

**IN THE SUPREME COURT OF APPEAL  
(HELD AT BLOEMFONTEIN)**

**SCA Case No:**

Gauteng Division  
Case No: 15996/2017

In the matter between:

**DUDUZILE CYNTHIA MYENI**

Applicant

and

**ORGANISATION UNDOING TAX ABUSE NPC**

First Respondent

**SOUTH AFRICAN AIRWAYS PILOTS ASSOCIATION**

Second Respondent

**SOUTH AFRICAN AIRWAYS SOC LIMITED**

Third Respondent

**AIR CHEFS SOC LIMITED**

Fourth Respondent

**MINISTER OF FINANCE**

Fifth Respondent

*In re:*

**ORGANISATION UNDOING TAX ABUSE NPC**

First Plaintiff

**SOUTH AFRICAN AIRWAYS PILOTS ASSOCIATION**

Second Plaintiff

and

**DUDUZILE CYNTHIA MYENI**

First Defendant

**SOUTH AFRICAN AIRWAYS SOC LIMITED**

Second Defendant

**AIR CHEFS SOC LIMITED**

Third Defendant

**MINISTER OF FINANCE**

Fourth Defendant

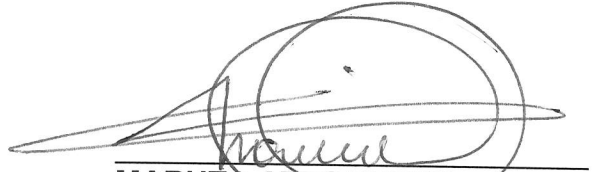
---

FILING SHEET

---

**DOCUMENT:** FOUNDING AFFIDAVIT IN SUPPORT OF THE CONDONATION APPLICATION FOR THE LATE FILING OF THE APPLICATION FOR LEAVE TO APPEAL IN TERMS OF SECTION 17(2)(b) OF THE SUPERIOR COURTS ACT 10 OF 2013

**DATED AT JOHANNESBURG ON THIS THE 3<sup>RD</sup> DAY OF FEBRUARY 2021.**



**MABUZA ATTORNEYS**

Applicant's Attorneys

1<sup>st</sup> Floor, 83 Central Street

**Houghton**, Johannesburg, 2198

Tel: (011) 483 2387/0476

Fax: (011) 728 0145/086 678 2748

Email: [eric@mabuzas.co.za](mailto:eric@mabuzas.co.za)

Ref: Mr ET Mabuzas

**C/O MATSEPES INC**

26/28 Aliwal Street,

**Bloemfontein**, 9301

Tel: (051) 448 3145

Fax: (051) 430 4563

Email: [jenine@matsepes.co.za](mailto:jenine@matsepes.co.za)

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

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

**AND TO: JENNINGS INCORPORATED**  
First and Second Respondents' Attorneys  
149 Anderson Street  
**Brooklyn**, Pretoria  
Tel: 012 110 4442  
Email: [andri@jinc.co.za](mailto:andri@jinc.co.za)  
Ref: A JENNINGS/ OUT 007  
**C/O SYMINGTON DE KOK ATTORNEYS**  
169B Nelson Mandela Drive  
Westdene, **Bloemfontein**

PO BOX 12012  
Brandhof  
9324  
Tel: 051 505 6600  
Email: [cslack@symok.co.za](mailto:cslack@symok.co.za)

**IN THE SUPREME COURT OF APPEAL  
(HELD AT BLOEMFONTEIN)**

**SCA Case No:**

Gauteng Local Division  
Case No: 15996/2017

In the matter between:

