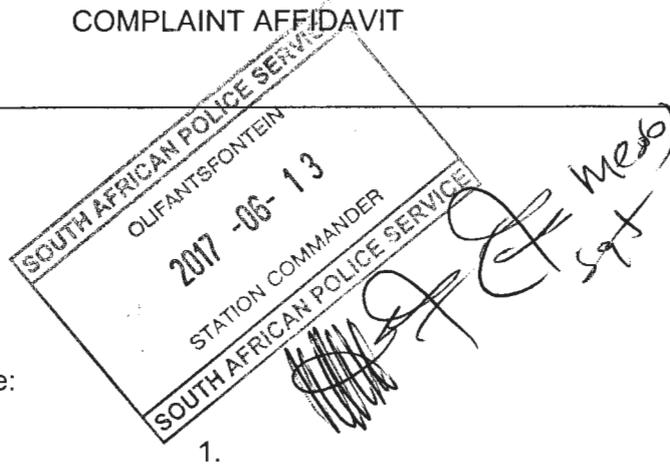


COMPLAINT AFFIDAVIT

I, the undersigned,

██████████

do hereby make oath and state:



1.

I am a major female Advocate and Head of Legal Affairs at Organisation Undoing Tax Abuse, also known as OUTA. OUTA is 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.

2.

The Organisation Undoing Tax Abuse ("OUTA") is a proudly South African non-profit civil action organization, comprising of and supported by people who are passionate about improving the prosperity of our nation. OUTA was established to challenge the abuse of authority with regards to taxpayers' money in South Africa.

3.

The contents of this affidavit fall within my personal knowledge and expertise unless indicated otherwise and are, to the best of my knowledge, true and correct.

4.

4.1. On or about the 1st of June 2017, I obtained a copy of several Civil Court applications involving Mr and Mrs Ngubane which disclose possible acts of fraud, forgery, uttering and offences in terms of the Companies Act, 2008. A copy of the pleadings is attached hereto and marked "A".

4.2. The key pleading is a Founding Affidavit of one Mr Neil David Button hereinafter referred to as "Mr Button" acting on behalf of Huntrex, a Company under liquidation.

4.3. All documents and evidence used to support the allegations in this complaint was obtained from the pleadings mentioned *supra* and form part of public record, unless indicated otherwise.

5.

From the Founding Affidavit, I respectfully submit there is a *prima face case* to made out for fraud, forgery and uttering committed by:

5.1. Mr Baldwin Siphon Ngubane, a major businessman resident at [REDACTED] (hereinafter referred to as Mr Ngubane), and/ or;

5.2. Mrs Sheila Thabisile Ngubane, a major businesswoman resident at [REDACTED] (hereinafter referred to as Mrs Ngubane).

BACKGROUND TO THE COMPLAINT

6.

Mr and Mrs Ngubane acted as the Directors of a company called Huntrex 305 (Pty) Ltd a company duly registered in terms of the Companies Act under registration number 2010/004684/07 (hereinafter referred to as **Huntrex**).

7.

On or about the 10th of June 2011, Huntrex (with Mr Ngubane acting as Directors on behalf of Huntrex) purchased a business called the Stanger Business ("**Stanger**") from a company called Brikor Limited ("Brikor"). Brikor is a company duly registered in terms of the Companies Act under registration number 1998/013247/06. Attached hereto and marked "**B**", is a copy of the Sale of Business Agreement.

8.

According to the Sale of Business Agreement, Stanger consisted of the Stanger Trade names which include Natal Sands (Pty) Ltd (a company duly registered in terms of the Companies Act under registration number 2008/000718/07), Hanis Investments (Pty) Ltd (a company duly registered in terms of the Companies Act under registration number 1980/004681/07) and Zululand



Quarries (Pty) Ltd (a company duly registered in terms of the Companies Act under registration number 1964/002940/07). The companies are hereinafter referred to as **Natal Sands, Hanis Investments** and **Zululand Quarries** respectively.

9.

The total purchase price in terms of the Sale of Business Agreement was R50 000 000.00 (fifty million rand only) plus an amount described as the Stanger Assumed Liabilities. The purchase was wholly funded by Ithala Development Finance Corporation Limited (hereinafter referred to as Ithala).

10.

