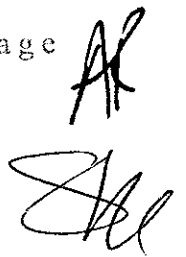



3.3 Subsequently Skhosana became the President of the First Respondent and thereafter, the following concerning events had unfolded:

- a) There were factions which had developed in the Applicant such as that which was led by the Second Respondent whom I believe may be aligned to Skhosana;
- b) The Second Respondent attempted to coerce other athletic clubs within the demarcated provincial boundaries of the areas controlled by the Applicant to form a separate break away organisation which became to be known as the Third Respondent;
- c) The Second Respondent is for all and intense purposes, the representative alternatively, the Chairperson of the Third Respondent. In this regard, a copy of an email confirming this is attached hereto and marked as annexure "SC3". I pray that the contents thereof be incorporated herein in order to avoid unnecessary repetition;
- d) It is apparent from annexure "SC3" hereto that the Third Respondent had indicated that they have applied for membership to the First Respondent in terms of clause 6 of the First Respondent's Constitution, a copy of which is

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annexure "SC2" hereto. It is this application which is relevant to the present application;

- e) The Applicant has not been provided with any details regarding the Third Respondent inclusive of its Constitution, membership register and its objectives, responsibilities and functions. Resultantly, the Applicant is unaware as to any details regarding the Third Respondent save for the fact that the Second Respondent is its duly authorized representative and/or Chairperson;
- f) The First Respondent has further failed to even request and / or obtain the comment and or consent of the Applicant for the Third Respondent's application and neither has it been willing to provide any details to the Applicant regarding the Third Respondent's status, membership or obligations or application;
- g) I verily believe that the Third Respondent cannot apply for membership to the First Respondent in view of the fact that the clubs within the Umgungundlovu District are still members of the Applicant and therefore they would not have the necessary legal persona to form a break away organisation;

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- h) I believe that the breakaway organisation formed has been purely driven by the faction which had lost out in my re-election as President of the Applicant and are simply unwilling to abide by the rules and regulations of the Applicant which is contrary to the Constitution of the First Respondent;
- i) The First Respondent is scheduled to meet on the **27th of October 2017** and I verily believe that the First Respondent will consider the application of the Third Respondent and approve same in view of the fact that Skhosana was aggrieved that he had lost out in the presidency race of the Applicant to me, and therefore, wishes me to no longer be the *de facto* President of the Applicant and thus, control the administration of athletics within the Province of KwaZulu Natal;
- j) In view of the strong reservations which the Applicant bears regarding the application made by the Third Respondent to the First Respondent for membership, an email was dispatched by me to the First Respondent, a copy of which is attached hereto and marked as annexure "SC4". I wish to highlight the following salient aspects of annexure "SC4" hereto as set out hereinbelow:
- i. The First Respondent was advised of the Third Respondent's application to it to be a member;



- ii. The First Respondent was advised that this application was in direct contravention of the provisions of its own Constitution and resolutions regarding provincial membership;
- iii. The First Respondent was further advised that should the Third Respondent's application be considered and or approved by it this act shall bring the administration of sport provincially and nationally into disrepair and will cause irreparable harm thereto;
- iv. The First Respondent was requested to reply in writing by **10am on 26th October 2017** that the application will not be approved.
- k) I hence submit that the contents of annexure "SC4" hereto are clear and unequivocal;
- l) The First replied to annexure "SC4" hereto via an e-mail which is annexure "SC5" hereto. Notwithstanding annexure "SC4" hereto being unequivocal the First Respondent contends miraculously that it was unable to read some of the attachments thereto. I believe this to be untrue as all attachments were readable. I believe that annexure "SC5" hereto is a ruse designed to further prolong the matter to enable the First Respondent to approve the application of the Third Respondent, notwithstanding the fact that same is contrary to its own constitution, a copy of which is annexure "SC2" hereto. I

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submit that the Respondent has further failed and or refused to provide the undertaking requested in annexure "SC4" hereto;

m) No undertaking has hence been provided by the First Respondent that it will not consider and approve the Third Respondent's application and as a result thereof the Applicant is compelled to approach the above Honourable Court.

3.4 I submit that the salient background facts referred to hereinabove are crucial when assessing the merits of the present application. I do however point out that the aforesaid facts are not exhaustive and I have only chosen in order to avoid prolixity to mention the salient aspects of the matter.