**DUDUZILE CYNTHIA MYENI**

Applicant

and

**ORGANISATION UNDOING TAX ABUSE NPC**

First Respondent

**SOUTH AFRICAN AIRWAYS PILOTS ASSOCIATION**

Second Respondent

**SOUTH AFRICAN AIRWAYS SOC LIMITED**

Third Respondent

**AIR CHEFS SOC LIMITED**

Fourth Respondent

**MINISTER OF FINANCE**

Fifth Respondent

*In re:*

**ORGANISATION UNDOING TAX ABUSE NPC**

First Plaintiff

**SOUTH AFRICAN AIRWAYS PILOTS ASSOCIATION**

Second Plaintiff

and

**DUDUZILE CYNTHIA MYENI**

First Defendant

**SOUTH AFRICAN AIRWAYS SOC LIMITED**

Second Defendant

**AIR CHEFS SOC LIMITED**

Third Defendant

**MINISTER OF FINANCE**

Fourth Defendant

---

**FOUNDING AFFIDAVIT IN SUPPORT OF CONDONATION APPLICATION**

---

I, the undersigned,



**THOMAS SIBUYI,**

do hereby make oath and say that:

**Introduction**

1. I am the applicant's attorney of record, practising as such with Mabuza Attorneys at 1<sup>st</sup> Floor, 83 Central Street, Houghton, Johannesburg. I have the authority to depose to this affidavit and to bring this application on behalf of the applicant.
2. The facts to which I depose herein are within my own personal knowledge and are, except where the context indicates otherwise or I expressly say so, to the best of my knowledge and belief both true and correct.

**THE PARTIES**

3. The applicant is **Duduzile Cynthia Myeni** in this matter.
4. The participating respondents are the **Organisation Undoing Tax Abuse** ("**OUTA**"), which is the first respondent herein, and the **South African Airways Pilots Association** ("**SAAPA**"), which is the second respondent, both are care of **Jennings Incorporated** at 149 Anderson Street, Brooklyn, Pretoria.

**PURPOSE OF THE AFFIDAVIT**

5. This is an application for condonation for the late filing of the application in terms of section 17(2)(b) of the Superior Courts Act 10 of 2013 ("the **Act**"), seeking leave to appeal the whole of the judgment and order of the Gauteng Division



(per Madam Justice Tolmay) delivered on 27 May 2020 read with the decision refusing leave to appeal delivered on 22 December 2020.

6. The order dismissing the application for leave to appeal was handed down on 22 December 2020.
7. The application for leave was filed outside the time limits prescribed by the Act. It was filed on 2 February 2020, approximately 7 (seven) court days late. It is submitted that the delay is not inordinate in the circumstances.

#### **EXPLANATION FOR THE DELAY**

8. It is submitted that the applicant has a reasonable explanation for the delay. The explanation is set out hereunder.
9. The application for leave to appeal was heard on 20 November 2020.
10. On 22 December 2020, the Honourable Madam Justice Tolmay J handed down judgment dismissing both the application for leave to appeal as well as the application to introduce new evidence. The Judge also granted the respondents' application to enforce the order in terms of section 18 of the Act. A copy of the judgment is attached in the petition application as annexure "DCM2".
11. On the same day, ie 22 December 2020 we informed the respondents' attorneys of our instructions to petition this Honourable Court for leave.
12. On 22 January 2021, we served the application for leave on the respondents' attorneys, they acknowledged receipt of the petition on the same day, ie 22



January 2021. A copy of email service and acknowledgment of receipt are attached hereto marked "TS1".

13. We immediately instructed our correspondent attorneys in Bloemfontein to lodge the petition in court. A copy of the email instruction is attached hereto marked "TS2".
14. On 25 January 2021, we received an email from our correspondent attorneys requesting proof of service of the petition. Proof was instantly emailed to them. A copy of the email from our correspondent attorneys and our reply are attached hereto marked "TS3".
15. On 28 January 2021, we again received a request for proof of service from our correspondent attorneys. Upon enquiring they confirmed that they did not receive our earlier correspondence. We again sent them proof of service. A copy of the emails exchanges in this regard is attached hereto marked "TS4".
16. On 29 January 2021, our correspondent attorneys requested proof of service of the petition on the third to fifth respondents and a court stamp indicating that the petition was also served in court.
17. We then attended to serve the petition on the third to fifth respondents but were informed by the security personal at the SAA entrance gate that there was no staff available at the SAA due to the fact that employees have been retrenched and others have stopped coming to work due to non-payment of their salaries. I was however able to serve on the fifth respondent and also able to obtain a court stamped of the court *a quo*.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a large, looped 'B'.

