

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH WEST, MAHIKENG)

4m126
CASE NO: _____/2018

In the matter between:

THARISA MINERALS PROPRIETARY LIMITED
(REGISTRATION NO: 2006/009544/07)

Applicant

and

RASEROLE MASHAMAITE

First Respondent

BONGANI XEZWI

Second Respondent

MURRAY HUNTER

Third Respondent

XOLANI MANGETHE

Fourth Respondent

**MARIKANA YOUTH DEVELOPMENT
ORGANISATION**

Fifth Respondent

THE RIGHT TO KNOW CAMPAIGN

Sixth Respondent

NOTICE OF MOTION

PART A

BE PLEASED TO TAKE NOTICE that the Applicant will make application to the above Honourable Court on Wednesday, 15 August 2018 at 21h00 or so soon thereafter as Counsel may be heard for an order in the following terms:

- 1 Dispensing with the provisions of the Uniform Rules of the above Honourable Court relating to times and manner of service referred to therein and dealing with the matter as one of urgency in terms of Rule 6(12) of the Uniform Rules for the Conduct of Proceedings in the above Honourable Court.
- 2 Pending the outcome of a final Order applied for in Part B hereof, granting the Applicant a Rule Nisi (an interim Order) in the following terms:
 - 2.1 The First to Sixth Respondents ("**the Respondents**") are interdicted and restrained from encouraging or participating in any unlawful protest action, or marching to and barricading any of the access roads and entrances to the Applicant's premises or instructing any other person to do so *inter alia* in the pursuit of their unlawful demand that the Applicant's security manager, Mr William Mpenbe and the Executive Director: Community and Transformation, Mr Thabang Maluke, be removed;
 - 2.2 The Respondents are interdicted and restrained from demanding the withdrawal of the Court Order of the above Honourable Court against the First Respondent under case number UM14/2017.
 - 2.3 The Respondents are interdicted and restrained from engaging in unlawful acts and/or other acts of violence or unrest or protests at the Applicant's premises;
 - 2.4 The Respondents are interdicted and restrained from burning tyres and damaging property including but not limited to vehicles either passing through, going to or owned by the Applicant or from encouraging any other person from participating in such unlawful conduct;
 - 2.5 The Respondents are interdicted and restrained from unlawfully gathering at the Applicant's premises;
 - 2.6 The Respondents are interdicted and restrained from interfering in any manner whatsoever with the business of the Applicant;
 - 2.7 The Respondents are interdicted and restrained from harassing or intimidating any employee of the Applicant or any other person or service provider or contractor on its premises or preventing any of the Applicant's

employees or service providers or contractors from tendering his/her/their employment and/or services to the Applicant; and

- 2.8 The Respondents are interdicted and restrained from unlawfully marching to or unlawfully being present at the Applicant's premises.
- 3 Directing the Respondents to give effect to, and to implement the terms of this Court order, in the following manner:
 - 3.1.1 The First to Fourth Respondents shall issue a memorandum on the Fifth and Sixth Respondents' letterhead (containing the official watermarks) signed by the First to Fourth Respondents;
 - 3.1.2 the Respondents shall call a meeting of its members/ the community and read out the terms of the Court order to so many of such members as are present at that meeting. A record shall be kept of the attendees;
 - 3.1.3 the Respondents shall get a signed undertaking from their members/the community stating that they shall immediately desist from their unlawful actions;
 - 3.1.4 the Respondents shall attach the original signed undertaking to the affidavit (referred to below);
 - 3.1.5 the Respondents shall deliver a copy of the Court order to all community radio stations and community newspapers in the region with an instruction to the radio station/s that the terms of the Court order be read after each news bulletin (for 2 consecutive days) and an instruction to the community newspaper/s to print the terms of the Court order.
- 3.2 Directing the Respondents to file an affidavit, attaching all relevant annexures including the aforesaid list of attendees, within five (5) Court days from the granting of this Order stating what steps he/she/they took in giving effect to and implementing the terms of this Court order;
- 3.3 Further and/or alternative relief.