4.

SUBMISSIONS

4.1 I respectfully submit that the Applicant in terms of the Act has a *prima facie* if not clear right to be affiliated and recognised by the First Respondent as the sole organisation administering athletics within the province of Kwa-Zulu Natal.

4.2 I further respectfully submit that pursuant to the contents of Section 9 of the First Respondent's Constitution only the Applicant is legible to be recognised by the

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First Respondent, as the controlling body of athletics clubs within the province of KwaZulu-Natal.


- 4.3 I further respectfully submit that the Applicant's sole and absolute right to be recognised as the only athletics association within the province of KwaZulu-Natal is further entrenched by the contents of paragraphs 9.13 of the First Respondent's constitution.
- 4.4 I accordingly respectfully submit that should the First Respondent attempt to recognise any other athletics body other than the Applicant, the Applicant shall suffer irreparable harm and same shall be contrary to the First Respondent's very own constitution.
- 4.5 I accordingly respectfully submit that the Applicant has a clear right or at the very least a *prima facie* right to the interdictory relief that has been herein sought and the ancillary relief.

5.



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5.1 I respectfully submit that the Applicant has a reasonable apprehension of harm for the following reasons:

- a) It is clear from the contents of annexure "SC3" hereto that the Second Respondent as a representative of the Third Respondent has already submitted an application to the First Respondent to be recognised as a provincial body that controls athletics with the UMgungundlovu District within Kwa-Zulu Natal. The UMgungundlovu District is a large district and as a result thereof organises many athletics events and is responsible for the collection of fees. One of such athletics events is the Comrade's Marathon which has its offices located at Pietermaritzburg. Consequently this is a large event and results in a large turnover of fees and has an impact on athletics not only in the province but in the country and worldwide;
- b) Should the Third Respondent be recognised as a member of the First Respondent the Third Respondent thereafter will be responsible for the collection of all fees generated from athletic events such as the Comrades Marathon and further shall be responsible for ensuring the safety of all participants and to prevent doping by athletes. Resultantly the Third Respondent will then bear the aforesaid responsibilities and there is no evidence whatsoever before the Applicant that the Third Respondent can do so;

AI²


- c) Furthermore pursuant to the contents of section 9 and 9.13 of the First Respondent's constitution the Third Respondent simply cannot be recognised as the constitution has to date not been amended to allow for the recognition of the Third Respondent as the provincial athletics body;
- d) In view of the fact that a meeting of the executive council / committee of the First Respondent, of which Skhosana is the president , is scheduled to take place on the 27th October 2017 the approval of the application by the Third Respondent looks eminent notwithstanding the fact that same would be contrary to its constitution. There has been a significant shroud of secrecy surrounding the said application so as to keep the Applicant proverbially " in the dark" and prevent it from exercising its rights and objecting thereto;
- e) It is apparent that annexure "SC4" was dispatched to the First Respondent whereat an undertaking was sought that the Third Respondent's application will not be approved notwithstanding such a letter the First Respondent has to date not provided such an undertaking thus compelling the institution of the present application and fortifying the belief that the approval thereof is imminent;
- f) I accordingly respectfully submit that if the Third Respondent's application is approved which looks eminent at the meeting on the 27th October 2017 this shall result in irreparable harm to athletics within the province of

KwaZulu-Natal and will result in the staging of events without the necessary safety precautions and anti-doping measures and it shall be detrimental to athletics within the province of KwaZulu-Natal and expose athletes to potential harm , which may even include death to such persons.

5.2 I accordingly respectfully submit that the Applicant's apprehension of irreparable harm is reasonable in the circumstances and borne out by the First Respondent's conduct as it has failed to provide the Applicant with the necessary undertaking that the Third Respondent's application will not be considered and approved by it.

6.