18. We then forwarded our correspondent attorneys with the stamped petition. A copy of the email to our correspondent attorneys on 29 January 2021 is attached hereto marked "TS5".
19. Our correspondent also advised that they needed the court orders of 27 May 2020 and 22 December 2020 respectively before lodging the petition. We managed to secure the court order for 22 December 2020 immediately but could only obtain the court order of 27 May 2020 on 2 February 2021.
20. On 2 February 2021, our correspondent attorneys confirmed that they lodged the petition with the Registrar in this Honourable Court. A copy of the letter is attached hereto marked "TS6".
21. I submit that in light of the abovementioned facts, the petition could not have been filed earlier.

#### IMPORTANCE OF THE MATTER

22. The matter is of extreme importance to the applicant. The sanction of a lifetime ban imposed by court *a quo* is unprecedented in South Africa and unwarranted in the circumstances. The sanction aspect of the 27 May 2020 judgment creates a firm basis for the Appeal Court to consider the appeal on the grounds of misdirection.
23. The sanction also constitutes a *prima facie* violation of section 22 of the Constitution of the applicant.
24. Therefore, the prejudice to the applicant will be manifest and disproportionate. The applicant will have to face all the consequences of the judgment and/or

A handwritten signature in black ink, consisting of a stylized 'J' followed by a large, looped 'B'.



order dismissing her application for leave to appeal by the court *a quo* without any relief. Even if the application for condonation is successful, the respondents will still have the opportunity to state their case, and if successful on the merits, would still obtain relief.

### **Prospects of success**

25. Briefly, and without getting into the merits of the application, I submit that the applicant has good prospects of success for the reasons more fully set out in the petition application.
26. There is absolutely no prejudice that the respondents will face.
27. This is because the respondents were served with the petition on 22 January 2021. Therefore, they did not experience any delay in receiving the petition.
28. Accordingly, it is submitted that there is no prejudice on the respondents.
29. Accordingly, the applicant has sufficiently strong prospects of success supporting the granting of condonation.

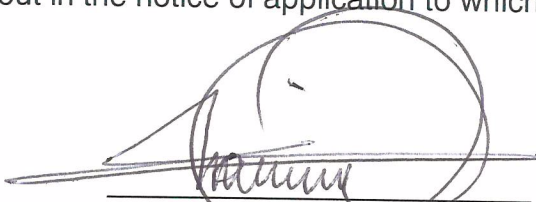
### **Interests of Justice**

30. Lastly over and above prospects and prejudice, it is respectfully submitted that it is in the interest of justice to grant condonation.
31. In the circumstances, the interest of justice also support condonation being granted.

A handwritten signature in black ink, consisting of a stylized capital 'A' with a vertical line through it and a small flourish at the bottom left.

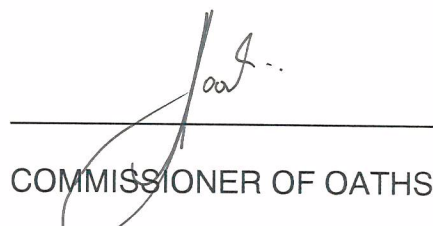
## Conclusion

32. In the circumstances I pray for condonation for the late filing of the applicant's petition application.
33. On the grounds set out above, I humbly pray that it may please the above Honourable Court to grant the relief set out in the notice of application to which this affidavit is attached.



DEPONENT

SIGNED AND SWORN TO BEFORE ME AT Houghton ON THIS  
THE 03 DAY OF **FEBRUARY 2021**. THE DEPONENT HAVING  
ACKNOWLEDGED IN MY PRESENCE THAT HE/SHE KNOWS AND  
UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THE PROVISIONS OF  
GOVERNMENT GAZETTE R1478 OF 11 JULY 1980 AS AMENDED BY  
GOVERNMENT GAZETTE R774 OF 20 APRIL 1982, CONCERNING THE TAKING  
OF THE OATH, HAVING BEEN COMPLIED WITH.



