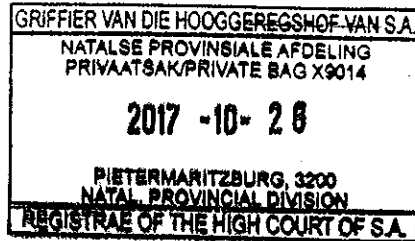


IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO:
12149/17P

In the matter of between:

KZN ATHLETICS



APPLICANT

AND

ATHLETICS SOUTH AFRICA

FIRST RESPONDENT

MAC CHITJA

SECOND RESPONDENT

UMGUNGUNDLOVU ATHLETICS

THIRD RESPONDENT

NOTICE OF MOTION

SIR / MADAM,

BE PLEASE TO TAKE NOTICE that an Application would be made on behalf of the abovenamed Applicant on the 26th October 2017 at 15h 30 for an Order in the following terms.

1.

That the application be heard as an urgent application as contemplated by the provisions of Rule 6 (12) (a) of the Uniform Rules of Court and that the

Applicant's non-compliance with time limits, notice periods and notice be and is hereby condoned by the above Honourable Court.

2.

That a Rule *Nisi* do hereby issued calling upon the Respondents and any and all other interested parties to show cause before the above Honourable Court on this _____ of _____ at 09h30 or as soon thereafter as the Applicant may be heard as to why Orders in the following terms should not be granted:

- 2.1 That the First Respondent be and is hereby interdicted and restrained from considering and accepting the Second and/or Third Respondent's application to it to be a member of it as provided for by section 6 and section 8 of the First Respondent's Constitution approved by the First Respondent's annual general meeting of June 2017.
- 2.2 That the Applicant be and is hereby directed to declare a dispute based on the First Respondent's acceptance and consideration of the Second and/or Third Respondent's application as referred to in paragraph 2.1 hereinabove and refer such dispute for arbitration and determination within ninety (90) days of the above Honourable Court granting any orders herein.
- 2.3 That the Respondents be and is hereby directed to pay costs of this application in the event of opposition hereto.

2.4 Such further and/or alternative relief that the above Honourable Court may deem appropriate.

3.

KINDLY TAKE NOTICE that the relief sought at paragraph 2.1 hereinabove shall operate as an Interim Interdict Order pending finalisation of this application.

4.

KINDLY TAKE FURTHER NOTICE that the affidavit of Sello Mokoena together with the supporting affidavit annexures thereto will be used in support of this application.

5.

KINDLY place the matter on the roll for hearing on an urgent basis accordingly.

DATED AT PIETERMARITZBURG ON THIS 26TH DAY OF OCTOBER 2017.



APPLICANTS ATTORNEYS

VIREN NAIDOO AND ASSOCIATES

376 JABU NDLOVU STREET

PIETERMARITZBURG

KWAZULU NATAL

TEL: 0333 342 6746

(REF: MR. V. NAIDOO)

TO: THE REGISTRAR OF THE HIGH COURT
CHURCH STREET
PIETERMARITZBURG

AND TO: ATHLETICS SOUTH AFRICA
FIRST RESPONDENT
ATHLETICS HOUSE
NO. 3, 11TH AVENUE, HOUGHTON ESTATE
JOHANNESBURG
GAUTENG
PER TELEFAX: 011 442 3091

AND TO: MAC CHITJA
SECOND RESPONDENT
19 SUNWOOD PLACE
LESTER PARK
PIETERMARITZBURG

AND TO: UMGUNGUNDLOVU ATHLETICS
C/O 19 SUNWOOD PLACE
LESTER PARK
PIETERMARITZBURG

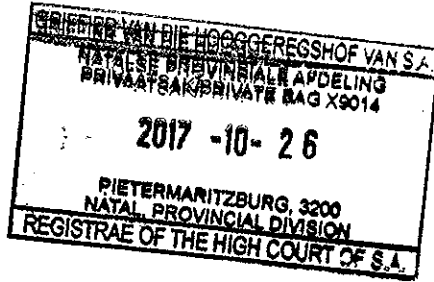
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APPLICANT



AND

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FIRST RESPONDENT

MR. MAC CHITJA

SECOND RESPONDENT

UMGUNGUNDLOVU ATHLETICS CLUB

THIRD RESPONDENT

APPLICANTS FOUNDING AFFIDAVIT

I, the undersigned,

SELLO MOKOENA

do hereby make oath and state:

AR
[Signature]

That, I am a major male President of KwaZulu Natal Athletics, which has its offices situated at 41 Walter Gilbert Road, Durban. KwaZulu Natal.

The facts deposed hereto are within my own personal knowledge and belief and are both true and correct unless where the contexts expressly indicates otherwise.

1.

INTRODUCTION

1.1 I respectfully submit that the Applicant is an organization which administers athletics within the Province of KwaZulu Natal and has the necessary legal personality to sue and be sued. I submit that the Applicant is an affiliate member of the First Respondent. I respectfully submit that I possess intimate pertinent knowledge of all facts peculiar to the present matter and can accordingly positively swear to such facts as set out hereinbelow. I further submit that I have been duly authorized by the Executive Committee of the Applicant to institute the present proceedings and to depose to the present affidavit on its behalf. A copy of a resolution authorizing me to do so, is attached hereto and marked as annexure "SC1".

