

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

**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 LTD**

**Third Respondent**

**AIR CHEFS SOC LTD**

**Fourth Respondent**

**MINISTER OF FINANCE**

**Fifth Respondent**

in

**ORGANISATION UNDOING TAX ABUSE NPC**

**First Plaintiff**

**SOUTH AFRICAN AIRWAYS PILOTS ASSOCIATION**

**Second Plaintiff**

and

**DUDUZILE CYNTHIA MYENI**

**First Defendant**

**SOUTH AFRICAN AIRWAYS SOC LTD**

**Second Defendant**

**AIR CHEFS SOC LTD**

**Third Defendant**

**MINISTER OF FINANCE**

**Fourth Defendant**

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**FOUNDING AFFIDAVIT- RULE 28(4) APPLICATION**

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I the undersigned

**DUDUZILE CYNTHIA MYENI**

do hereby under oath and say the following:

1. I am an adult female and the Former Chairperson of the South African Airways SOC Ltd (SAA), residing at **102 Kolsterkring, Meerensee, Richards Bay.**
2. The facts set out below are, to the best of my knowledge, both true and correct. Save where the contrary is expressed or appears from the context, they lie within my personal knowledge.
3. I so far as I make the submission and draw the conclusion in the affidavit, I do so on the advice or advises of my legal representatives which advice I accept.

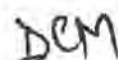
#### **PARTIES**

4. The First Respondent is **ORGANISATION UNDOING TAX ABUSE NPC**, a non-profit company incorporated under the laws of the Republic of South Africa and having its registered office at **318 Oak Avenue, Randburg, Johannesburg.**
5. The Second Respondent is **SOUTH AFRICAN AIRWAYS PILOTS' ASSOCIATION**, a branch of the Air Line Pilots' Association of South Africa, which is a registered trade union in terms of section 96 of the Labour Relations Act 66 of 1995, having its principal place of business at **10 Blockhouse Street, Kempton Park, Johannesburg.**

6. The Third Respondent is **SOUTH AFRICAN AIRWAYS SOC LTD**, a state-owned company duly established in terms of company laws of the Republic of South Africa and the South African Airways Act, 2007 ('SAA Act'), having its registered office at **Airways Park, 32 Jones Road, Kempton Park, Johannesburg.**
7. The Fourth Respondent is **AIR CHEFS SOC LTD**, a state-owned company duly established in terms of the company laws of the Republic of South Africa, having its registered office at **Airways Park, 32 Jones Road, Kempton Park, Johannesburg.**
8. The Fifth Respondent is **MINISTER OF FINANCE**, a member of the National Cabinet who has his principal office at **40 Church Square, Pretoria**. The Minister of Finance is, since 12 December 2014, the Cabinet member responsible for administering and regulating SAA under and in terms of the SAA Act.

#### **PURPOSE OF APPLICATION**

9. This is an application brought in terms of Rule 28(4) of the Uniform Rules of court to amend the plea of First Defendant.
10. A Rule 28 Notice was served on the Plaintiffs and was objected to in terms of Rule 28(3), which objection has given rise to this application.
11. This application therefore seeks to obtain leave of the above honorable court for all the proposed amendments to the First Defendant's to be effected.

**CONSOLIDATION OF RULE 28 NOTICES**

12. At the time my legal representatives filed the Rule 28 Notice, they had less than a week within which to familiarize themselves with all the issues in the case and only filed a Rule 28 Notice that traversed issues that covered only half of the plea and not the whole plea in it's entirety.
13. They have subsequently filed a second Rule 28 Notice that traverses the remainder of the issues that had not been dealt with in the first Rule 28 Notice.
14. I am advised that the filing of a second Rule 28 Notice is not prohibited in the Rules of Court and the circumstances that have given rise to the filing of the second Rule 28 Notice are just cause in that I am now being represented by a different legal representative who has had to prepare for the main trial under very tight time constraints.
15. The advice I have since received from my new legal representative has been to the effect that the plea as initially filed needs to be amended for the reasons that are the substance of this application.
16. To assist in avoiding avoidable delays or any other prejudice to the Plaintiffs in this case I ask that the above Honorable Court grant leave to have the two Rule 28 Notices heard as a single application as they are amendments of the same plea and the amendments are not duplicated in the two Rule 28 Notices.

