

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG PROVINCIAL DIVISION, PRETORIA)

CASE NUMBER: 1587612

In the application of:

**THE LAW SOCIETY OF SOUTH
AFRICA**

Amicus Curiae

and

**MABUNDA INCORPORATED and
42 others**

1st to 43rd Respondents

In re the matter of:

**MABUNDA INCORPORATED and
41 others**

1st to 42nd Applicants

and

THE ROAD ACCIDENT FUND

Respondent

LAW SOCIETY OF SOUTH AFRICA'S REPLYING AFFIDAVIT



I, the undersigned,

JOHANNES CORNELIS JANSE VAN RENSBURG

do hereby make oath and state that:

1. I am the Vice-President of the Law Society, which is an *amicus curiae* in this matter. I deposed to the founding affidavit delivered by the Law Society in this matter.
2. The facts contained in this affidavit, save where expressly stated or where the context indicates otherwise, fall within my own personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. Where I make submissions of a legal nature, I do so on advice received from the LSSA's legal representatives.

INTRODUCTION

4. On 17 March 2020, there was a short hearing in this matter. My attorney of record was in attendance and conveyed the following to me:
 - 4.1. The honourable Mr Justice Davis granted prayer 2 of the LSSA's notice of motion, allowing it to intervene in the matter as an *amicus*. He similarly granted the BLA's application to intervene as an *amicus*.
 - 4.2. The honourable Mr Justice Davis stood the matter down until the following day, in order to allow the RAF the opportunity to answer the LSSA and BLA's founding affidavits.

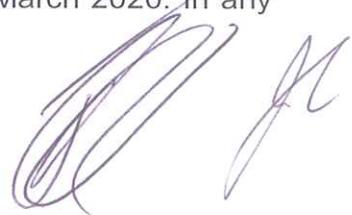


5. Given that the LSSA was granted leave to intervene as an *amicus*, my legal team understood that the RAF would be filing an answering affidavit which addressed the LSSA's submissions in the main application (the LSSA's founding affidavit included both the application to intervene and its submissions in the main application).
6. Instead, later that day, the RAF served an (unsigned) answering affidavit and a supplementary answering affidavit on the LSSA which primarily addressed the questions of urgency and the LSSA's entitlement to participate in the proceedings as *amicus*. The latter of these issues, at least, is now moot.
7. Much of the remainder of the affidavits is irrelevant, or constitutes new evidence in reply, which the RAF has not obtained permission to adduce. I therefore briefly reply to the two further affidavits only insofar as they are relevant to the LSSA.

THE RAF'S FIRST ANSWERING AFFIDAVIT

Ad "Introduction" (paragraphs 5 – 15)

8. This affidavit challenges the LSSA and BLA's applications to intervene as *amici*. As noted above, these parties have already been permitted to intervene as *amici*. The issue is therefore moot. I respectfully submit that the RAF should have been engaging with the substance of the *amici*'s submissions and not sought to attack the LSSA simply for the sake of it.
9. It is not quite correct that the LSSA brought its application on 16 March 2020. It served an unsigned copy of the papers on the RAF on 14 March 2020. In any



event, the learned Judge expressly invited intervening parties to file their papers at any time before the hearing.

10. The allegation that the LSSA is attempting to engineer a postponement to delay the furnishing of files to the RAF is offensive and nonsensical. If the matter was postponed, without an interim order in place, the handover of files would not be delayed. The attached letter ("RA1"), which was issued by the RAF on 17 March 2020, shows that the RAF is proceeding with its plans regardless of this litigation.- it amounts almost to constructive contempt given the launch of no less than three applications brought against it .

Ad "This application is not urgent" (paragraphs 16 – 31)

11. The LSSA persists with its contentions relating to urgency which are set out in its founding affidavit. It does not repeat them here.
12. However, it is worth mentioning that the correspondence directed by the LSSA to the RAF was aimed at avoiding litigation. The fact that the LSSA attempted to engage with the RAF, and avoid these proceedings, should not be held against it. On the contrary, it shows that the LSSA had no alternative remedy but to apply to join the proceedings. It also demonstrates that having resolved to intervene as an amicus in any application brought it could not to do so before it had received a copy of the papers in any such application .

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Ad "Both LSSA and BLA have an alternative remedy" (paragraph 50)

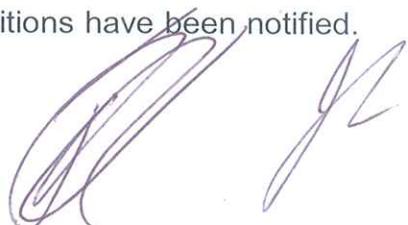
13. I am advised that the RAF is conflating the requirements for an interim interdict with those of an *amicus* application. The LSSA applied to join these proceedings because they arose first. The LSSA may still intervene in the related proceedings.

14. Although it is not necessary to do so, because the LSSA has already been joined as an *amicus*, I make the following brief observations on the Rule 16A notice requirement:

14.1. I am advised that the notice requirement is for the benefit of prospective *amici*. In the present case, the *amici* are already before the court.

14.2. Rule 16A(9) allows the court to dispense with any of the requirements of Rule 16A if it is in the interests of justice to do so. I am advised that it has been held to be in the interests of justice to dispense with the notice requirement where the constitutional challenge has been brought to the attention of all persons who might be affected or who have a legitimate interest in the case and where there was an element of urgency in the proceedings and it was in the public interest that the dispute be resolved.

14.3. In the present case, the impugned decisions have come to the attention of all the relevant panel attorneys, who have received communications on the issue directly from the RAF. It has also come to the attention of the LSSA, which is one of the most important representative bodies of the attorneys' profession. All Judges have been notified of the decision, and all prospective tenderers for panel attorney positions have been notified.