The Sale of Business Agreement also included all shares issued by the companies mentioned above and which were duly transferred to Huntrex. Attached hereto and marked "C1 – C9" are copies of the respective Securities Transfer Forms, voided Share Certificates and the newly issued Share Certificates in respect of all three companies mentioned in paragraph 8 *supra*.

11.

Mr and Mrs Ngubane, as the Directors and Share Holders of Huntrex, continued with the Stanger Business until an Application for Provisional Liquidation was brought against Huntrex by Ithala for defaulting on the repayments in respect of the loan granted in favour of Huntrex. The application for Provisional Liquidation was granted on the 31st of March 2015 in the High Court of South Africa KwaZulu-Natal Local Division, Durban under case number 14110/2013.

12.

The final order for the winding up of Huntrex was granted on the 26th of January 2016 by the High Court of South Africa KwaZulu-Natal Local Division, Durban. A copy of the final Winding-Up Order is attached hereto and marked as "D".

13.

On or about the 6th of May 2016, Messrs. Niel David Button, Thamsanqa Eugene Mshengu, Mandla Professor Madlala and Glaudine Judith Lombard were appointed as the Liquidators in respect of

Huntrex with all powers as set out in section 386 of the Companies Act 61 of 1973 and which include the power to dispose of any assets held by Huntrex or its subsidiary companies. A copy of the Certificate of Appointment of Liquidators is attached and marked as "E".

14.

During April/ March 2016 the Liquidators negotiated the sale of **Natal Sands, Hanis Investments and Zululand Quarries** with Sandton Plant Hire (Pty) Ltd, herein after referred to as **Sandton Plant Hire**, to recover capital and pay Huntrex's creditors.

- 14.1. The negotiated purchase price for the three companies amounted to only R15 305 450.00 (fifteen million, three hundred and five thousand four hundred and fifty rand).
- 14.2. The sale included all mining and converted mining rights held by **Natal Sands, Hanis Investments** and **Zululand Quarries** and formed the underlining reason for the sale.

ACTS OF FRAUD, FORGERY, UTTERING AND CONTRAVENTION OF THE COMPANIES ACT, 2008

15.

According to Mr Button's Founding Affidavit, before the sale could be concluded Mr Petrus Roets of Sandton Plant Hire informed the Liquidators that Mr and Mrs Ngubane advised him that they are the shareholders of all shares in **Natal Sands, Hanis Investments** and **Zululand Quarries** in their personal capacities and not Huntrex. Therefore, the Liquidators do not possess the power to sell and transfer the rights to Sandton Plant Hire.

16.

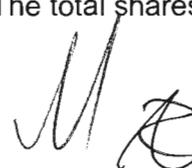
In support of this notion, Share Certificates purporting to be issued in Mr and Mrs Ngubane's personal capacity were delivered by Mr Ngubane and the sale was subsequently cancelled. Copies of said Share Certificates are attached and marked as "F1 – F5".

17.

Upon inspection of the Share Certificates produced by Mr Ngubane, the following was observed by Mr Button:



- 17.1. The Share Certificates titled "*Zululand Querries (Pty) Limited*" (attachment **F1** and **F2**) –
- 17.1.1. The Share Certificate incorrectly states "*Zululand Querries (Pty) Limited*" instead of "*Zululand Quarries (Pty) Limited*", the registered name of the relevant company in terms of the Companies Act 2008.
- 17.1.2. The Share Certificates are numbered as "*Certificate Number 1*" and "*Certificate Number 2*" respectively in purported compliance with section 51(4)(a) of the Companies Act 2008.
- 17.1.3. However, the Share Certificates issued to Brikor and subsequently to Huntrex were share certificates numbers 20 and 21. Refer to attachments marked **C1** and **C2**.
- 17.1.4. Share Certificates must be consequently numbered and thus the Share Certificates produced by Mr Ngubane cannot be said to have been legitimately and correctly numbered.
- 17.1.5. Further, according to the Share Certificates produced by Mr Ngubane, he owns 30 shares and Mrs Ngubane owns 70 shares, a total of 100 shares. The total shares issued by the company are 102 shares.
- 17.1.6. Further, the Share Certificates produced by Mr Ngubane indicates that each share has a par value of 1 cent. However, the Share Certificates issued by Brikor to Huntrex indicated the par value of each share at 1 rand. The change in the par value of the shares cannot within good reason be explained.
- 17.1.7. Finally, the Share Certificates produced by Mr Ngubane was purportedly in compliance with section 51(1)(b) of the Companies Act 2008 as it is signed by himself in his capacity as Director and an unknown person in their capacity as Secretary of Zululand Quarries. However, no record can be found of a company Secretary being appointed in respect of Huntrex or who the person may be.
- 17.2. The Share Certificates titled "*Natal Sand Supplies (Pty) Ltd*" (attachment **D3** and **D4**) –
- 17.2.1. The Share Certificates are numbered as "*Certificate Number 1*" and "*Certificate Number 2*" respectively in purported compliance with section 51(4)(a) of the Companies Act 2008.
- 17.2.2. However, the Share Certificates issued to Brikor and subsequently to Huntrex were share certificates numbers 2 and 3. Refer to attachments marked **C4** and **C5**.
- 17.2.3. Share Certificates must be consequently numbered and thus the Share Certificates produced by Mr Ngubane cannot be said to have been legitimately and correctly numbered.
- 17.2.4. Further, according to the Share Certificates produced by Mr Ngubane he owns 70 shares and Mrs Ngubane also owns 70 shares, a total of 140 shares. The total shares issued by the company are 100 shares.



