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

**CASE NO: 32097/20**

In the matter between :-

**ORGANISATION UNDOING TAX ABUSE**

**Applicant**

and

**MINISTER OF TRANSPORT**

**1<sup>st</sup> Respondent**

**MINISTER OF CO-OPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS**

**2<sup>nd</sup> Respondent**

**ROAD TRAFFIC INFRINGEMENT AUTHORITY**

**3<sup>rd</sup> Respondent**

**APPEALS TRIBUNAL**

**4<sup>th</sup> Respondent**

**FILING SHEET**

**DOCUMENT:**

**1<sup>ST</sup> RESPONDENT'S ANSWERING AFFIDAVIT**

**ON ROLL :**

**FILED BY:**

**ATTORNEY FOR 1<sup>ST</sup> RESPONDENT**

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**TO:** THE REGISTRAR OF THE HIGH COURT  
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**AND  
TO:** **APPLICANT'S ATTORNEYS**  
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BY: *E Coorger*



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

**CASE NO: 32097/2020**

In the matter between:

**ORGANISATION UNDOING TAX ABUSE**

Applicant

and

**MINISTER OF TRANSPORT**

First Respondent

**MINISTER OF CO-OPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS**

Second Respondent

**ROAD TRAFFIC INFRINGEMENT AUTHORITY**

Third Respondent

**APPEALS TRIBUNAL**

Fourth Respondent

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**FIRST RESPONDENT'S ANSWERING AFFIDAVIT**

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I, the undersigned

**FIKILE MBALULA**

do hereby state under oath that:

1. The facts deposed to therein are to the best of my belief both true and correct. They are within my personal knowledge unless the context thereof indicates otherwise or I expressly state so.

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2. I am the Minister of Transport. I am cited in these proceedings in my official capacity as the first respondent.
3. Where I make submissions of a legal nature in this affidavit, I do so on the advice of my legal representatives which advice I believe to be true and correct.
4. I have read the notice of motion and the founding affidavit deposed to by **STEFANIE FICK** on behalf of the applicant later. Later in the course of this affidavit I will answer directly to the allegation made therein.
5. The applicant has instituted the motion proceedings to challenge the constitutionality or validity of the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 (henceforth, "AARTO Act") as well as the Administrative Adjudication of Road Traffic Offences Amendment Act 4 of 2019 (henceforth, "the Amendment Act") as a whole. In the alternative to the above challenge, the applicant seeks an order in terms of which the provisions of section 17 of the Amendment Act, whose intention is to amend section 30 of the AARTO Act, are declared unconstitutional and invalid.
6. The upshot of the first challenge as directed at AARTO Act (including the Amendment Act) is that it [AARTO Act] unlawfully intrudes upon the exclusive legislative competence of the provinces as set out in Schedule 5,

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Part A and Part B of the Constitution of the Republic of South Africa, Act 1996, ("the Constitution"). It shifts, so the applicant contends, the enforcement of the traffic laws from the judicial enforcement to an administrative enforcement process which is done through the national organs of state, namely, the Road Traffic Infringement Authority established in terms of section 3 and the Appeals Tribunal established in terms of section 29A of the Amendment Act.

7. The second challenge, which is directed to the provisions of section 17 of the Amendment Act, is that these provisions fail to provide for adequate service to the infringers. This inadequacy, as the applicant contends, is due to the fact that section 17 of the Amendment Act removes the requirement that service under AARTO Act must be personal or by registered mail. And that the Amendment Act is unconstitutional because it relaxes the service provisions and permits that service of documents be effected upon the infringers by way of email, SMS's or voice message.
8. I deny that the AARTO Act is unconstitutional either on the grounds postulated by the applicant or at all. I deny specifically that AARTO Act constitutes an intrusion let alone an unlawfully intrusion to the exclusive legislative competence of the provinces.