17. At the time of drafting this affidavit, I had not received a Rule 28(3) objection to the second Rule 28 Notice, but I however do anticipate such objection as previously. I shall thus endeavor to deal with the current objection and the anticipated objection as is reasonably possible in this founding affidavit. To the extent that issues emerge in the anticipated Rule 28(3) objection so not covered in this application, I am advised that I will be able to address them in a Replying Affidavit if necessary.

18. In light of the above, I ask that the court grant leave to have the two Rule 28 Notices heard as a consolidated application on the grounds stated above.

#### **REASONS FOR AMENDMENTS**

19. In consulting with my new legal representative as part of preparation for the trial, I was made aware of number of deficiencies and flaws in my defence as pleaded that have caused me grave concern. I was advised that the rules of court allow for amendments of pleadings at any stage prior to the judgment and in the current stage, it is still opportune to effect amendments in that the trial has not begun.

20. To avoid prolixity, I shall not restate each of the proposed amendments in this application but ask that reference be made to the Rule 28 Notices for the proposed amendments and shall only deal with them in broad terms that give context to the substance and intended purpose thereof.

21. The first issue that I seek to address in the amendments is factual errors in a number of admissions made. I had all along been under the impression that my



previous legal representative had accurately captured the essence of points discussed in consultations and had pleaded them correctly.

22. As a non-legal person, I was none the wiser on the legal implications of how some of the admissions and denials had been framed in the plea. I was not able to fully ascertain whether the plea was conveying my version of events and explanations as I had intended them to be. It is not my intention to cast aspersions on my previous legal previous legal representatives but I deem it apposite to state that I had in good faith relied on the competence, expertise and counsel of my previous legal representative in as far as having my defence properly pleaded. There was thus nothing until now that had warranted concern or any form of apprehension on my part over the accurateness and robustness of the plea as filed.

23. In this regard, I submit that some of the amendments seek to correct matters of fact that have erroneously been admitted or denied in the original plea.

24. I am advised that some of the erroneous admissions and denials have in some instances resulted in ambiguity, material contradictions and inconsistencies that if left unchanged could prejudice me in the trial and could in themselves lead to negative inferences being drawn against me by the court.

25. I am also advised that the obligation is on me as a party in litigation to ensure that the plea places the court in a position where it has as accurate a version of my defence as the court cannot be bound by a mistake of law on the part of a litigant or allow a defence in the trial that is not pleaded in the papers.

26. The second issue that the amendments seek to address is numerous instances in the plea as is at present, that appear to fall short on compliance with Rule 22 of the Rules of Court.

27. In particular, there are many instances where serious allegations made against me along the lines of impropriety, unlawful conduct and multiple violations of statutory provisions of the Companies Act and Public Finance Management Act are answered with bare denials.

28. I am advised that bare denials can be considered inadequate when pleading to the substance of an allegation and could lead to the court later holding that certain facts arising from those allegations have not been put in issue. It has always been my intention to put serious allegations made by the Plaintiffs in issue and the bare denials as I now understand them do not achieve this intention.

29. I submit that the proposed amendments will cure the defects in the plea that render the plea in its present state noncompliant with Rule 22.

#### **PLAINTIFFS' RULE 28(3) OBJECTION**

30. The Plaintiffs raised four grounds of objection to the proposed amendments and I shall address each of these grounds next.

31. The first ground of objection is DELAY AND PREJUDICE owing to alleged late filing of the Rule 28 Notice. This ground is now moot as the court gave directions

on how the Rule Notices were to be dealt with by the parties. It is also unfounded in that Rule 28 stipulates no time frames on when such notices should be filed. Instead, Rule 28(10) specifically states leave to amend any pleading may be granted at any stage before judgment.

32. The second ground of objection is WITHDRAWAL OF ADMISSIONS. These are at paragraphs 9,11,12,18 and 19 of the Rule 28 Notice.