- 4 Ordering that the costs of this application (Part A) be paid jointly and severally by the Respondents, the one paying the other to be absolved, in the event that any of the Respondents seek to oppose the relief sought in Part A.
- 5 Directing that the service of the order in Part A be effected on the Respondents –
 - 5.1 First Respondent – by email on the First Respondent on email address 'raserolemashamaite@gmail.com' and by SMS using the cell phone numbers (071) 308 3303 and 082 621 0062;
 - 5.2 Second Respondent – by email on the Second Respondent on email address 'bongani.xezwi@gmail.com' and 'bongani@r2k.org.za' and by SMS using the cell phone number 082 525 3949 and 078 030 5192;
 - 5.3 Third Respondent – by email on the Third Respondent on email address 'murray@r2k.org.za' and by SMS using the cell phone number 072 672 5468;
 - 5.4 Fourth Respondent – by SMS on the Fourth Respondent using the cell phone number 078 065 5124;
 - 5.5 Fifth Respondent – by service on the First, Second and Fourth Respondents who are leaders of the Fifth Respondent; and
 - 5.6 Sixth Respondent – by service on the First and Third Respondents who are leaders of the Sixth Respondent.

TAKE NOTICE FURTHER that the affidavit of **WILLIAM MPEMBE**, the Applicant's Security Manager, together with annexures and confirmatory affidavits will be used in support of this application.

PART B

TAKE NOTICE THAT that the Applicant intends to approach the above Honourable Court on a date and time to be determined by the Court, alternatively on a date and time to be notified to the parties, for a final Order in the following terms –

- 6 Interdicting and restraining the Respondents from encouraging or participating in any unlawful protest action, or marching to and barricading any of the access roads and entrances to the Applicant's premises or instructing any other person to do so *inter alia* in the pursuit of their unlawful demand that the Applicant's security manager, Mr William Mpenbe and the Executive Director: Community and Transformation, Mr Thabang Maluke, be removed;
- 7 Interdicting and restraining the Respondents from demanding the withdrawal of the Court Order of the above Honourable Court against the First Respondent under case number UM14/2017.
- 8 Interdicting and restraining the Respondents from engaging in unlawful acts and/or other acts of violence or unrest or protests at the Applicant's premises;
- 9 Interdicting and restraining the Respondents from burning tyres and damaging property including but not limited to vehicles either passing through, going to or owned by the Applicant or from encouraging any other person from participating in such unlawful conduct;
- 10 Interdicting and restraining the Respondents from unlawfully gathering at the Applicant's premises;
- 11 Interdicting and restraining the Respondents from interfering in any manner whatsoever with the business of the Applicant;
- 12 Interdicting and restraining the Respondents from harassing or intimidating any employee of the Applicant or any other person or service provider or contractor on its premises or preventing any of the Applicant's employees or

- service providers or contractors from tendering his/her/their employment and/or services to the Applicant; and
- 13 Interdicting and restraining the Respondents from unlawfully marching to or unlawfully being present at the Applicant's premises.
 - 14 Directing the Respondents to give effect to and to implement the terms of this final Court order in the following manner:
 - 14.1 The First to Fourth Respondents shall issue a memorandum on the Fifth and Sixth Respondents' letterhead (containing the official watermarks) signed by the First to Fourth Respondents;
 - 14.2 the Respondents shall call a meeting of its members/ the community and read out the terms of the Court order to so many of such members as are present at that meeting. A record shall be kept of the attendees;
 - 14.3 the Respondents shall get a signed undertaking from their members/the community stating that they shall immediately desist from their unlawful actions;
 - 14.4 the Respondents shall attach the original signed undertaking to the affidavit (referred to below);
 - 14.5 the Respondents shall deliver a copy of the Court order to all community radio stations and community newspapers in the region with an instruction to the radio station/s that the terms of the Court order be read after each news bulletin (for 2 consecutive days) and an instruction to the community newspaper/s to print the terms of the Court order.
 - 15 Directing the Respondents to file an affidavit within five (5) Court days from the granting of this final order stating what steps he/they took in giving effect to and implementing the terms of this Court order.
 - 16 Further and/or alternative relief.
 - 17 Directing that the service of the order in Part B be effected on the Respondents –

- 17.1 First Respondent – by email on the First Respondent on email address 'raserolemashamaite@gmail.com' and by SMS using the cell phone numbers (071) 308 3303 and 082 621 0062;
- 17.2 Second Respondent – by email on the Second Respondent on email address 'bongani.xezwi@gmail.com' and 'bongani@r2k.org.za' and by SMS using the cell phone number 082 525 3949 and 078 030 5192;
- 17.3 Third Respondent – by email on the Third Respondent on email address 'murray@r2k.org.za' and by SMS using the cell phone number 072 672 5468;
- 17.4 Fourth Respondent – by SMS on the Fourth Respondent using the cell phone number 078 065 5124;
- 17.5 Fifth Respondent – by service on the First, Second and Fourth Respondents who are leaders of the Fifth Respondent; and
- 17.6 Sixth Respondent – by service on the First and Third Respondents who are leaders of the Sixth Respondent.