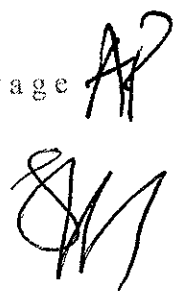
6.1 I respectfully submit that the balance of convenience favours the Applicant with regards to the relief herein sought for the following reasons:

- a) The Applicant, pursuant to the contents of paragraphs 9 and 9.13 of the First Respondent's constitution, is the only athletics body which is entitled to administer, regulate and control athletics within the province of KwaZulu-Natal. No other body may do so as matters currently stand;
- b) The Applicant has been performing the aforesaid function successfully for a considerable period of time without any incident and / or allegations of maladministration;

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- c) The Third Respondent's members are still a members of the Applicant and hence cannot be members of the Third Respondent until they resign as members of the Applicant;
- d) The Applicant is unaware as to the mechanisms, status, safety record and measures to prevent doping of the Third Respondent and as a result thereof, should its application be granted, will be entitled to administer athletics within the aforesaid province which shall be detrimental for the reasons set out hereinabove;
- e) The First Respondent is disentitled pursuant to its own constitution to approve the application by the Third Respondent and its constitution has to date not been amended.

6.2 Accordingly I respectfully submit that all the Applicant seeks to do is prevent the First Respondent from acting in a manner which is in any event contrary to its own constitution therefore the First Respondent can hardly claim any prejudice if the above Honourable Court accedes to the relief herein sought.



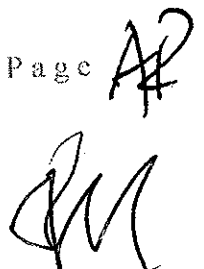
7.

I submit that there is no other alternative adequate remedy available at the Applicant's disposal save for approaching the above Honourable Court in view of the fact that the First Respondent has to date failed and / or refused to provide the undertaking that the Third Respondent's application will not be considered and approved by it. I accordingly submit that in the circumstances the Applicant has no other alternative but to approach the above Honourable Court for the relief herein sought.

8.

ANCILLARY RELIEF

- 8.1 I respectfully submit that in view of the fact that the First Respondent is considering the Third Respondent's application, this amounts to a dispute between the Applicant and the First Respondent as prescribed by the provisions of Section 31.1 of the First Respondent's constitution, a copy of which is annexure "SC2" hereto.
- 8.2 Resultantly I have sought that upon the above Honourable Court granting the Applicant the relief herein sought that the Applicant be directed within a period of



90 days to refer the aforesaid dispute for arbitration as prescribed by the provisions of Section 31 of the First Respondent's constitution.

8.3 I respectfully submit that in the interim however and pending the resolution of the dispute the Applicant requires the protection of the above Honourable Court and the interdictory relief herein sought as this dispute shall take a considerable period of time to finalise at which point the Third Respondent's application would have already been approved and the harm would have already been suffered.

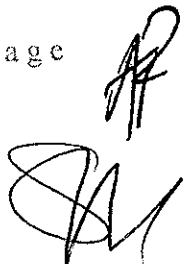
8.4 In the circumstances I have also sought that the above Honourable Court direct the Applicant to refer the aforesaid dispute for arbitration as prescribed by Section 31 of the First Respondent's constitution, a copy of which is annexure "SC2" hereto.

9.

URGENCY

9.1 I respectfully submit that the application is urgent for the following reasons:

- a) The Third Respondent had informed the Applicant of its intention to apply for membership of the First Respondent in terms of clause 6 of the First Respondent's constitution , on the 23rd October 2017;



- b) Thereafter the Applicant was obliged to convene an emergency executive committee meeting to decide on the conduct of the Third Respondent in applying to the First Respondent for membership and the steps that needed to be embarked upon to protect the interests of the Applicant herein;
- c) Subsequently and on the 24th October 2017 a meeting was held and a resolution was taken by the executive committee of the Applicant to instruct legal representatives and liaise with the First Respondent and request that it cease from approving any application for membership by the Third Respondent as confirmed by the contents of annexure "SC1" hereto;
- d) The Applicant had thereafter dispatched correspondence, a copy of which is annexure "SC4" hereto to the First Respondent requesting its undertaking not to grant and consider any application made by the Third Respondent which undertaking was not provided by it as confirmed by annexure "SC4" hereto;
- e) The Applicant had thereafter instructed its legal representatives on the afternoon of the 25th October 2017 and the present application was prepared on the 26th October 2017 and launched before the above Honourable Court.

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9.2 I accordingly respectfully submit that the Applicant has wasted no time in approaching the above Honourable Court and that the application is urgent as the meeting to consider the Third Respondent's application by the First Respondent's executive committee is set down for the 27th October 2017.

