CONSTITUTIONAL COURT OF SOUTH AFRICA

ConCourt Case No: 269/2021

In the matter between:

ALIAS MTOLO	First Applicant
MANEHENG MTOLO	Second Applicant

and

THEUNIS CHRISTOFFEL LOMBARD	First Respondent
NATIONAL MINISTER OF POLICE	Second Respondent
JACOBUS HUNTER	Third Respondent
MARIA HELENTJE LOMBARD	Fourth Respondent

REPLYING AFFIDAVIT

I, the undersigned –

ALIAS MTOLO

do hereby make oath and swear that –

1. I am an adult male person, currently unemployed. I resided at Plot 8, Ardenworld, Vanderbijlpark, Gauteng Province.

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2. The facts herein are within my personal knowledge, unless indicated otherwise or if the contrary appears from the context and are to the best my belief and knowledge true and correct.

3. Where I make any submissions of a legal nature, I do so on the advice of my attorneys of record which advice I concur.

4. I perused and considered the affidavit deposed to by the first respondent and annexures and wishes to reply thereto to as set out below in this affidavit. To the extent that:

4.1 I omit to deal with any particular allegations or legal submissions contained in the said affidavit or any allegations in the said affidavit is inconsistent with what is set out herein, same should be considered denied as if specifically traversed.

5. I reply *seriatim*.

6. <u>Ad paragraphs 1 – 4</u>

6.1 The allegations are noted, save to deny that they are true and correct.

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7. Ad paragraphs 4.1.1 – 4.1.2

7.1 I admit that:

7.1.1 J Dippenaar did not dismiss the application of merits on 25 August 2021;

7.1.2 The urgent application on 25 August 2021 was struck off the roll for lack of urgency; and

7.1.3 I repeated some of the content of the previous application.

7.2 I deny that I have failed to follow appropriate alternative remedies, such as leave to appeal or placing the matter on a normal roll. In fact, the application before this Honourable Court is pursued through an appeal process – which is not unusual, but extraordinary.

7.3 The rules of this Court permit a litigant to approach it seeking direct access on urgent basis.

7.4 It is noted that further legal argument will be raised by the deponent.

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8. Ad paragraph 4.1.3 .1

8.1 I am battling to find logic nor any legal basis for the deponent's submission that "*the application of the Uniform Rules of the Court Rule 6(12) is not inconsistent with some rights or principle of the Constitution*".

9. Ad paragraphs 4.1.3 .2 – 5

9.1 This application raises multiple constitutional issues of importance – as advanced in the founding affidavit. The deponent's answer herein focused purely on the rights of the minor children – this, however, ignores the other rights such as dignity and education. These rights, including the rights of the minor children, formed the basis of our application and remained unchallenged by the deponent.

9.2 The submission by the deponent that this matter is not urgent because we have alternative accommodation is unfounded and meritless. I have stated clearly in the founding affidavit that some of the community members have

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opened their homes to permit us and our children to invade their privacy – bath and wash our clothes.

9.3 Further, the reliance on AA7 and AA8 by the deponent is not in any manner a confirmation that myself, my wife and our children have alternative accommodation. I am not certain as to on what basis has the deponent arrived at the conclusion that the mere pictures of people standing outside the property should be accepted by this Honourable Court as evidence of alternative accommodation for us.

9.4 The application before this court is not pertaining to the disagreement with the High Court's assessment of facts and Rule(12). J Dippenaar did not deal with the facts of the urgent application on 25 August 2021 – thus, this application is premised on the constitutional rights advanced in the founding affidavit.

9.5 I have also made it clear, as part of this application that the other burning issue, which I am advised it would be prudent for this Court to consider, is that the order of J Dippenaar

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appears to be rescinding the order granted by Justice Antonie authorising us to approach the High Court on an urgent basis should the respondents fail to comply with his order.

9.6 The allegation that this application contains new version of events as suggested by the deponent in paragraph 4.1.3.7 is denied. In fact, the deponent has stated in paragraph 4.1.1 of the answering affidavit that I have nonetheless repeated the content of my previous application and brought the same subject matter before this Honourable Court.

9.7 It is clear that the despondent is contradicting himself in this regard.

10. Ad paragraphs 5.1 – 6

10.1 The background of the proceedings is noted. Save to state that the threats by the deponent to pursue a rescission application never materialised.