TAKE FURTHER NOTICE THAT should any Respondent wish to oppose the application in Part B hereof, such Respondent is required to give notice in writing of his intention to oppose to the Applicant's attorney at the address below on or before _____ and, within 15 (fifteen) days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any, and further you are required to appoint in such notification, an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT if no such notice of intention to oppose is given, the application in Part B hereof will be made on a date and time to be notified to the parties.

TAKE NOTICE FURTHER THAT any of the Respondents may anticipate the return date for the final Order by giving the Applicant 24 hours notice.

TAKE NOTICE FURTHER THAT the applicant has appointed Cliffe Dekker Hofmeyr Incorporated, care of Minchin Kelly Inc Attorneys whose address and

contact details are listed below, as the address at which it will accept notice and service of all process in these proceedings.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

Signed and dated at Mahikeng this 15 day of August 2018.


CLIFFE DEKKER HOFMEYR INC.

Applicant's Attorneys

1 Protea Place

Sandown

Tel: 011 562 1568/1152

Cell: 073 723 5416 / 082 324 9999

Fax: 011 562 1109/1652

Email: bheki.nhlapho@cdhlegal.com

fiona.leppan@cdhlegal.com

Ref: Fiona Leppan

c/o Minchin Kelly Inc Attorneys

9 Proctor Avenue, Mafikeng

North West, 2745

Reinhardt van Rooyen

Email: litigation1@minkelly.co.za

Cell: 082 803 5730

Tel: (018) 3810804

Fax: (018) 381 0808

**TO:
 THE REGISTRAR OF THE HIGH COURT
 MAHIKENG**

FILING BY HAND

AND TO:

RASEROLE MASHAMAITE

First Respondent

1444 Selepe Street, Dube Village

Gauteng, 1801

Cell: 071 308 3303 and 082 621 0062.

Email: raserolemashamaite@gmail.com

SERVICE BY EMAIL

AND TO:

BONGANI XEZWI

Second Respondent

054 Aspen House

Cell: 082 525 3949 and 078 030 5192

Email: bongani.xezwi@gmail.com and bongani@r2k.org.za

BY EMAIL**AND TO:****MURRAY HUNTER**

Third Respondent

Cell: 072 672 5468

Email: murray@r2k.org.za

BY EMAIL**AND TO:****BONGANI MANGETHE**

Fourth Respondent

H18 Marikana

Cell: 078 065 5124

AND TO:**MARIKANA YOUTH DEVELOPMENT ORGANISATION**

Fifth Respondent

Care of the First, Second and Fourth Respondents

AND TO:**THE RIGHT TO KNOW CAMPAIGN**

Sixth Respondent

Care of the First, and Third Respondents

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH WEST, MAHIKENG)

CASE NO: _____/2017

In the matter between:

THARISA MINERALS PROPRIETARY LIMITED

Applicant

(REGISTRATION NO: 2006/009544/07)

and

RASEROLE MASHAMAITE

First Respondent

BONGANI XEZWI

Second Respondent

MURRAY HUNTER

Third Respondent

XOLANI MANGETHE

Fourth Respondent

**MARIKANA YOUTH DEVELOPMENT
ORGANISATION**

Fifth Respondent

THE RIGHT TO KNOW CAMPAIGN

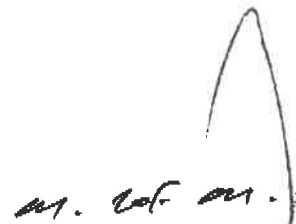
Sixth Respondent

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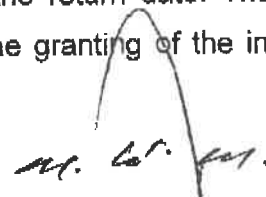
I, the undersigned

WILLIAM MPEMBE

do hereby state on oath that:



