

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

Case No: 32323/2022

In the matter between:

**ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA**      **APPLICANT**

*In re:*

**HELEN SUZMAN FOUNDATION**      **1<sup>ST</sup> APPLICANT**

and

**MINISTER OF HOME AFFAIRS**      **1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR – GENERAL OF HOME AFFAIRS**      **2<sup>ND</sup> RESPONDENT**

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**FILING NOTICE**

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**DOCUMENT:**      **ATDF'S REPLYING AFFIDAVIT: *IN RE:* CORMSA**

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**SIGNED AND DATED AT PRETORIA ON THIS THE \_\_\_\_ DAY OF  
\_\_\_\_\_ 2022.**

  
\_\_\_\_\_  
**M J MASHAO ATTORNEYS**  
230 Orient Street  
Arcadia, Tshwane  
Pretoria  
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Email: [mattorneys@telkomsa.net](mailto:mattorneys@telkomsa.net)  
REF: MASHAO/CVL/MJ0009001

**TO: THE REGISTRAR OF THE HIGH COURT -  
GAUTENG DIVISION - PRETORIA**

**AND TO: D L A PIPER SOUTH AFRICA (RF) INC.**

First Respondent's attorneys  
6<sup>th</sup> Floor, 61 Katherine Street  
Sandown, Sandton  
Tel: (011) 302 0802  
Ref: W Makadam/N v Onsolon/ M Thulare

c/o MACINTOSH CROSS & FARQUHARSON  
834 Pretorius Street  
Arcadia, PRETORIA  
Tel: (012) 342 4855  
Email: [al@macintoshcross.c.za](mailto:al@macintoshcross.c.za)  
Ref: Anneke Lotter

RECEIVED BY ONTVANG DEUR Macintosh, Cross & Farquharson WITHOUT PREJUDICE SONDER BENADELING VAN REGTE	
2022 -12- 05	
TO 14:51	TIME
HANDTEKENING	SIGNATURE

**AND TO: THE STATE ATTORNEY – PRETORIA**

SALU Building  
316 Thabo Sehume Street  
Cnr Thabo Sehume & Francis Baard Streets  
Pretoria Central, PRETORIA

**C/o SIGOGO ATTORNEYS**

416 Kirkness Street  
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Arcadia, Pretoria

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REF: K Swuhana/TM/DHA0001

 <b>Sigogo Attorneys</b>	
2022 -12- 05	
Ontvang Sonder Benadeling van Regte Received Without Prejudice	

18:08

**AND TO: NORTON ROSE FULBRIGHT INC.**

Fourth Respondent's attorneys

9<sup>th</sup> Floor, 117 on Stand

Cape Town, 8000

Tel: (012) 405 1200

Email: [Jason.whyte@nortonrosefulbright.com](mailto:Jason.whyte@nortonrosefulbright.com) &

[Laura.macfarlane@northonrosefulbright.com](mailto:Laura.macfarlane@northonrosefulbright.com)

c/o: **MACROBERT ATTORNEYS**

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0181

Email: [newessels@macrobert.co.za](mailto:newessels@macrobert.co.za) & [rkasere@macrobert.co.za](mailto:rkasere@macrobert.co.za)

*MacRobert*  
Attorneys

2022 -12- 05

Without prejudice of clients rights  
Sonder benadeling van klient se regte

15:21

**IN THE HIGH COURT OF SOUTH AFRICA**  
**NORTH GAUTENG DIVISION, PRETORIA**

**Case No:32323/2022**

In the matter between:

**ALL TRUCK DRIVERS FORUM AND ALLIED SOUTH AFRICA** Applicant

*Inre:*

**HELEN SUZMAN FOUNDATION** 1<sup>st</sup> Applicant

and

**MINISTER OF HOME AFFAIRS** 1<sup>st</sup> Respondent

**THE DIRECTOR - GENERAL OF HOME AFFAIRS** 2<sup>nd</sup> Respondent

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**ATDF'S REPLYING AFFIDAVIT: INRE: HELLEN SUZMAN FOUNDATION**

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I the undersigned;

**MARIO KHUMALO**

Do hereby make an oath and state that:

1. I am the Spokesperson of All Truck Drivers Forum and Allied South Africa ("ATDFASA") and duly authorised to depose to this affidavit on

behalf of ATDFASA. I have the necessary authority to depose to this affidavit and to launch these proceedings on behalf of ATDFASA as I have demonstrated in the founding affidavit.

