

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

Case No.: 15996/2017

In the matter between:

DUDUZILE CYNTHIA MYENI

Appellant

and

ORGANISATION UNDOING TAX ABUSE NPC

First Respondent

SOUTH AFRICAN AIRWAYS PILOTS ASSOCIATION

Second Respondent

**NOTICE OF EXTREME URGENT APPEAL IN TERMS OF SECTION 18(4)(II) OF
THE SUPERIOR COURTS ACT 10 OF 2013**

KINDLY TAKE NOTICE THAT the appellant hereby files her notice of appeal to the Full Court in terms of section 18(4)(ii) of the Superior Courts Act 10 of 2013 (“the Act”) against the judgment and order of this court granted by Tolmay J on 22 December 2020 regarding the application brought in terms of section 18(1) and (3) of the Act.

KINDLY TAKE NOTICE THAT copies of both the aforesaid section 18 judgment and order, as well as the main judgment and order dated 27 May 2020, will form part of the record to be filed herein.

KINDLY TAKE NOTE THAT the appeal will be heard by the Full Court of the above Honourable Court as a matter of extreme urgency and on a date to be determined by the Registrar on the grounds of appeal set out hereunder:

FIRST GROUND: NO EXCEPTIONAL CIRCUMSTANCES

1. The learned judge erred in her conclusion that the respondents had in fact established exceptional circumstances to succeed with their application for an order declaring that the order of 27 May 2020 be operational and enforceable.
2. The learned judge ought properly to have found that there were no exceptional circumstances in light of, *inter alia*, the following considerations:
 - 2.1. The appellant is no longer a board member or non-executive director of Centlec, a state-owned entity, nor is she a board member of any state-owned entity and therefore no public interest demands the application of the order of 27 May 2020.
 - 2.2. The appellant's term as a board member of Centlec ended in November 2020.
 - 2.3. Accordingly, the fundamental basis for the judgment of Tolmay J has been removed or substantially ameliorated.
3. The learned judge erred in finding that exceptional circumstances exist because of the public interest and based on the findings made in the judgment, as the appellant disputed and continues to dispute the allegations that her involvement in the Emirates MOU and the Airbus Swap Transaction demonstrated her failure and disregard to follow principles of corporate governance. Her alleged

mismanagement of SAA as a state-owned enterprise leading to the order declaring her a delinquent director for the remainder of her life is the subject matter of the proposed appeal in terms of the rules of this Honourable Court.

4. The learned judge erred in finding that the manner in which the appellant presented her case is a contributing factor that supports a finding on exceptional circumstances and that she put an incomplete version to the court. The court failed to apply the same standard in testing the evidence placed by the respondent as the witnesses of the respondent failed to provide a complete version when questioned by the appellant's counsel on facts that were instrumental in the court declaring the appellant to be a delinquent director for the remainder of her lifetime. In fact the learned judge disregarded crucial evidence by the appellant that disproved allegations made by the respondents.
5. The learned judge erred in finding that exceptional circumstances existed based on the finding that the appellant was not a reliable witness, as this was not a factor relevant in the determination of whether or not the requirements of section 162(5)(c) read with sections 76 and 77 of the Companies Act in order to declare a director delinquent.

SECOND GROUND: IRREPARABLE HARM

6. The learned judge erred in finding that no irreparable harm would accrue to the appellant. The sanction constitutes a *prima facie* violation of the appellant's rights as enshrined in section 22 of the Constitution, which provides that:

"Every citizen has the right to choose their trade, occupation or profession freely.

The practice of a trade, occupation or profession maybe regulated by law”.

7. The learned judge erred in finding that the appellant will suffer no irreparable harm if the source of her living which she procures from being remunerated as a board member of any entity is removed for the next estimated two to three years while the appeal is under way; and/or
8. The learned judge erred in finding that the respondents will suffer no irreparable harm if the order of 27 May 2020 is suspended pending the finalisation of the appeal.

THIRD GROUND: NO REGARD FOR PROSPECTS OF SUCCESS ON APPEAL

9. There is binding authority of the Supreme Court of Appeal to the effect that the prospects of success on appeal must be evaluated as a requirement for the granting of an application in terms of section 18(1) of the Superior Courts Act.
10. The learned judge erred in not taking this requirement into account and/or not finding the respondents' failure to deal with the requirement ought to properly have been fatal to its section 18(1) application in so far as the respondent is the onus-bearing party, which onus, it is common cause, is a “heavy” onus.

FOURTH GROUND

11. Irrespective of and/or in addition to the above, the learned judge failed to adequately give reasons for the decision as specifically compelled by section 18(4)(i) of the Superior Courts Act. This failure has the effect of curtailing the appellant's automatic right of appeal and section 34 of the Constitution of the Republic of South Africa.

KINDLY PLACE THE MATTER ON THE ROLL ACCORDINGLY.

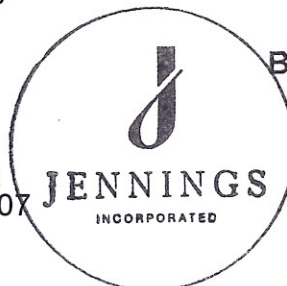
DATED AT JOHANNESBURG ON THIS THE 21ST DAY OF JANUARY 2021.



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TO: **THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
PRETORIA**

AND TO: **JENNINGS INCORPORATED**
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