IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT 54/00

In the matter of -

SIAS MOISE Plaintiff

versus

TRANSITIONAL LOCAL COUNCIL OF
GREATER GERMISTON Defendant

and

THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT Intervenor

and

THE WOMEN'S LEGAL CENTRE *Amicus curiae*

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AFFIDAVIT

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I, the undersigned **DEBORAH ANA QUÉNET**, hereby make oath and state that:

1. I am an admitted attorney of the High Court of South Africa in the employ of the Women's Legal Centre, Cape Town.

2. I am duly authorised by the Women's Legal Centre Trust to bring this application and to depose to this affidavit on behalf of the Trust. The Women's Legal Centre was admitted by this Court as *amicus curiae* in this matter.

3. The facts contained herein are true and correct and, unless otherwise stated or indicated by the context, within my personal knowledge.

4. On 4 July 2001 judgment was handed down in this matter by Acting Justice Somyalo. An order in the following terms was made by the Court:

"[26] The order made by Hoffman AJ in the Witwatersrand High Court on 25 October 2000 declaring constitutionally invalid section 2 (1) (a) of the Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970 is confirmed."

5. The order contains no provision regulating the retrospective effect of the declaration of invalidity, a matter dealt with in paragraph 70 of the written submissions by the Women's Legal Centre. There will consequently be uncertainty as to its effect upon actions instituted but not finally determined at the time that the order was made.

6. It is respectfully submitted that this Court's failure to regulate the wider application and effect of the order of invalidity constitutes a "patent error or omission" within the meaning of Rule 42 (1)(b) of the Uniform Rules.

7. It is further submitted that this Court has the power, in terms of Rule 28 of its own Rules, read with Uniform Rule 42 (1) (b), to vary its order by including an order as to retrospectivity based on the order in paragraph 26 (b) of *Mohlomi v Minister of Defence* (1997 (1) SA 124 (CC)). Alternatively, it is submitted that this Court may, by exercising its inherent power to regulate its own process, supplement the order in this way.

8. Finally it is submitted that the relevant date to be included in the order as to retrospectivity is 27 April 1994, that is, the date on which the Interim Constitution came into operation. This is because the Limitation of Legal Proceedings (Provincial and Local Authorities) Act, 94 of 1970, pre-dates the Interim Constitution.The only amendments to the Act subsequent to 27 April 1994 (by the Justice Laws Rationalisation Act 18 of 1996 and the General Law Amendment Act 49 of 1996) have no bearing on the constitutional question determined by this Court. The amendments were limited to replacing two of the exceptions in section 3 (1) with references to new legislation and to deleting all references to "the territory of South-West Africa". This applicability of the Interim Constitution was discussed in footnote 19 of the written submissions of the Women's Legal Centre.

9. Notice of this application will be sent to all other parties in this matter.

10. I accordingly ask that an order be granted in the terms sought in the Notice of Application.

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**DEBORAH ANA QUÉNET**

I certify that:

1. The deponent acknowledged to me that:
   1.1 She knows and understands the contents of this declaration;
   1.2 She has no objection to taking the prescribed oath;
   1.3 She considers the prescribed oath to be binding on her conscience.

2. The deponent thereafter uttered the words: “I swear that the contents of this declaration are true, so help me God”.

3. The deponent signed this declaration in my presence at the address set out hereunder on _____.

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COMMISSIONER OF OATHS