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9. I deny, further, that by enacting both the AARTO Act and the Amendment Act, Parliament acted beyond the legislative powers conferred on it in the Constitution.
10. As it will be gleaned from the AARTO Act itself and as I demonstrate hereunder, AARTO Act makes provision for road traffic regulation. The National Assembly has legislative competence to pass such legislation.
11. Parliament enjoys plenary legislative power subject only to the bounds of the Constitution. This legislative competence is sourced from the provisions of Section 44 of the Constitution. Section 44(1)(a) provides that [t]he national legislative authority as vested in Parliament-confers on the National Assembly the power - to pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, subject to subsection (2), a matter within a functional area listed in Schedule 5.
12. In terms of section 44(1) (b) [t]he national legislative authority as vested in Parliament-confers on the National Council of Provinces the power- [t]o pass, in accordance with section 76, legislation with regard to any matter within a functional area listed in Schedule 4 and any other matter required by the Constitution to be passed in accordance with section 76.

13. Section 44(2) of the Constitution provides that the Parliament may intervene, by passing legislation in accordance with section 76 (1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary- to maintain national security; to maintain economic unity; to maintain essential national standards; to establish minimum standards required for the rendering of services; or to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.
14. Parliament may, thus, legislate on 'any matter', including a matter within the functional areas listed in Schedule 4 and, subject to certain specified circumstances, on a matter within the functional areas listed in Schedule 5.
15. Part A of Schedule 4 lists functional areas with regard to which both Parliament and the provincial legislatures have concurrent legislative competence. Part A of Schedule 5 lists functional areas with regard to which provincial legislatures have exclusive legislative competence.
16. Part A of Schedule 4 of the Constitution lists road traffic regulation as a functional area in respect of which the Parliament has legislative competence albeit concurrent with the provinces. The AARTO Act is such legislation which provides for road traffic regulation.

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17. The AARTO Act was passed as a section 76(1) legislation. The concurrence of the provinces was sought and obtained prior to the enactment of AARTO Act. All provinces but one supported and gave mandate to the National Council of Provinces in regard to this legislation. In this regard communication by the provinces wherein they gave their concurrence and mandated (except one province – Western Cape) to the National Council of Provinces to participate and vote in favour of AARTO. These are attached hereto marked "AAMT1.1 to 1.9".
18. Much as the AARTO Act makes provisions for road traffic regulations, which is functional are listed area in Schedule 4 of the Constitution, the Parliament has legislative competence subject to the Constitution. The requirements of the Constitution were complied with by seeking and obtaining the concurrence of the provinces.
19. The introduction of AARTO Act brings harmony and standardization of adjudication of and traffic infringement nationally and regardless of where one finds himself in South Africa.
20. It is on these bases that I deny that the AARTO Act unlawfully intrudes on the legislative competence of the provinces and that by enacting AARTO Act the Parliament acted beyond legislative powers conferred to it by the

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Constitution. I submit that in all the circumstances the Parliament acted within its legislative powers.

21. I deny too that the provisions of section 17 (amending section 30) fail to provide for adequate service. I deny specifically that these provisions remove the requirement that service of documents must be personal. The personal service is retained by the Amendment Act and is expressly mentioned therein.
22. The provisions of section 17 of the amendment Act do not remove the requirement that service of documents be effected by way of registered mail. What these provisions do is to extend the scope of postage service such that the postal services are not limited to registered mail only. In this regard I point out that the post office does not provide registered mail services only. There are other services other than registered mail. The use of the word postage in the Amendment Act is broader and greater than the registered mail which lesser and limited to that service only. Postage service includes other services currently available or which may, in future, become available.
23. The sum total of it is that registered mail falls within the postage service. All that is required by the section is that in order to be effective, service must be done, *inter alia*, by way of postal service to the address that would ordinarily have been chosen by the infringer. The infringer will choose whether s/he

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prefers registered mail or ordinary mail or any other postal service available. The choice of service which an individual make will be respected and given effect to.