2. The facts contained in this affidavit falls within my personal knowledge and they are to the best of my ability and recollection both true and correct.
3. I have access to the documents and files which are relevant to this matter. In order to prepare this affidavit, I have perused the documents and files pertaining to this matter.
4. To the extent that this affidavit contains submissions of legal nature the same has been made on the advice of the legal representatives of the Applicant.
5. I have read the affidavit on behalf of the intervening party HSF and wish to reply herein as follows. In doing so I will not respond to each and every paragraph and such should not be construed as an admission. To the extent that the provisions of HSF affidavit are in conflict with the contents of the founding of ATDFASA, those are denied.
6. The HSF's opposition to the participation of ATDFASA in this matter is that ATDFASA has not demonstrated any direct and substantial

interest in the matter and further that it is not in the public interest ATDFASA to be allowed to be an opposing party in this matter.

7. The who affidavit is full of legal submissions and arguments, and I will therefore not deal with each and every paragraph therein. And failure to do so should not be construed as an admission.
8. It is indeed not correct to submit that ATDFASA does not have direct and substantial interest in the matter. ATDFASA has demonstrated in the founding affidavit that it represents South African truck drivers who have been negatively affected by the fact that the Zimbabwean permit dispensation has had in the trucking industry by allowing foreign truck drivers who would not have been allowed to participate in the truck driving industry had it not been for the said permits. The submission that the permit dispensation is lawful does not in anyway assist HSF's argument as it is ATDFASA's case that the said permits were unlawful in the first place.
9. The relief sought by HSF in these proceedings will result in the prolonged Zimbabwean permit dispensation is highly prejudicial to truck drivers that ATDFASA represents. If that relief is not opposed the truck drivers that ATDFASA represents will continue to be prejudiced by having foreign truck drivers who would have not normally been allowed had it not been for the disputed Zimbabwean exemption permit.

10. The fact that the said Zimbabwean permit dispensation has not yet been reviewed and set aside does not necessarily leads to a conclusion that they are lawful. Although they exist in fact, they are still unlawful. The HSF's application has the effect of prolonging the application of this illegal Zimbabwean permit dispensation, hence the opposition by ATDFASA.
11. The submission that ATDFASA can make written submissions to the Minister pertaining to the future application of the Zimbabwean permit is not an answer to an illegal dispensation. It is submitted that the Minister did not in the first place have the legal authority to grant the said Zimbabwean dispensation, hence the opposition. To invite ATDFASA to make submission to the Minister on the future applications of the Zimbabwean exemption permit will be to condone an illegality.
12. HSF seems to suggest that ATDFASA should have done a separate application. That separate application would have been dealing with the same Zimbabwean permit dispensation that is the subject of this litigation.
13. It cannot be said that it is in the public interest that different Courts should sit to hear a matter dealing with the dispute to the same issue, that is, the Zimbabwean exemption permit dispensation, which will

inevitably result in conflicting decisions on the same subject matter. That with respect it cannot be argued that it is in the public interest.

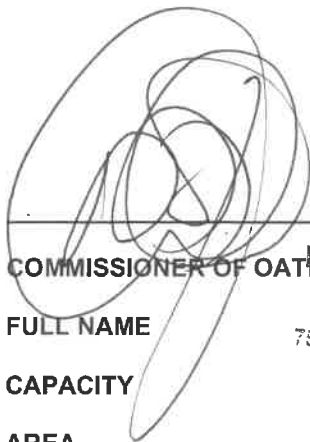
14. It is in fact in the interest of public and the proper administration of justice that similar legal issues and disputes should be decided by one bench. Parties who are aware that there is a similar matter pending in the same Court should not act irresponsibly by launching various and separate application dealing with the same issue risking conflicting judgements. That will not be a prudent utilisation of the scarce judicial resources, and secondly, it would lead to unintended consequences of having conflicting judgements from the same division.
15. The ATDFASA persists with its application to be joined and to oppose the order sought by HSF in the main application as it is ATDFASA stance that the Zimbabwean dispensation was never lawful in the first place.



DEPONENT

SIGNED AND SWORN BEFORE ME AT \_\_\_\_\_ BY THE DEPONENT ON THIS THE \_\_\_\_ DAY \_\_\_\_\_ 2022, AFTER HE HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND REGARDS SAME TO BE BOTH TRUE AND CORRECT AND HAS TAKEN THE PRESCRIBED OATH WHICH HE REGARDS AS BINDING ON HIS OWN CONSCIENCE AND UTTERED THE WORDS 'SO HELP ME GOD'





**COMMISSIONER OF OATHS**  
**FULL NAME** **MONKGOPHO TREVOR TLHABI**  
**CAPACITY** **PRACTISING ATTORNEYS (RSA)**  
**AREA** **COMMISSIONER OF OATHS**  
**754 STANZA BOPAPE & BECKETT STREET**  
**EASTCLYFFE**  
**PRETORIA**