the Restitution of Land Rights Act, as stated in paragraph 15 of SARDA's *"replying affidavit"*.

19. Ad paragraph 16

19.1. SARDA's intention is clear insofar as it states that *"it seeks to participate in a new, far-reaching, application to vary the Land Claims Court's order of 8 February 2013, and in so doing has asked the Land Court (and is asking this Court) to reassess its interest in that order"*, is simply to revive a matter which was disposed of 12 years ago. SARDA is estopped from contending that that decision is wrong and the matter is res judicata.

20. In the premises, the Commission requests that SARDA's application for condonation to file a replying affidavit, be dismissed with costs of suit.

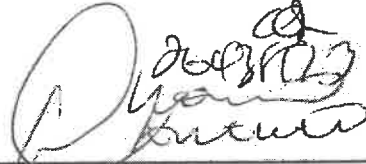


LEBJANE HARRY MAPHUTHA

⁵ Para [98] of Mpshe AJ's judgment in the Land Claims Court 303.

I certify that the deponent acknowledged to me that he knows and understands the contents of this declaration, that he has no objection to taking the prescribed oath and considers it to be binding on his conscience.

Thus signed and sworn to before me at CAPE TOWN on this the 12 day of **MARCH** 2025.




COMMISSIONER OF OATHS
Ex officio

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
CAPE TOWN CENTRAL

2025 -03- 12

CAPE TOWN CENTRAL
COMMUNITY SERVICE CENTRE
SOUTH AFRICAN POLICE SERVICE

STAATSPROKUREUR: KAAPSTAD

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STATE ATTORNEY: CAPE TOWN