AR
#

- 1.2 The First Respondent in these proceedings is Athletic South Africa which is a non-profit organization established in terms of the Sports and Recreation Act of 2010 ("the Act"). The purpose of the First Respondent is to regulate the administration of athletics within the Republic of South Africa via its affiliate members such as the Applicant herein. The First Respondent's registered offices are situated at Athletics House, No. 3, 11th Avenue, Houghton Estate, Johannesburg, Gauteng. The First Respondent is governed by its Constitution and a copy thereof is attached hereto and marked as annexure "SC2". I shall make reference thereto later on hereinbelow.
- 1.3 The Second Respondent in these proceedings is Mr. Mac Chitja, who is a major male and whose address to the best of my knowledge is situated at, 19 Sunwood Place, Leister Park , Pietermaritzburg. The Second Respondent has been cited herein in his capacity as a Representative and/or Chairperson and/or Proxy of the Third Respondent.
- 1.4 The Third Respondent is Umgungundlovu Athletics, an organization which was purportedly formed by certain athletics clubs in the Province of KwaZulu Natal and whose full and further particulars are at this stage, unknown to the Applicant. The Third Respondent is however for all intense purposes represented by the Second Respondent in view of correspondence which I shall set out hereinbelow.

A handwritten signature in black ink, appearing to be the initials 'AK' with a large, stylized flourish below it.

1.5 The relief sought in the present application is set out in the Notice of Motion prefixed to my affidavit herein and I hence pray that the contents thereof be incorporated herein in order to avoid unnecessary repetition.

2.

SALIENT BACKGROUND FACTS

2.1 The First Respondent has legal personality and through its authorized representatives, has an independent existence from its members and officers and therefore, has the power to incur legal obligations, to enter into legal transactions as well as institute or defend legal proceedings. In this regard, I draw the above Honourable Court's attention to paragraphs 2.1, 2.2, 2.3.1 to 2.3.4 of the First Respondent's Constitution, a copy of which is annexure "SC2" hereto.


2.2 The Applicant was established and obtained its separate legal personality in 1992 and as a result thereof, has to date administered athletics within the Province of KwaZulu Natal since the said date.

2.3 The Applicant administers athletics in the following districts for the Province of KwaZulu Natal pursuant to a demarcation that had been sanctioned and

A handwritten signature in black ink, appearing to be 'AR' with a large, stylized flourish below it.

authorized by the First Respondent and as confirmed by section 9.13 of annexure "SC2" hereto. In this regard, I point out that the Applicant solely administers athletics clubs and athletics events within the following districts:

- a) The Ugu District;
- b) **The Umgungundlovu District which encompasses Pietermaritzburg, Impendle, Howick, Richmond, Mpofana, Mooi River, Rosetta, Dalton, New Hanover, Hammarsdale, Edendale, The Msunduzi, Nottingham Road, Umshwathi, Mpolweni and Mkhambathi. I digress to mention that the present application pertains to this district;**
- c) The Uthukela District;
- d) The Umzinyathi District;
- e) The Amajuba District;
- f) The Zululand and Umkhanyakude District;
- g) The Uthungulu and Ilembe Districts;
- h) The Sisonke and Ethekwini Metro Districts.

A handwritten signature in black ink, consisting of stylized initials and a surname, located at the bottom right of the page.

2.4 In view of the fact that the Applicant administers the aforesaid districts, all athletics clubs and athletic events within the aforesaid districts referred to hereinabove fall under its jurisdiction and regulation and as a result thereof, all athletics clubs must pay to the Applicant fees for the holding of events and must ensure that such events comply with health and safety regulations in respect of their participants aswell as the anti-doping regulations of the First Respondent. Resultantly, I submit that the Applicant has a responsibility to regulate administration of athletics within the Province of KwaZulu Natal which it takes very seriously and which has a significant impact on its members.

2.5 Pursuant to the Act and the provisions thereof, the Applicant was obliged to be a member of the First Respondent and **the First Respondent had accordingly recognized that the Applicant was the only entity which was recognized by it for the administration and regulation of athletics within the Province of KwaZulu Natal.** In this regard, I wish to point out the following:

- a) Pursuant to the provisions of **section 9** of the First Respondent's Constitution (annexure "SC2" hereto), **the Applicant** was to solely administer athletics in the magisterial districts that will be controlled by it;

b) Pursuant to the contents of section 18.1.13 of the First Respondent's Constitution (annexure "SC2" hereto), only the Applicant is recognized as a provincial member of the First Respondent.

2.6 Resultantly and pursuant to the contents of paragraphs 8.1.13, 9 and 9.13, only the Applicant can be a member of the First Respondent and administer athletics within the Province of KwaZulu Natal.

3.

3.1 It is imperative that I point out to the above Honourable Court that the current President of the First Respondent is one Alec Skhosana ("Skhosana").

3.2 During on or about 11th April 2012, Skhosana and I had both rallied to obtain the position of President of the Applicant herein. Skhosana unfortunately had lost out to me and I was elected Chairperson of the Applicant in 2012. I was subsequently re-elected despite opposition from those aligned to Skhosana, who was aggrieved by this. I hence submit that Skhosana was part of a faction that did not want me to obtain the presidency of the Applicant and it is reasonable for me to believe that he would want to circumvent the operations of the Applicant.

AR
