

**IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG NORTH HIGH COURT, PRETORIA]**

CASE NUMBER:

In the matter between:

HIGHWAYMANS' GARAGE CC	1 st Applicant
SYNKOTEY NORMITHA MABOY t/a CLEWER GENERAL STORE	2 nd Applicant
KINGDOM AFRICA SILKS CC t/a AFRICA SILKS	3 rd Applicant
MICHAEL EDWARD GOODWIN t/a THE OLD PRINT SHOP AND MONA COTTAGE	4 th Applicant
KENSINGTON BEE (PTY) LTD	5 th Applicant
TOURVEST (PTY) LTD t/a THE SPOTTED DOG/ SCOTTS CAFÉ & MRS. MAC SHOP	6 th Applicant
SHAN PATON t/a PONYSKRANTS STABLES	7 th Applicant
JOHN THOMAS REYNDERS CC t/a THE VINE RESTAURANT	8 th Applicant
FREDA PATON t/a THE IRON STORE	9 th Applicant
GUSTAV PEACH t/a THE DAISY	10 th Applicant
CHRISTINE GROVE t/a PILGRIMS PLACE	11 th Applicant
BRANDON TRAUT t/a THE PILGRIMS REST GOLF COURSE	12 TH Applicant
MARTINS COFFEE SHOP CC. t/a PILGRIMS PANTRY	13 TH Applicant
THE CONCERNED RESIDENTS OF PILGRIMS REST	14 th Applicant

And

THE PREMIER OF THE PROVINCE OF MPUMALANGA THE HONOURABLE MR. DAVID DABEDE MABUZA	1 st Respondent
THE MEMBER OF THE EXECUTIVE COMMITTEE FOR PUBLIC WORKS, ROADS AND TRANSPORT FOR THE PROVINCE OF MPUMALANGA, DIKELEDI MAHLANGU	2 nd Respondent
THE MINISTER OF PUBLIC WORKS AND HOUSING OF THE REPUBLIC OF SOUTH – AFRICA	3 rd Respondent
THE MPUMALANGA HISTORICAL SITES COUNCIL	4 th Respondent
TEMBA NGWENYA	5 th Respondent
MANGWANYANI TRADING	6 th Respondent
MATLETELE CONSTRUCTION AND PROJECTS CC	7 th Respondent
TIMBHULU CONSTRUCTION AND PROJECTS	8 th Respondent
URIZIMA 83 CC	9 th Respondent
LEGCABHO LE'AFRICA	10 th Respondent
SIBUSISO KOCK	11 TH Respondent
NNA GAPE TRADING & PROJECTS CC	12 TH Respondent
JM CHAPLIN	13 TH Respondent
LORRAINE SWANEPOEL	14 th Respondent

FOUNDING AFFIDAVIT

I the undersigned:

MARIUS BRUMMER

do hereby make oath and declare as follows:

1.

1.1 I am an adult male businessman with principal place of business at Highway Man Garage, Building A 74, Pilgrims Rest.

1.2 I am the sole director of highway Mans Garage CC, the First Applicant in this application and as such I am duly authorised to launch this application as I am doing.

1.3 The contents of this affidavit fall within my personal knowledge save where the contrary is stated and it is both true and correct.

1.3 I am duly authorised to depose to this affidavit on behalf of each and every one of the Applicants as properly dealt with in paragraph 2 hereunder.

1.4 Where I make legal submissions I do so on the advice of our legal team and I trust in the veracity of those submissions.

2.

THE APPLICANTS:

2.1 The First Applicant is **HIGHWAYMANS' GARAGE** the business of which I am the owner, trading as such from Building A 47, Pilgrims rest.

2.2.1 The Second Applicant is **SYNKOTEY NORMITHA MABOY**, an adult female business woman conducting business as **CLEWER GENERAL STORE**, from Building A 49, Pilgrims Rest.

2.2.2 I am duly authorised to depose to this affidavit on behalf of the Second Applicant as is evident from **Annexure "A1"** hereto, being a supporting affidavit by Synkotey Nornitha Maboy.