COMMISSIONER OF OATHS  
CAPACITY:

FULL NAMES:

PHYSICAL ADDRESS:

**COMMISSIONER OF OATHS**  
**AFZAL LOONAT CA (SA)**  
83 Central Street,  
Houghton 2198  
P.O. Box 67, Strathavon 2031

'TSI'

Thomas Sibuyi

**From:** Thomas Sibuyi  
**Sent:** Friday, January 22, 2021 3:33 PM  
**To:** Andri Jennings; irene@jinc.co.za  
**Cc:** Eric Mabuza  
**Subject:** DUDUZILE CYNTHIA MYENI // ORGANIZATION UNDOING TAX ABUSE & OTHERS  
**Attachments:** Petition Application 22.01.2020.pdf

Tracking:	Recipient	Delivery	Read
	Andri Jennings		
	irene@jinc.co.za		
	Eric Mabuza	Delivered: 1/22/2021 3:33 PM	Read: 1/22/2021 3:36 PM

Dear Sirs,

We act on behalf of Ms Duduzile Myeni.

Please see attached Ms Myeni's petition application at the Supreme Court of Appeal for service hereof.

Kindly acknowledge receipt hereof.

Kind Regards,

Thomas Sibuyi



Senior Associate

1<sup>st</sup> Floor, 83 Central Street

Houghton, Johannesburg

Tel: (011) 483 2387/483 0476

Fax: (011) 728 0145

Email: [thomas@mabuzas.co.za](mailto:thomas@mabuzas.co.za)

TSI

**Thomas Sibuyi**

---

**Subject:**

FW: DUDUZILE CYNTHIA MYENI // ORGANIZATION UNDOING TAX ABUSE & OTHERS  
**Attachments:** PETITION OUT007 MYENI OUTA.pdf

---

**From:** Andri Jennings <andri@jinc.co.za>

**Sent:** Friday, January 22, 2021 4:00 PM

**To:** Thomas Sibuyi <thomas@mabuzas.co.za>

**Cc:** Eric Mabuza <Eric@mabuzas.co.za>; Irene Pienaar <irene@jinc.co.za>

**Subject:** RE: DUDUZILE CYNTHIA MYENI // ORGANIZATION UNDOING TAX ABUSE & OTHERS

Good day.

We refer to the abovementioned matter as well as the email below.

Please find attached hereto the acknowledgement of receipt as requested.

We trust that the above is in order.

Kind Regards/Vriendelike Groete,

Andri Jennings

Director/Direkteur



Head Office: 149 Anderson Street, Brooklyn, Pretoria | O: 012 110 4442  
18 Ross Street, Cullinan | O: 012 110 4442  
222 Smit Street, 21st Floor, Braamfontein, Johannesburg | O: 010 005 4572  
21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 258 8770

Reg No: 2018/065399/21 | [www.jinc.co.za](http://www.jinc.co.za)



"TSI"

Thomas Sibuyi

---

**Subject:**

FW: DUDUZILE CYNTHIA MYENI // ORGANIZATION UNDOING TAX ABUSE & OTHERS

**Attachments:**

Petition Application 22.01.2020.pdf

---

**From:** Thomas Sibuyi

**Sent:** Friday, January 22, 2021 3:40 PM

**To:** Jenine Harms <jenine@matsepes.co.za>

**Cc:** Eric Mabuza <Eric@mabuzas.co.za>

**Subject:** FW: DUDUZILE CYNTHIA MYENI // ORGANIZATION UNDOING TAX ABUSE & OTHERS

Dear Jenine,

We request that you assist us by attend to lodge or file the attached Petition Application at the SCA.

It was served on the respondents' attorneys via email as per email below.

We will courier the original with the condonation application by next week.

Regards

Thomas Sibuyi



**Subject:**

FW: DUDUZILE CYNTHIA MYENI // ORGANIZATION UNDOING TAX ABUSE & OTHERS

**Attachments:**

CamScanner 01-25-2021 10.29\_1.pdf

---

**From:** Jenine Harms <[jenine@matsepes.co.za](mailto:jenine@matsepes.co.za)>

**Sent:** Monday, January 25, 2021 8:46 AM

**To:** Thomas Sibuyi <[thomas@mabuzas.co.za](mailto:thomas@mabuzas.co.za)>

**Subject:** RE: DUDUZILE CYNTHIA MYENI // ORGANIZATION UNDOING TAX ABUSE & OTHERS

Good day,

Thank you for the e-mail.