24. Registered mail should not be the only prescribed form of service of documents. Under the postage service there will be many options of service available whether by registered mail or ordinary mail or any other service which the post office provides.
25. Further, in a country such as South Africa, that is advancing in the space of technology electronic mode of service should be made available to members and of the public. The change to the paperless society due to environmental reasons and advertisement in technology makes it more essential to consider utilising other options that are in line with and accommodate such changes. For some individuals it is more convenient and efficient to communicate via email or SMS's as opposed to the old conventional way of post office. To some people, for instance, it is very inconvenient and time consuming that they be required to go to the post office to collect post when there are other convenient modes of receiving such communications while in the comfort of their homes or offices or even in transit as emails, for instance, can be accessible anywhere in the world.

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26. The legislation can only prescribe methods of service that are regarded as acceptable and reasonable to give effect thereto. The individual will then choose the form convenient to him. There is nothing unreasonable in this regard.
27. The postal services, I submit in all its forms as well as other terms of service prescribed are still the reasonable methods available. Insistence on service by registered mail, though, as the only postal service to be utilised is by itself not reasonable.
28. It is on these bases that I deny that by not specifically mentioning registered mail the provisions of section 17 provide an inadequate provision for service.
29. I will, however, pray that in the event it is found that AARTO Act and the Amendment Act are unconstitutional and that there is no interpretation that can survive the constitutional invalidity the Honourable Court should suspend the declaration of invalidity for a period of 24 months to enable the Parliament to rectify the invalidity. This, though, is not in any way a concession that the AARTO Act or the Amendment Act are unconstitutional.

**AARTO ACT EXPOSITION: -**

30. South Africa has unacceptable high levels of road traffic accidents with the resultant mortality rate. This is ever the case throughout the year but increasingly more during the festive season and easter weekends. A very

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high percentage of these accidents are caused by bad behaviour such as speeding, drunken driving, reckless and negligent driving by drivers on the road.

31. The AARTO Act is not the first nor the only legislation that provides for matters concerning road traffic in general. It is however unique in its terms. One of its uniqueness is, it introduces an administrative adjudication of the infringements as opposed to criminal prosecution which has been the case and still is in most parts of the country. It also introduces a single and uniform national regulation standard of adjudication of infringements through a dedicated and specialist body or bodies.
32. The AARTO was assented to on 09 September 1998 with commencement date of 01 July 2007. It was implemented on an experimental basis such that so far it was brought into operation in certain geographical jurisdiction of the country in particular in the City of Johannesburg and City Tshwane Metropolitan Municipalities only.
33. Before AARTO was enacted, the road traffic offences were governed, in the main, by the National Road Traffic Act, 93 of 1996 (henceforth, "the NRTA") and the Criminal Procedure Act 51 OF 1977 (henceforth, "the CP").

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34. The prescriptions governed by the NRTA include subjects such as the licences to drive, disqualification from obtaining or holding the driver's licences, failure to obey road traffic signs, speed limits, reckless, negligent and inconsiderate driving, driving while under the influence of intoxicating liquor or drugs which have narcotic effect or with excessive amount of alcohol in the blood or breath, any unauthorised acts in relation to vehicle, prohibitions on furnishing of false information and unlawful acts in relation to registration plates, registration numbers, registration marks and certain other documents.
35. Almost all contraventions of the prescriptions under NRTA were criminal offences and criminal prosecution and sanction would follow in the event such contravention occurred. This meant that the allege traffic offender became an accused person subjected to the strictures and protection of the criminal law. Any person charged for contravening the NRTA legislation was then dealt with by the criminal courts with the provisions of the CP Act and the principles governing criminal law conduct applicable.
36. The current system employed nationally save for jurisdictions within the Cities of Johannesburg and Tshwane Metropolitan Municipalities is totally inadequate and has not helped in reducing the carnage on roads. The fines issued in accordance with this system are in most instances not paid. The default system in terms of the current system nationally is that an offender

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(infringer) is charged criminally and in most cases to appear in the Magistrate Courts. Due to high incidents of crime in the country, our courts give priority to serious crimes as opposed to traffic violations with the result that less than 20% of the traffic cases are in fact finalized by our Courts. This scenario has significantly contributed to bad behavioural conduct by drivers on the road.

