IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

HELD AT BRAAMFONTEIN

CC CASE NO:

SCA CASE NO: 189/2023

LCC CASE NO: 70/2022

In the matter between:

MAGALONE MEREKI	**FIRST APPLICANT**
TOPIES MEREKI	**SECOND APPLICANT**
DIKHOTSO MEREKI	**THIRD APPLICANT**

and

MOLADORA TRUST	**FIRST RESPONDENT**
DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND LAND REFORM	**SECOND RESPONDENT**

NOTICE OF MOTION- CONDONATION APPLICATION

KINDLY TAKE NOTICE THAT the first to third applicants intends applying to the above Honourable Court for an order in the following terms

1. That Non-compliance with the rules of this Court and the late filling of their application is condoned

2. Costs be granted in case of opposition

3. That the first to third applicants are granted further and alternative relief

FURTHER TAKE NOTICE that the affidavit of Donald Somo will be used in support of this application

TAKE FURTHER NOTICE that the first to third applicants have appointed the address of their attorneys as set out below at which they shall accept notice and service of all processes in this application

DATED AND SIGNED AT VRYBURG THIS 25TH DAY OF APRIL 2024

LEGAL AID SOUTH AFRICA
Attorney for Applicants
73 Vry street
VRYBURG
TEL: 053 927 0095
EMAIL: VuyaniAM@legal-aid.co.za
: DonaldS@legal-aid.co.za

TO: **THE REGISTRAR**
Constitutional Court
BRAAMFONTEIN

AND TO: **MOOLMAN AND PIENAAR INCORPORATED**
Attorney for First Respondent
57 Maree Street
POTCHEFSTROOM
and 400 Old Howick Road
HILTON
Ref: Ms. C Pienaar/Mr. HJ Moolman/MAT10044
Email: clarissap@mmlaw.co.za / hj@mmlaw.co.za
Tel: 018 297 8799 / 033 024 0421

MOOLMAN & PIENAAR INC.
Prokureurs / Attorneys
2024-04-25
"RECEIVED WITHOUT PREJUDICE"
TIME: 16:20

AND TO: **STATE ATTORNEY, PRETORIA**
Attorneys for Second Respondent
SALU Building
255 Thabo Sehume Street
cnr Thabo Sehume
& Francis Baard Streets
PRETORIA
Tel: 012 309 1627

STATE ATTORNEY
RECEPTION
2024-04-26
PRIVATE BAG/PRIVAATSAK X91 (1)
PRETORIA 0001
STAATSPROKUREUR

2046/2022/259

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DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND LAND REFORM	**SECOND RESPONDENT**

AFFIDAVIT- CONDONATION APPLICATION

I, the undersigned,

DONALD SOMO

Do hereby make the following statement under oath and say

1.

I am an advocate of the High Court of South Africa, admitted and practicing as such. I am employed by Legal Aid South Africa at its Vryburg local office as a Legal Practitioner, Supervisory role.

2.

The contents herein are within my personal knowledge and are both true and correct

3.

I am authorized to depose of this affidavit on behalf of the first to the third applicants as I was assisgned to assist them and have the necessary authority

4.

PURPOSE OF APPLICATION

This is an application to beg the above Honourable court to condone the late filling of the application to appeal the decision of the Supreme Court of Appeal and request the honourable court to hear the matter on behalf of the applicants.

5.

In my affidavit, I will show the following

(a) Reasons for the delay;
(b) Prejudice suffered, if any;
(c) Prospects of success and
(d) Importance of the case

6.

REASONS FOR DELAY

This matter was heard by the Supreme Court of Appeal on the 15th of March 2024. After the hearing, judgement thereof was reserved. The judgement was handed down electronically on the 3rd of April 2024. In terms of the rules, the applicants had fifteen days to note this application from the day of the judgement

In computation of days, I confirm that the filing of this application is two days late.

7.

After receiving the order, the practitioners involved convened to study and analyse the judgement. Then, we had to deliberate on the merits and prospects of success. This was so that when we consult with the client, we are able to advice of the way forward.

8.

After the deliberations, I undertook to consult with the clients. I need to hastily mention that clients reside at least one hundred and ninenty six kilometers (196) from our vryburg office and it is the only close by office to the parties.

9.

On the tenth of April, I attended to visit the farm to advise them of the order, I was unfortunately not able to find them. This was because we only have one contact number of the parties and as at the time, it was not functional. I found no one at the residence and I had to go back.

10.

I went back on the 18th and I was told by some small child that they have a family funeral in the area of Tigane and they will only be back the following week. Labouring under the advice of the boy, I went back on 23 April to gather instructions and found only the third applicant who advised I come back the 25th as she will attend to have them all available in order to be able to give instructions as at that time, the second applicant was at her part time job and the first applicant was sick and at the clinic.

11.

It is on 25 April that I managed to consult with them and get clear instructions in relation to the way forward. We also had an opportunity to draft the affidavits for signature, hence only able to file today.

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PREJUDICE

Appreciating the history of the matter, I submit that though it is taking a lengthy time, there is no prejudice to the first respondent in this regard. In fact, I submit that should there be any prejudice, it would be suffered by the applicants if this application is not heard as their livelihood depends on this application

PROSPECTS OF SUCCESS AND IMPORTANCE OF THE CASE

Without burdening the record, I submit that the prospects of success and the importance of the case are clearly outlined in the main application and pray the court to consider them as if specifically pleaded herein. It suffices to mention that the above honourable court has not pronounced on these issues and it will assist in letting these issues settled as a result

WHEREFORE, I PRAY THAT AN ORDER AS PRAYED FOR IN THE NOTICE OF MOTION BE GRANTED

DEPONENT

I CERTIFY that the Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn before me at on the 25 dayof April 2024 and confirm that the provisions of Government Notice No. R 1258 dated 21 July 1972 have been complied with.

COMMISSIONER OF OATHS

Ditebogo Patrick Kotoane
Commissioner of Oath
Ex Officio
Legal Practitioner
36 Leask Street, Klerksdorp, 2570
P.O Box 240, Stilfontein, 2550
Cell: 073 333 1223