Kindly note that we can only file an original condonation application.

Also please attach proof of service – acknowledgement of your e-mail (Reid receipt or confirmation of receipt).

Trust you find the above in order.

Regards,



**Thomas Sibuyi**

---

**Subject:**

FW: DUDUZILE CYNTHIA MYENI // ORGANIZATION UNDOING TAX ABUSE & OTHERS

**Attachments:**

CamScanner 01-25-2021 10.29\_1.pdf

---

**From:** Thomas Sibuyi

**Sent:** Monday, January 25, 2021 10:33 AM

**To:** Jenine Harms <jenine@matsepes.co.za>

**Subject:** RE: DUDUZILE CYNTHIA MYENI // ORGANIZATION UNDOING TAX ABUSE & OTHERS

Dear Jenine,

Please see attached read receipt notification for your attention.

Regards

Thomas Sibuyi

TS



'TS4'

Thomas Sibuyi

**Subject:** FW: DUDUZILE MYENI // ORGANIZATION UNDOING TAX ABUSE  
**Attachments:** Filing Sheet 28.01.2021.docx; EMAIL RECEIPT FOR SERVICE OF PETITION APPLICATION.pdf; PROOF OF ACKNOWLEDGEMENT OF SERVICE BY THE 1ST AND 2ND RESPONDENTS-1-4.pdf

**From:** Jenine Harms <jenine@matsepes.co.za>  
**Sent:** Thursday, 28 January 2021 13:34  
**To:** Eric Mabuza <Eric@mabuzas.co.za>; Rudolph Baloyi <rudolph@mabuzas.co.za>; Lindiwe Ndlovu <lindiwe@mabuzas.co.za>; Zondiwe Longwe <zondiwe@mabuzas.co.za>  
**Subject:** DUDUZILE MYENI // ORGANIZATION UNDOING TAX ABUSE

Good day,

We refer to the above matter.

When can we expect to receive this as the Respondents are enquiring about filing.

Regards,

	Tel: 051 448 3145 Fax: 051 430 4563 ?	PO Box/Posbus 256 Bloemfontein 9300 DOCEX 23	26/28 Aliwal Street/Straat Bloemfontein 9301
--	---------------------------------------------	----------------------------------------------------	-------------------------------------------------

This e-mail, its attachments and any rights attaching hereto are, unless the context clearly indicates otherwise, the property of Matsepes Inc. It is confidential, private and intended for the addressee only. Should you not be the addressee and receive this e-mail by mistake, kindly notify the sender, and delete this e-mail, immediately and do not disclose or use same in any manner whatsoever. Views and opinions expressed in this e-mail are those of the sender unless clearly stated as those of the company. The company accepts no liability whatsoever for any loss or damages whatsoever and howsoever incurred, or suffered, resulting, or arising, from the use of this email or its attachments. The company does not warrant the integrity of this e-mail nor that it is free of errors, viruses, interception or interference.

TS



**Thomas Sibuyi**

---

**Subject:** FW: DUDUZILE MYENI // ORGANIZATION UNDOING TAX ABUSE  
**Attachments:** Filing Sheet 28.01.2021.docx; EMAIL RECEIPT FOR SERVICE OF PETITION APPLICATION.pdf; PROOF OF ACKNOWLEDGEMENT OF SERVICE BY THE 1ST AND 2ND RESPONDENTS-1-4.pdf

---

**From:** Thomas Sibuyi  
**Sent:** Thursday, January 28, 2021 4:30 PM  
**To:** Jenine Harms <jenine@matsepes.co.za>  
**Cc:** Rudolph Baloyi <rudolph@mabuzas.co.za>  
**Subject:** RE: DUDUZILE MYENI // ORGANIZATION UNDOING TAX ABUSE

Dear Jenine,

Our earlier telecom bears reference.

Please see attached acknowledgment of receipt of service of the Petition Application with required filing sheet for you to insert their correspondent attorneys and attend file in court.