- 17.2.5. Further, the Share Certificates produced by Mr Ngubane indicates that each share has a par value of 1 cent. However, the Share Certificates issued by Brikor to Huntrex indicated the par value of each share at 1 rand. The change in the par value of the shares cannot within good reason be explained.
- 17.2.6. Finally, the Share Certificates produced by Mr Ngubane was purportedly in compliance with section 51(1)(b) of the Companies Act 2008 as it is signed by himself in his capacity as Director and an unknown person in their capacity as Secretary of Natal Sand Supplies. However, no record can be found of a company Secretary being appointed in respect of Huntrex or who the person may be.
- 17.3. The Share Certificates incorrectly titled "*Hanis Investment (Pty) Ltd*" instead of "*Hanis Investments (Pty) Ltd*" (attachment **F5**) –
- 17.3.1. The Share Certificate is numbered as "*Certificate Number 2*" in purported compliance with section 51(4)(a) of the Companies Act 2008.
- 17.3.2. However, the Share Certificate issued to Brikor and subsequently to Huntrex was share certificate numbers 8 and 9. Refer to attachments marked **C7** and **C8**.
- 17.3.3. Share Certificates must be consequently numbered and thus the Share Certificates produced by Mr Ngubane cannot be said to have been legitimately and correctly numbered.
- 17.3.4. Further, according to the Share Certificate produced by Mr Ngubane he owns 30 shares. The total shares issued by the company were 6 shares.
- 17.3.5. Further, the Share Certificates produced by Mr Ngubane indicates that each share has a par value of 1 cent. However, the Share Certificates issued by Brikor to Huntrex indicated the par value of each share at 1 rand. The change in the par value of the shares cannot within good reason be explained.
- 17.3.6. Finally, the Share Certificates produced by Mr Ngubane was purportedly in compliance with section 51(1)(b) of the Companies Act 2008 as it is signed by himself in his capacity as Director and an unknown person in their capacity as Secretary of Hanis Investments. However, no record can be found of a company Secretary being appointed in respect of Huntrex or who the person may be.

18.

No documentation proving that there was a legal underlying agreement to facilitate the transfer of the shares or a reason for the shares to be transferred by operation of law from Huntrex to Mr and Mrs Ngubane, as required by as required in Section 51(6) of the Companies Act 2008, could be obtained or established.

A handwritten signature in black ink, appearing to be the initials 'MR' or similar, written in a cursive style.

19.

Further, the books and records of Huntrex, as disclosed in Mr Button's Founding Affidavit, do not reflect payment by either Mr and/ or Mrs Ngubane in respect of the transferred shares originally held by Huntrex. Refer to attachment marked "G" and "H".

20.

According to Mr Button's Founding Affidavit, the Liquidators have been unable to locate the Share Registers of **Natal Sands**, **Hanis Investments** and **Zululand Quarries** to further verify the transfer of shares as required by section 51(5) of the Companies Act, 21008, or the validity of the Share Certificates produced by Mr Ngubane. The validity and legality thereof are disputed by the Liquidators. However, OUTA has obtained photocopies of the original Share Registers for Natal Sands and Zululand Quarries, which reflect no record of transfer of shares from Huntrex to Mr and Mrs Ngubane. Attached hereto and marked "I", are said photocopies. It is accompanied by an affidavit duly signed by the person whom collected the photocopies, Mr Shane van Straaten.