37. The AARTO Act was introduced to amongst others stop this carnage on our roads. It is designed to change behaviour of road users not only by levying penalties but also by introducing the point demerit system in terms of which serial transgressors may find their licenses eventually suspended or even revoked.
38. One of the innovations of AARTO Act and the Amendment Bill is to introduce an Administrative Adjudication of traffic offences and an introduction of the Appeals Tribunal to ensure fairness and impartiality in the adjudication process. The objects of the AARTO Act are set out in section 2. It provides as follows:
- "2. *The objects of this Act are, despite the Criminal Procedure Act, 1977 (Act No. 51 of 1977) –*
- (a) *to encourage compliance with the national and provincial laws relating to road traffic and to promote road traffic safety;*
  - (b) *to encourage the payment of penalties imposed for infringements and to allow alleged minor infringers to make representations;*

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- (c) to establish a procedure for the effective and expeditious adjudication of infringements;
- (d) to alleviate the burden on the courts of trying offenders for infringements;
- (e) to penalise drivers and operators who are guilty of infringements or offences through the imposition of demerit points leading to the suspension and cancellation of driving licences, professional driving permits or operator cards;
- (f) to reward law-abiding behaviour by reducing demerit points imposed if infringements or offences are not committed over specified periods;
- (g) to establish an agency to support the law enforcement and judicial authorities and to undertake the administrative adjudication process; and" (Own emphasis)

39. I must emphasise that the intention behind the AARTO Act is not merely for revenue collection for the state agencies as some people suppose and assume. This assumption is not only false but unfortunate. Traffic fines have been imposed throughout the country long before the advent of the AARTO Act. These fines are meant to serve as punishment for errant drivers. However, the system of imposing fines has failed because large majority of the infringers simply do not pay their fines and therefore suffer no consequences for their bad road behaviour. This in turn rewards their bad behaviour and the negative side of it is that it tends to increase road accidents caused by bad driving behaviours.

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40. The AARTO Act seeks, first, to ensure that the errant drivers suffer the consequences of actually paying for their fines and penalties. Second, where the errant behaviour continues notwithstanding the imposition and payment or non-payment of the fines and penalties, the point demerit system will apply to ensure that the driver's license of the errant driver is ultimately suspended and, in some instances, ultimately cancelled.
41. The AARTO Act represents a shift in the executive legislative policy. Now the minister is empowered, by section 29 thereof, acting in concurrence with the Minister of Justice and MEC of each province to prescribe the infringements and offences and to prescribe penalties, which may be expressed as a single unit or multiple units according to monetary value, which must be imposed for each infringement. It is thus evident that the cooperation between national and provincial in this regard defeats the notion held by the applicant that national government usurped the enforcement of traffic infringements.
42. The Minister is also empowered to prescribe the demerit points which are incurred for each offence or infringement and to prescribe a total number of demerits points which, if exceeded, would disqualify the person from driving or operating a motor vehicle.

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43. Any person who has committed an offence or an infringement, incurs the number of demerit points. Demerit points are incurred on the date on which the penalty and fee, if any, imposed for the infringement are paid, including when partial or dishonoured payments, or arrangements to pay in instalments, are made, an enforcement order is issued or the infringer is convicted of the offence, as the case may be.
44. If an infringer has committed two or more infringements or is convicted by a court of two or more offences arising out of the same circumstances, demerit points are recorded, only in relation to one such infringement or offence, being, in any case where the same number of demerit points does not apply to all those infringements or offences, the infringement or offence to which the greatest number of demerit points applies.
45. The demerit points in respect of offences or infringements by operators and drivers are recorded separately even if they arise out of the same circumstances.
46. If a person appeals against a conviction by the court for an offence, no demerit points are recorded unless the appeal is rejected or abandoned in which case demerit points are incurred in the prescribed manner.