Thanking you for your assistance in advance.

Regards  
Thomas Sibuyi

"TS5"

Thomas Sibuyi

**Subject:**

FW: DUDU MYENI // OUTA NPC & 4 OTHERS

**Attachments:**

Stamped Notice of Motion 29.01.2021.pdf

---

**From:** Thomas Sibuyi

**Sent:** Friday, January 29, 2021 4:26 PM

**To:** Jenine Harms <jenine@matsepes.co.za>

**Subject:** RE: DUDU MYENI // OUTA NPC & 4 OTHERS

Dear Jenine,

Please see attached notice of motion bearing court stamp of court a quo and which was served on the first and second respondents and the fifth respondent.

I was unable to serve on the third and fourth respondents due to the fact that there was no staff available at the SAA offices to accept service due to the fact that employees have been retrenched or stopped working. I personally attended to their offices today and was told by the security gate that it will point less to allow me access inside the building because there was no staff in the building to accept service.

I request that you replace the notice of motion with the attached one since the previously had an address for law firm which had already withdrawn from acting on behalf of the third and fourth respondents.

I will try get the court order to you by Monday.

Regards

Thomas Sibuyi

TS

(Bloemfontein) INC. / ING.

Reg. No. : 1998/020850/21

Tel: 051 448 3145 | Fax: 051 430 4563

P.O. Box | Posbus 256  
Bloemfontein 9300  
DOCEX 23

26/28 Aliwal Street/Straat  
Bloemfontein 9301

Group offices at:  
Odendaalsrus & Welkom

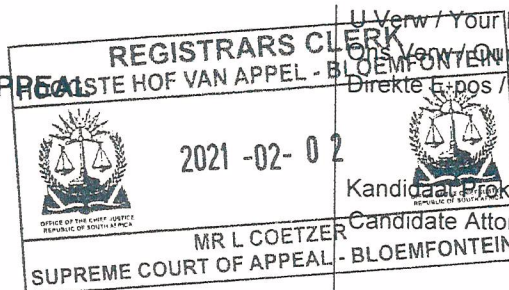
TS6



FORMERLY ISRAEL SACKSTEIN MATSEPE

Attorneys / Prokureurs / Babuelli

THE REGISTRAR  
SUPREME COURT OF APPEAL  
BLOEMFONTEIN



U Verw / Your Ref:

Ons Verw / Our Ref:

Direkte E-pos / Direct E-mail: jenine@matsepes.co.za

Kandidaat Prokureur /

Candidate Attorney:

Demi-Lee Mpati  
Boitumelo Ramohlola  
Thando Mokaulezi  
Jaco Kleyn

BY HAND

Datum/Date: 1/02/2021

Dear sir / madam,

*No original applications  
only copies.*

RE: DUDUZILE CYNTHIA MYENI // ORGANISATION UNDOING TAX ABUSE NPC, SOUTH AFRICAN AIRWAYS PILOTS ASSOCIATION & 3 OTHERS

*Handwritten signature of L COETZER*  
L COETZER  
REGISTRAR  
04/02/2021

We refer to the above matter and have pleasure in handing you herewith :

1. APPLICATION FOR LEAVE TO APPEAL IN TERMS OF SECTION 17(2)(b) in threefold.

We confirm a copy was served.

Court order dated 27 May 2020 is not available yet. We confirm to file within the next 10 days.

Your obedient servants,

  
MATSEPES (BFN) INC

DIRECTORS:  
ROUX BARRY CLOETE B.A., LL.B., Pg.D.C.L. | TSUI VINCENT MATSEPE Dip.Juris., B.Proc.

ASSISTED BY:  
ANNE-MARIE J KRUGER LL.B | MARIKE ROHDE LL.B | KARIN SMIT LL.B, B.Iuris. | MOSALA D MHLEKOA LL.B

INSOLVENCY PRACTITIONER:  
H. BADENHORST AIPSA INSOLVENCY DIPLOMA (SARIPA) Advanced certificate in Insolvency Litigation and Administration Practice

B-BBEE Certificate – LEVEL 2

*Handwritten signature*