9.3 I respectfully submit that any prejudice that the Respondents' may suffer as a result of short service and / or in some instances lack of service may be remedied by the following factors:

a) The Respondents possess the right to anticipate the return date of the present application and have any orders which the Applicant obtains *ex parte* reconsidered and set aside.

b) A copy of the orders will be served on the Respondents and the return date will be a short one which will enable the Respondents to place any facts before the above Honourable Court which can be taken into account in reconsidering any order obtained by the Applicant on an *ex parte* urgent basis.

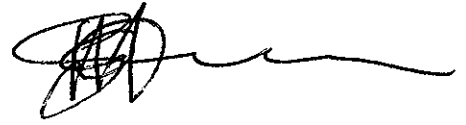
9.4 Resultantly short service and/or the lack thereof can be remedied by the Respondents exercising their rights in terms of the provisions of Rule 6 (12) (c) of the Uniform Rules of Court and they may have any orders obtained by the Applicant reconsidered and set aside.

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[Signature]

10.

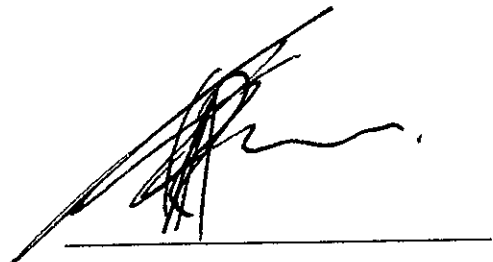
CONCLUDING SUBMISSIONS

Wherefore I pray that it may please the above Honourable Court to grant the Applicant the relief herein sought as prayed for in the Notice of Motion prefixed hereto.



DEPONENT

I CERTIFY that the deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn to before me at THE EDWARDS BUILDING on this 26TH day of OCTOBER 2017, the regulations contained in Government Notice No.R35 dated the 14 March 1980 having been complied with.

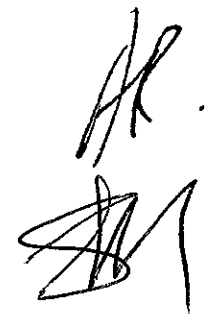


COMMISSIONER OF OATHS



FULL NAME :
CAPACITY :
BUSINESS ADDRESS :
AREA :

ABDUR-RAHIM KHAN
COMMISSIONER OF OATHS
PRACTISING ADVOCATE
17 PRINCE EDWARD STREET
PIETERMARITZBURG
KWAZULU-NATAL





KWAZULU-NATAL ATHLETICS

Physical Address

Kings Park Athletic Stadium
41 Walter Gilbert Road
Cnr NMR Avenue & Walter Gilbert
Durban

Telephone: 031 312 9374

Facsimile: 031 303 2728

E-Mail: admin@kznathletics.co.za

Postal Address

PO Box 47323
Greyville, 4023

**RESOLUTION OF THE KZNA EXECUTIVE COMMITTEE MEETING
HELD ON 24 OCTOBER 2017 AT 17H00
AT THE KINGSPARK ATHLETIC STADIUM BOARDROOM**

The Executive Committee has noted:

The applicable email regarding the so called uMgungundlovu Athletics formation was received.

The Executive committee has resolved that:

The President, Mr Sello Mokoena, be given the mandate and support to pursue the matter through the legal route.

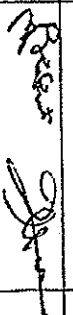




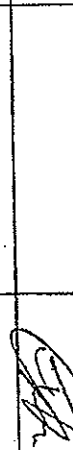

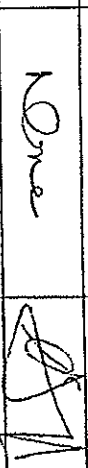



He will take legal advice and follow through.

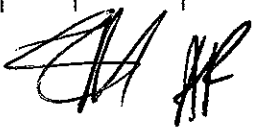
Signed on this day, 26/10/2017, at Kingspark Athletics Stadium, Durban.

Goodman Cele
General Manager: Kwazulu-Natal Athletics
41 Isiah Ntshangase Road
Durban
4001
031 312 9374 (office)
031 303 2728 (fax)
celeg@kznathletics.co.za

KZNA EXECUTIVE COMMITTEE: MEETING ATTENDANCE REGISTER

DATE: 24/10/2017.