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In short, the impugned decisions are big news in the legal industry, and it is inconceivable that any interested party wouldn't know of them.

THE RAF'S SUPPLEMENTARY ANSWERING AFFIDAVIT

Ad "Introduction" ("paragraphs 5 – 6")

15. The RAF simultaneously concedes that the LSSA and BLA have been joined as *amici* and alleges that they should be mulcted in costs because they have not met the test for joinder as *amici*. This is nonsensical.
16. I also strongly deny that the LSSA's joinder was "disruptive". In filing its papers when it did, the LSSA complied with the express invitation of the presiding Judge.

Ad "This application was never urgent" (paragraphs 7 – 25)

17. The contentions in these paragraphs are repetitive, have mostly been dealt with elsewhere, and do not demand a response.
18. The contentions in paragraph 16 highlight the RAF's troubling new obsession with settling matters. Settling matters for the sake of it is as problematic as litigating for the sake of it. Matters should settle when appropriate, and should be litigated when appropriate, but the blanket approach adopted by the RAF reveals a deep misunderstanding of the issues at stake in these proceedings. If a policy of settling at all costs becomes known universally to Plaintiffs it will lead to them holding out for the highest amounts of compensation with ruinous consequences for the RAF .

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19. The table listing payments made to law firms, included in paragraph 17, is irrelevant, misleading, and should be struck out. The intention seems to be to embarrass firms which may be party to these proceedings. However, the figures listed are deeply misleading, to the extent that they are even accurate (there is no way of verifying them in the short time available), because such payments would include all disbursements such as payments to counsel and experts- which exceed in most cases the attorneys fees .In any event, the RAF ultimately decides what it pays to panel attorneys when it tenders for their services, enters into agreements with them, and accepts the services provided.

Ad “The Law Society of South Africa or BLA are not entitled to admission as *amicus curiae*” and “Both LSSA and BLA have an alternative remedy” (paragraphs 33 – 43)

20. The contents of these paragraphs are repetitive and have been dealt with above.

Ad “Conclusion” (paragraphs 71 – 72)

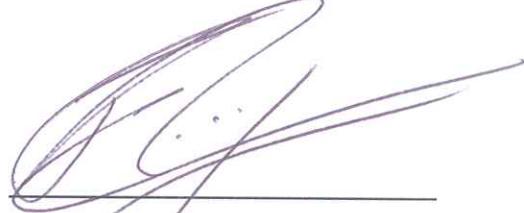
21. The prayers and costs orders sought by the RAF do not make sense in light of the fact that the LSSA was successful in its application to be joined as an *amicus* *Despite the written request to consent thereto and the launch of the application to Court for such leave the RAF persisted in its opposition and continues to do so . The costs of the amicus application should be borne by the RAF.*

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JOHANNES CORNELIS JANSE VAN RENSBURG

I certify, that this affidavit is signed and sworn to, before me, at BRITS
on this 18th day of **MARCH 2020**, the Deponent having acknowledged that he knows
and understands the contents of this Affidavit, the Regulations contained in
Government Notice R1258 of 21 July 1972, as amended, having been complied with.



COMMISSIONER OF OATHS
Full names:
Address:
Capacity:

**Cornelius Johannes
Janse van Rensburg**
PRAKТИСЕРЕНДЕ ПРОКУРЕУР
КОМИССАРИС ВАН ЕДЕ
LUDORF STR 44. BRITS 0250

The Managing Director / Senior Partner
Road Accident Fund Plaintiff Attorneys

17 March 2020

Dear Madam/Sir

RE: INVITATION TO ARRANGE AND ATTEND TO BLOCK SETTLEMENTS FOR 2020 - 2021 TRIAL MATTERS

The Road Accident Fund (RAF) has adopted a new model which emphasizes investigation and settlement of claims. As part of this model the RAF has embarked on an initiative to settle and finalise matters expeditiously in order to avoid long periods of settlement, litigation and high legal costs. The RAF also intends to reduce the average time of claims settlement to be in line with the RAF Act, i.e. 120 days.

The RAF is prepared to engage in block settlements with plaintiff attorneys to either settle matters or minimize issues in dispute. Should your firm have any matters that are set down for trial in 2020, kindly contact the regional office in which the matters are administered to arrange a block settlement date. The respective region will advise on the process to be followed pursuant to the block settlement meeting.

The RAF is aware of matters that were settled with some disputes postponed *sine dies*. Kindly contact the RAF regarding these matters for expeditious settlement.

Please be advised that this invitation applies to matters that have been allocated a trial date in the year 2020, and communication is to be directed to the following RAF contacts:

- Menlyn matters - Fiona Govender on FionaG@raf.co.za;
- Johannesburg matters - Carla Williams on CarlaW@raf.co.za;
- Cape Town matters – Rafi Mowzer on RafiM@raf.co.za;
- East London matters – Xolani Lamani on xolani@raf.co.za;
- Durban matters – Vasie Pillay on vasiep@raf.co.za

Should you have any queries, kindly contact Nyiko Walter Baloyi on the following e-mail address: Walterb@raf.co.za

Yours sincerely,


Lindelwa Xingwana-Jabavu
Chief Operations Officer



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Board Members: Adv Galelane Rasethaba (Chairperson), Ms Thembelihle Msibi (Vice-Chairperson), Mr Hilmi Daniels, Ms Lorraine Francois, Dr Nomonde Mabuya-Moloele, Mr Lusani Mulaudzi, Mr Khotso Mothobi, Mr Moses Nyama, Dr Maria Peenze, Mr Thulani Tshabalala