10.2 The difficulty that the first and fourth respondents are faced with, is the failure to properly interpret the order of Justice

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Antonie. Thus, they persist with their ill-conceived submission in paragraph 5.1.4 that they complied with Justice Antonie's order. Their persistence is based on a rather and deliberate poor interpretation that "*the roof was properly attached in the same manner the previous roof was installed, where the applicant had resided for four years*". Paragraph 4 of Justice Antonie's order clearly directed the first and fourth respondents to "*replace the roof and windows of the dwelling to make it* ***fit for human occupation***".

10.3 Thus, the property that is alleged to have been fixed by the first and fourth respondents, it could be that in their view is restored to its original status – which I disagree. But the question is not whether the property is restored to its previous status, but rather the first and fourth respondents have complied with the order granted by Justice Antonie, especially paragraph 4 and the property is fit to be occupied by human beings.

10.4 The social worker's report was unchallenged – the report was commissioned to ensure that the interests of the minor

children are safeguarded. She made it clear that the property is not fit for human occupation.

10.5 There is nothing in the order of Justice Antonie that directed the first and fourth respondents to restore the property to its original conditions. The first and fourth respondents did not dispute the pictures we submitted in the High Court – the similar pictures are now before this Court – thus, on the basis of the pictures, the property cannot be declared to be fit to be occupied by human beings.

11. Ad paragraphs 6.1 – 13

11.1 The allegations herein are denied.

11.2 It is noted that the first respondent is persisting with the submission that we evicted ourselves. This argument was largely rejected by Justice Antonie – who stated that it is inconceivable for a family to remove a roof and windows of the property not belonging to them – then evict themselves. I submit that this Court should also reject this submission meritless and ill-conceived.

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12. Ad paragraphs 14 – 22

12.1 The allegations herein are denied. I have no knowledge of the contents of the newspapers – nor was I even interviewed. It is opportunistic for the first and fourth respondents to rely on newspaper article in order to refused compliance with court order.

13. Ad paragraphs 23 – 36

13.1 The pictures before this Court served before J Dippenaar and were not disputed. Hence the deponent is not even disputing them – he simply submits that the pictures proves that he had complied with Justice Antonie's order – which is incorrect.

14. Ad paragraphs 23 – 36

14.1 It is unprecedented and unusual for a litigant to attack the attorney who is the creature of instructions furnished by cleint. The deponent has persisted with his attack on my attorney even during the re-consideration application – his attacks are unfounded.

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14.2 These attacks are coupled with threats of costs *de bonis propris* against my attorney. These attacks are unfounded and simply intended to scare my attorney to dump me and withdraw from this matter.

14.3 The deponent has even ventured into making serious allegations that my attorney has mislead the Court. These allegations are made without any basis – thus, the Court should really condemn the allegations as meritless and unfounded.

14.4 The deponent further persist that my attorney had failed to adhere to the Rules – this is not correct at all. It is trite that the Rules of the Court, including the High Court permits matters to be heard on extreme urgent basis. This was a case with both orders granted by Justices Keightley and Antonie. In any event, it is not my attorney who should adhere to the Rules – his job is to proffer a legal advice – the criticism, if any, should be directed to me – I am a litigant.

14.5 It is also unfounded to allege that my attorney is aware that we have moved out of the property on our own accord and

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removed the furniture – our attorney never resided with us, he only met us the first time when we furnished him with instructions pertaining to our illegal eviction. Now, I am battling to comprehend these allegations attacking our attorneys on issues that he is not even a party nor have no knowledge, besides what he was instructed to do.

14.6 It is not my attorney's duty to contact the deponent and confirm if he received the urgent application.

14.7 It is clear that the deponent is concern with his pockets, should the application not succeed. The deponent's financial impact arising from this application is nothing compared to the gross violation of our constitutional rights.

14.8 The application was served properly to the deponent's attorneys of record. After they had sent email confirming that they are not on record, the application was served to the deponent. For some reasons unknown to me, the attorneys are now on record.

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14.9 For all of these reasons, I respectfully request that this Court grant the relief set out in the notice of motion to which this affidavit is attached.

DEPONENT

The Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at Benoni on this the 06 Aug day of 2021, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 17 August 1977, as amended having been complied with.

06.08.2021

Captain N Kwanyane

COMMISSIONER FOR OATHS

Name; Captain N Kwanyane
Address; 117 Harpur Ave Benoni
Rank; Captain

SOUTH AFRICAN POLICE SERVICE 117 HARPUR AVENUE 06-08-2021
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