NAME	DESIGNATION	CELL NO.	EMAIL	Conflict of interests Yes/None	SIGN
SELLO MOKOENA	President	0837929374	president@kznathletics.co.za	Present	
LANGA MHLONGO	Vice-President	08277 37719	mhlongolanga@saps.gov.za	Present	
MOSES XULU	Chairperson- Cross Country Commission	083 756 3990	vmxulu7323@gmail.com	No	
SIPHO MKHATHINI	Chairperson Road Commission	0824609761	s.bhoyiya@gmail.com	No	
KHURRA BUTHELEZI	Chairperson- Track and Field Commission	083 708 1973	buthleziki@gmail.com	NONE	
THUBALETHU PHAKU	Chairperson Athletes Commission	078 612 9211	thubalethup@dut.ac.za		
SIFISO NZUZA	Comrades Marathon Assoc.	072 450 3481	sifiso.nzuza@drdlr.gov.za		
MOSES MADLALA	Additional Member	082 706 8150	kwamashuathleticclub@gmail.com		
PROF LOGAN D. NAIDOO	Additional Member	084 44 44388	LNaidoo@mut.ac.za	None	
CHARMAINE JUGNARAYAN	Co-opted Member	0823836998	Charmainecej@netactive. co.za	None	
SANDILE NTOMBELA	Additional Member	078 458 0934	Nsandile3@gmail.com	NONE	
TONY MORRISON	Additional Member	0833749502	antsadm@gmail.com	None	
GOODMAN CELE	Ex Officio Office Manager	031 3129374	celeg@kznathletics.co.za	N	



"SC2"



The Constitution of Athletics South Africa

Version: June 2017

As approved at the Annual General Meeting of June 2017





VERSION No. AUGUST 2015

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SECTION I DEFINITIONS, NATURE AND OBJECTIVES

1. DEFINITION OF TERMS

In this Constitution, except where incompatible with the context, the following terms shall have the meanings indicated:

- | | | |
|------|------------------------------|--|
| 1.1 | CAA | Confederation of African Athletics |
| 1.2 | AAG | All Africa Games. |
| 1.3 | Annual General Meeting (AGM) | A meeting as formulated in Clause 12.1. |
| 1.4 | ASA | Athletics South Africa. |
| 1.5 | Athletics | Track & Field, Road Running, Race Walking and Cross Country (including Mountain Running). |
| 1.6 | Athletics Meet | An event in Track & Field, Road Running, Race Walking and Cross Country, as provided for in Clause 1.5, catering for individual licenced athletes affiliated to clubs in good standing with their respective provinces, and including Fun Runs sanctioned by ASA, through its members. |
| 1.7 | Board | The Executive Board of ASA as constituted in terms of Clause 20.1. |
| 1.8 | CEO | Chief Executive Officer of ASA, or if no CEO has been appointed, then the person who is appointed the General Manager by the Board. |
| 1.9 | Commissions | The bodies established by the Annual General Meetings (AGMs) of ASA to manage on behalf of the Board, all or any of the disciplines of athletics as provided for in Clause 1.5. |
| 1.10 | Constitution | The constitution of ASA. All schedules (the |



Schedules) as listed under Clause 37 and the ASA Rules and Regulations as referred to in Clause 35.3 below shall for all intents and purposes form an integral part of this Constitution. Whenever reference is made to this Constitution, the Schedules shall be deemed to be automatically included in such reference.

- 1.11 *Council Meeting* As constituted in terms of Clause 18.1.
- 1.12 *Domicile* The place of permanent residence of an athlete in the Republic of South Africa.
- 1.13 *Fun Runs* Athletics meetings sanctioned by ASA, not requiring participation to be restricted to licensed athletes.
- 1.14 *General Meetings* The meetings as formulated in Clause 12.
- 1.15 *Honorary Member* As described in Clause 25.
- 1.16 *IAAF* International Association of Athletics Federations.
- 1.17 *Member (or members)* As described in Clause 8.
- 1.18 *SASCOC* South African Sports Confederation and Olympic Committee
- 1.19 *Officers* The CEO and such personnel employed at the offices of ASA on a part-time or full-time basis as may be appointed in writing by the CEO from time to time.
- 1.20 *Office Bearers* Elected members of the Executive Board, the Commissions and the Committees of ASA.
- 1.21 *Presidium* The body comprising the President, the Vice-President and the CEO of ASA.
- 1.22 *Quadrennial General Meeting (QGM)* Each AGM commencing with effect from 1999 and thereafter at four year intervals.