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47. A printout from the national contraventions register which is verified by the agency is on the face of it evidence of the demerit points incurred by a person, but nothing prevents a person from approaching the court on appeal or review in connection with the demerit points recorded against that person in the said register.
48. In a nutshell, the AARTO Act removes road traffic infringements from the jurisdiction of the criminal courts and deal with them in the first instance by administrative process. Any person affected by the decision in that administrative process may apply to the Magistrate Court designated by the Minister to review such administrative decision in terms of the Promotion of Administrative Justice Act 3 of 2000. Or may appeal such decision still to the Magistrate Court.
49. The AARTO Act seeks to regulate every aspect of road traffic. However, there is a departure from the old system in that a person who falls foul of the road traffic laws will no longer be regarded as committing a criminal offence. Such person is now regarded as an infringer and becomes a party to an administrative process which culminate in administrative decision. If the infringement is established, such infringer become liable to pay penalties. The process is now more of civil and administrative in nature than criminal process.

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50. The AARTO Act also establishes the Road Traffic Infringement Authority (RTIA) which is a juristic person and whose object include administering a procedure to discourage the contravention of road traffic legislation; to support adjudication of infringement; to enforce penalties imposed against persons contravening the road traffic legislature; to administer and manage the point demerit system for infringements and offences and to enforce penalties impose on persons contravening the Road Traffic laws.
51. The registrar is appointed to oversee the functions of the RTIA in accordance with the business plan prepared by him or her. The Deputy Registrar may also be appointed. The Act also makes provisions for the appointment of the representation officer.
52. In terms of section 18 an infringer who has been served with an infringement notice may make representations with respect to that notice to the agency by submitting a sworn statement or affirmation indicating the existence of reasonable grounds why s/he should not be held liable for the penalty payable in terms of the infringement notice.
53. A representation officer must duly consider the representations and any reply thereto. S/he may conduct independent investigations to verify the facts; and may- allow the representations if there are reasonable grounds indicating that the infringer should not be held liable for the penalty payable in terms of the

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infringement notice; or reject the representations if there are no such reasonable grounds.

54. If the representations are allowed the agency must forthwith cancel the infringement notice, and inform the infringer in the prescribed manner of the decision. If the representations are rejected, the representations officer may advise the infringer, in terms of the Amendment Act, of his right to review or appeal to the Tribunal, and must serve or cause to be served on the infringer a prescribed written notification informing him or her - of the reasons for the decision, and provide the issuing authority concerned with a copy thereof.
55. If the infringer does not exercise his or her election he must be informed that the penalty, the prescribed representations fee and the prescribed fee of the courtesy letter, if any, are payable within 32 days after the date of service of the notification; and that a failure to pay the penalty and fees or to make arrangements to pay in instalments will result in an enforcement order being served on the infringer and that the infringer will become liable to pay the penalty and fees and the prescribed fee of the enforcement order.
56. If an infringer pays the penalty and fee or makes arrangements to pay in instalments, the agency must- update the national contraventions register in the prescribed manner; record the demerit points incurred by the infringer in the national contraventions register; and notify the infringer by registered

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mail in the prescribed manner that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and provide the infringer with a printout of the demerit points incurred to date, together with an indication of the number of points left before his or her driving licence, professional driving permit or operator card is suspended.

57. If a person is alleged to have committed an infringement, an authorised officer or a person duly authorised by an issuing authority, must instead of a notice contemplated in section 56 or 341 of the CP Act, serve or cause to be served on that person an infringement notice, which must specify the name and residential and postal address of the infringer, if known, at the time when the infringement was committed; state the prescribed particulars of the infringement; specify the amount of the prescribed penalty payable in respect of that infringement, the issuing authority to which the penalty is payable and the place where the penalty may be paid; specify the prescribed discount which may be obtained if the penalty is paid not later than 32 days after the date of service of the infringement notice; inform the infringer that the demerit points position may be ascertained in a prescribed manner; inform the infringer that, not later than 32 days after the date of service of the infringement notice.