32.1. At paragraph 9; the admission is withdrawn on the grounds that the admission was not properly pleaded effectively being a confession and avoidance when the correct way of pleading should have been a denial. It is nonetheless an admission which was not material to the cause of action or evidence that supports the case of the Plaintiffs:

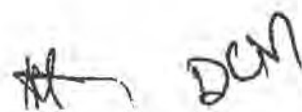
32.2. At paragraph 11; the admission is withdrawn on the grounds that the pleading is erroneous and factually inaccurate.

32.3. At paragraph 12; the admission is withdrawn on the grounds that the pleading is erroneous and factually inaccurate.

32.4. At paragraph 18; the admission is withdrawn and substituted with a non-admission as the allegation is not about issues within the purview of first defendant.



- 32.5. At paragraph 19; the admission is withdrawn on the grounds that the admission was made erroneously.
33. The admissions withdrawn are in the main corrections of factual inaccuracies and rectification of evasiveness and ambiguities in the plea.
34. It is submitted that the withdrawn admissions are not of material allegations made against First Defendant but are of context and background information.
35. None of the withdrawals pertain to specific conduct of the First Defendant previously admitted and subsequently denied in the proposed amendments.
36. The third ground of opposition is BAD FAITH in that the First Defendant seeks to induce further delays and postponements. This allegation is baseless as the plaintiffs were not ambushed with the Rule 28 Notice but had been informed about it at the pre-trial a few days before they received it.
37. What is bad faith in this instance is the plaintiff's failure to mention that the First Defendant withdrew the special plea of locus standi. If there indeed was bad faith intention to cause delays, the First Defendant would not have withdrawn the special plea.
38. What is also bad faith is the allegation that the First Defendant had a failed attempt to secure an indefinite postponement when the postponement was requested to the second quarter of next year.

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39. The fourth ground is IMPERMISSIBLE LEGAL ARGUMENT. Save to say that the First Defendant could not raise an exception after having pleaded, I cannot address this objection as it is vague.
40. As stated earlier, I anticipate that there will be an objection to the second Rule 28 Notice which I shall deal with if and when it is received.
41. It is submitted that the grounds as averred in the Rule 28(3) objection are not sufficient grounds upon which an amendment can be refused.

#### PREJUDICE

42. I will be greatly prejudiced if not allowed to make the proposed amendments in that the plea as it is at present in that it does not accurately plead my defence as I would personally like to have it pleaded.
43. A refusal to grant the amendments would have the effect of violation the *audi alteram partem* rule in that I will be subjected to a trial while not having my side of the case heard as I am legally entitled to have it heard. My version and defence can only be contained in the plea, which plea is deficient at this point.
44. A refusal to grant the amendment would infringe on my Section 34 Constitutional right to a fair hearing.



DCM 10

45. A refusal to grant the amendment would not be in the interests of justice as the continuation of a trial where one party feels inadequately heard would lead to injustice and a miscarriage of justice.
46. On the other hand, there is no prejudice the plaintiffs in that the merits of their case should be able to stand regardless of what the admissions or denials of the First Defendant are. If in their view, sufficient evidence exists to be granted the relief they seek, it is of no material effect what the plea of defendant states.
47. The plaintiffs are aware of all the facts regarding the changes I have in legal representation but have opposed postponement applications to have allow my new legal representatives sufficient time to prepare. It is the plaintiff's overzealousness to start the trial at all costs that has resulted in postponements in situation where they could have been avoided. Thus, the prejudice on the part of the plaintiff is largely self-created.
48. This application has not been occasioned by conduct of my own hence I pray that no order be made as to costs, alternatively, the cost order be reserved.

**WHEREFORE** I pray that the court grant leave to amend the please as per the Rule 28 Notices.

HA DCM

*[Signature]*

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**DEPONENT**

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Umlanga on this the 04 day of November 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

<b>SOUTH AFRICAN POLICE SERVICE</b>
COMMUNITY SERVICE CENTRE
<b>2019 -11- 04</b>
UMHLANGA SATELLITE
KWAZULU-NATAL

*[Signature]*  
CST  
N. KHUMALO  
7137211-3

**COMMISSIONER OF OATHS**

ADDRESS: Umlanga

*DCM*