21.

Upon inspection of the abovementioned photocopies of the Share Registers, the following is evident:

- 21.1. There is no entry in the Zululand Share Register indicating the transfer of shares from Huntrex to Mr and/or Mrs Ngubane which would support or confirm the Share Certificates produced by Mr Ngubane.
- 21.2. There is no entry in the Natal Sands Share Register indicating the transfer of shares from Huntrex to Mr and/or Mrs Ngubane which would support or confirm the Share Certificates produced by Mr Ngubane.

22.

Despite the Liquidators' attempts to obtain an explanation from Mr and Mrs Ngubane and/or their legal representative, no reasonable explanation has been provided. Mr and Mrs Ngubane and/or their legal representative refuses and/or neglects to respond. Refer to attachment marked "J".



23.

The Liquidators have brought an Application for the setting aside of the purported transfer of the shares in **Natal Sands**, **Hanis Investments** and **Zululand Quarries** in the High Court of South Africa KwaZulu-Natal Local Division, Durban under case number 8296/2016. The Application is still to be heard and determined by the honourable court.

24.

24.1. Therefore, it is a strong possibility that Mr and/or Mrs Ngubane falsified share certificates with the intention to create the impression that they were the only lawful shareholders in Zululand Quarries, Natal Sands and Hanis Investments and that they are effectively the owners of the mineral rights vested in those companies. They then presented the false share certificates to Mr. Roets. The unlawful and intentional misrepresentation made by Mr Ngubane and Mrs Ngubane by producing the false Share Certificates, led to the cancellation of the sale and caused substantial prejudice to Huntrex and/ or its creditors.

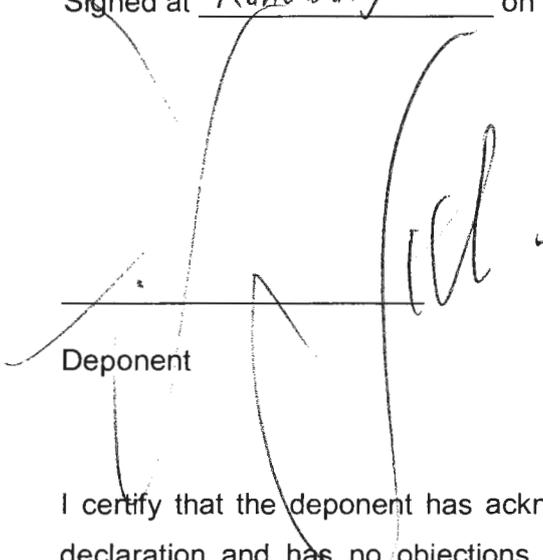
25.

- 25.1. Section 214(1)(ii) states that: "*A person is guilty of an offence if the person... was knowingly a party to... an act or omission by a business calculated to defraud a creditor, employee or security holder of the company, or with another fraudulent purpose*".
- 25.2. Sections 76(2) and (3) of the Companies Act, 2008, sets a standard for director in terms of which they **must** not use the position of director, or any information obtained while acting in the capacity of a director to gain an advantage for the director, or knowingly cause harm to the company or a subsidiary of the company; and
- 25.3. A director of a company, when acting in that capacity, must exercise the powers and perform the functions of director in good faith and for a proper purpose; in the best interests of the company; and with the degree of care, skill and diligence that may reasonably be expected of a person carrying out the same functions in relation to the company as those carried out by that director; and having the general knowledge, skill and experience of that director.



Therefore, Mr and Mrs Ngubane possibly committed acts of fraud, forgery, uttering and acts in contravention of the Companies Act, 2008 and I request and require further investigation and possible prosecution in the matter.

Signed at Randburg on this 13th day of June 2017.


Deponent

I certify that the deponent has acknowledged that she understands the contents of the above declaration and has no objections to taking the prescribed oath or affirmation and that she considers the prescribed oath or affirmation binding on her conscience.

Signed and sworn before me, at Randburg on this 13th day of 2017.
2017.


Commissioner of Oaths

Name: _____

Office: _____

Address: _____

PRAKTISERENDE PROKUREUR/PRACTISING ATTORNEY RSA
KOMMISSARIS VAN EDE/COMMISSIONER OF OATHS