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58. The infringer may- pay the penalty, as reduced by way of discount, or make representations to the agency, in the case of a minor infringement; pay the penalty, as so reduced, in the case of a major infringement; make arrangements with the agency to pay the penalty in instalments in the prescribed manner; or provide information, in the prescribed manner, to the satisfaction of the issuing authority that he or she was not the driver of the motor vehicle at the time of the alleged infringement, coupled with the name, acceptable identification and residential and postal address of the alleged driver or person in control of the vehicle failing which the matter will be referred to the agency and a courtesy letter will be issued whereafter the infringer becomes liable to pay both the penalty and the prescribed fee of the courtesy letter.
59. If an infringer fails to comply with an infringement notice within the prescribed period, the issuing authority must give notice of the failure, in the prescribed manner, to the agency for further action. If an infringer complies with an infringement notice by arranging to pay the penalty in instalments or by paying the penalty, as reduced by the discount, the agency must- update the national contraventions register in the prescribed manner; record the demerit points incurred by the infringer in the national contraventions register; notify the infringer by registered mail in the prescribed manner that the demerit points have been recorded against his or her name in the national contraventions register in respect of the infringement in question; and

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provide the infringer with a printout of the demerit points incurred by him or her to date, together with an indication of the amount of points left before his or her driving licence, professional driving permit or operator card is suspended.

60. If the infringer satisfies the issuing authority that he or she was not the driver of the motor vehicle, the issuing authority must cancel the infringement notice, and may serve or cause to be served on the person identified as the driver an infringement notice in relation to the alleged infringement. The owner or operator of a motor vehicle who permits any person to drive such vehicle or otherwise to exercise any control over such vehicle, without having ascertained the full names, identity document and residential and postal address or email of such person is liable for the penalty and fee.
61. Any person who has committed an infringement, incurs the number of demerit points. The demerit points in respect of offences or infringements by operators and drivers are recorded separately even if they arise out of the same circumstances. It bears repeating that where a person was convicted for an offence and appeals against a conviction, no demerit points are recorded unless the appeal is rejected or abandoned in which case demerit points are incurred in the prescribed manner.

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62. If a person or operator including a juristic person incurs demerit points which, are added to the points previously recorded against that person or operator or juristic person in the register and reduced. Once the demerits exceed the permissible total that person is disqualified with effect from 32 days after such excess points have been incurred, from driving or operating a motor vehicle. S/he must immediately hand in any driving licence card or professional driving permit in the prescribed manner to the issuing authority for retention by such issuing authority during the disqualification period, produce any driving licence contained in an identity document to such issuing authority for endorsement as suspended or must remove the prescribed operator card and deal therewith in the prescribed manner. The disqualification period equals in months the number of points by which the total is exceeded, multiplied by three or such number as may be prescribed by the Minister.
63. The Amendment Act establishes the Appeals Tribunal whose function is to adjudicate any matter brought to it by an infringer aggrieved by the decision of the representation officer and to hear appeals against or review any decision of the representation officer and make any ruling or order necessary or incidental to the performance of its functions. As mentioned above, if the infringer is not happy with the decision of the Appeals Tribunal, he or she may challenge the decision either by way of review or appeal to the Magistrate Court.

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64. In a nutshell, the AARTO Act seeks to introduce road traffic regulation which is a uniform standard applicable throughout the country. It embodies in it an administrative process and at every stage of the process the infringer is given a right to procedural hearing.
65. I turn to deal with the allegations made by the applicant in the founding affidavit. All allegations therein not specifically admitted by me are denied. All allegations in the founding affidavit which are inconsistent with what I have stated herein are equally denied.
66. AD PARAGRAPH 1
- I do not take issue with the contents of this paragraph.
67. AD PARAGRAPH 2
- To the extent the allegations made in the founding affidavit differ with what I have stated herein, the truthfulness and the correctness thereof are denied.
68. AD PARAGRAPH 3
- 68.1 I note that the applicant seeks to challenge the constitutionality of the AARTO Act and the Amendment Act. I deny though that the AARTO Act and the Amendment Act are unconstitutional or invalid.
- 68.2 It is correct that AARTO Act creates a single national system of road traffic regulation. It introduces a standard and a uniform process of adjudication of

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