- 1 I am an adult male employed by Tharisa Minerals (Pty) Ltd ("Tharisa") as a Protection Services Manager. Tharisa carries business in the Marikana District Municipality.
- 2 I depose to this affidavit in my capacity as Tharisa's Protection Services Manager and I am duly authorised to depose to this affidavit.
- 3 I am responsible for the protection of Tharisa's property, assets including conducting investigation/s on matters related to Tharisa's safety and that of its employees including criminal investigations.
- 4 The Applicant approaches the honourable Court on an extremely urgent basis for the relief set out in the accompanying Notice of Motion.
- 5 The gravamen of this application is to ensure that the rule of law is upheld, the sanctity of life is protected and respected as well as being necessitated by the Applicant's statutory obligations to protect its employees, service providers' and visitors' lives and well-being in terms of the Mine Health and Safety Act.
- 6 In a nutshell, the Respondents have not complied with the spirit, purport and provisions of the Regulation of Gatherings Act (the RGA).
- 7 In light of the extreme urgency of this matter, and logistically, I could not attend at the Applicant's attorneys' offices in Sandton to prepare and commission a comprehensive founding affidavit. I apologise in advance for this and I am attending at Court to give evidence under oath. I respectfully submit that in light of the extreme urgency the honourable Court have regard to my evidence as the basis for this urgent interdict application.
- 8 So, I will lead *viva voce* evidence, explain the chronology of facts and events to the learned Judge and the Applicant's Counsel will argue and justify to the honourable Court to grant the terms of the Order as sought by the Applicant.
- 9 The Applicant seeks an interim Order and agrees to the Respondents giving the Applicant 24 – 48 hours notice to anticipate the return date. There is minimal, if any, prejudice to the Respondents in the granting of the interim



- relief. There is immense prejudice to the Applicant if the interim Order is not granted and the Applicant once again records its agreement to the Respondents providing 24-48 hours notice to anticipate the return date.
- 10 The Respondents are intent on marching unlawfully tomorrow commencing at 8:00. I apologise profusely for inconveniencing the honourable Court and the learned Judge but I and the Applicant have no option other than to reach out to the Court and request the Court's intervention. The Applicant has appointed local Counsel to argue the matter as opposed to Counsel from Johannesburg. This is so as to minimize inconveniencing the Court in having to hear this application very late tonight. Once again, in advance, I apologise profusely for the inconvenience but I submit that it is crucial for the Applicant to reach out to the honourable Court seeking the granting of this urgent interdict.
 - 11 The Respondents want to hand over a memorandum of demands tomorrow. Two of these demands are patently unlawful: the demand that the Applicant removes myself and Thabang Maluke, a director with the Applicant, is unlawful. In addition, the demand that the Applicant withdraws the Court Order and interdict under case number UM14/2017 granted by this Honourable Court is similarly unlawful. This latter unlawful demand, if complied with, essentially negates the rule of law and is a sign of gross disrespect for the Orders of this honourable Court. This undermines the judiciary and the sacrosanctity of Court orders.
 - 12 If this demand is complied with then it will effectively negate the need for parties to respect Court orders as a wrong message will be perpetuated. The country will descend into chaos if Court orders are withdrawn whimsically and on the basis of unlawful demands being made. I should also mention that this unlawful demand highlights the Respondents' *mala fides* and illustrates their propensity to disrespect Orders of this honourable Court. I submit that the honourable Court should send a strong message to the Respondents reminding them that Court orders are sacrosanct and should be challenged in terms of civil procedure and not through criminal and thuggish behaviour.

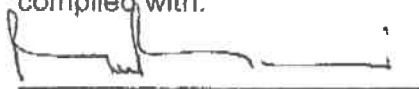

M. C. M.

- 13 This matter is extremely urgent. I only learned today that the march will proceed tomorrow. In addition, the Respondents have accused me of being a murderer. Their allegation relates to my tenure as being a General in the SAPS during the Marikana tragedy. I am constrained to inform the learned Judge that the Farlam Commission into the Marikana tragedy made no factual findings or factual conclusion that I am responsible – criminal or otherwise – for the Marikana tragedy. In fact, the Farlam Commission commended me. The accusation that I am a murderer is extremely inciting, provocative, mischievous in the extreme and worrying having regard to the necessary context and factual matrix.
- 14 In addition, the baseless allegation has serious implications for my personal safety and that of my family members. I request that the honourable Court send a strong message to the Respondents in granting the relief being sought that such baseless and reckless accusations – which have a real likelihood of harm and/or loss of life – will not be condoned and must be immediately quelled.
- 15 The Applicant has sent a letter of demand to the Respondents seeking an undertaking not to proceed with the unlawful march tomorrow. The Respondents are resolute in their unlawful actions and have not provided any undertaking. I also understand that none of the Respondents have made contact with the Applicant's attorneys to discuss this matter.
- 16 I reiterate that I will lead evidence making a case on behalf of the Applicant for the interim relief being sought.
- 17 I submit that the issue of costs be held over for determination on the return date.


WILLIAM MPEMBE

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 Milking on the 15th day of **AUGUST 2018**, 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.



COMMISSIONER OF OATHS

Full Names: REINHARDT VAN ROOIJEN

Office: 9 Kooten Avenue

Business Address: Milking

Newry