- 2.3.1 The Third Applicant is **KINGDOM AFRICA SILKS CC**, a close corporation duly registered in accordance with the Close Corporations Act 69 of 1984 (as amended), trading under the registered trade mark **AFRICA SILKS**, conducting business from Building X 38, Pilgrims Rest, Mpumalanga.
- 2.3.2 I am duly authorised to depose hereto on behalf of the Third Applicant as is evident from **Annexure "A2"** hereto being a supporting affidavit by Johanna Petronella Swart, the owner of that business.
- 2.4.1 The Fourth Applicant is **MICHAEL EDWARD GOODWIN**, an adult male businessman trading as **THE OLD PRINT SHOP AND MONA COTTAGE** with principal place of business at Building HO8, Pilgrims Rest, Mpumalanga.
- 2.4.2 I am duly authorised to depose to this affidavit on behalf of the Fourth Applicant by virtue of **Annexure "A3"** hereto being a supporting affidavit to that effect.

2.5.1 The Fifth Applicant is **KENSINGTON BEE (PTY) LTD**, a private company duly registered and incorporated by virtue of the Statutes of the Republic of South Africa with principal place of business at Building HO8, Pilgrims Rest.

2.5.2 As will become evident hereunder the Fifth Applicant was successful in tendering for the Old Print Shop Building HO8 Pilgrims Rest, Northwest Province and the relevance of it being an applicant to these proceedings will become evident hereunder.

2.5.3 I am duly authorised to depose to this affidavit on behalf of the Fifth Applicant by virtue of supporting affidavits by its two directors, Ava Malatji and Sharreennee Flavia Goodwin marked as **Annexures "A4"** and **"A5"**.

2.6.1 The Sixth Respondent is **TOURVEST (PTY.) LTD.**, a private company duly registered and incorporated in accordance with the statutes of the Republic of South Africa with registration number: 2008 / 003719/07 with registered address being at Tourvest House, 33 West Street, Houghton, Johannesburg trading as *inter alia* **THE SPOTTED DOG**,

PILGRIMS REST, MRS MAC SHOP, PILGRIMS REST and SCOTTS CAFE, PILGRIMS REST.

2.6.2 I am duly authorised to depose to this affidavit on behalf of the Sixth Applicant by virtue of a supporting affidavit Mr Robert Gumede, the chairperson of the board attached hereto as **Annexure "A6"**.

2.7.1 The Seventh Applicant is **SHAN PATON**, an adult female businesswoman conducting business as **PONIESKRANTZ' STABLES** with principal place of business at Ponyskrants Stable, Pilgrims Rest, Mpumalanga.

2.7.2 I am duly authorised to depose to this affidavit on behalf of the Seventh Applicant by virtue of a supporting affidavit attached hereto as **Annexure "A7"**.

2.8.1 The Eight Applicant is **J T REINDERS CC**, a closed corporation, duly registered in accordance with the provisions of the Close Corporations Act, with principal place of business at building A52, Pilgrims Rest, Mpumalanga, conducting business as **THE VINE RESTUARANT & PUB**.

- 2.8.2 I am duly authorized by the Eight Applicant to depose hereto and refer in this regard to **Annexure "A8"** hereto, being a supporting affidavit by John Thomas Reinders.
- 2.9.1 The Ninth Applicant is **FREDA PATON**, an adult female businesswoman conducting business as **THE IRON STORE**, Pilgrims Rest with principal place of business at Building X5, Pilgrims Rest. I am duly authorized by the Eighth Applicant by virtue of a supporting affidavit attached as **Annexure "A9"**.
- 2.10.1 The Tenth Applicant is **GUSTAV PEACH**, an adult male businessman conducting business as **THE DAISY** with principal place of business at Building A46, Pilgrims Rest, Mpumalanga.
- 2.10.2 I am duly authorised to depose to this affidavit on behalf of the Tenth Applicant by virtue of the supporting affidavit attached hereto as **Annexure "A10"**.
- 2.11.1 The Eleventh Applicant is **CHRISTINE GROVE**, an adult female businesswoman conducting business as **PILGRIMS PLACE** with

principal place of business as building A54, Pilgrims Rest, Mpumalanga

2.11.2 The Eleventh Applicant has duly authorized me to depose to this affidavit on her behalf, as is evident by the supporting affidavit attached hereto as **Annexure "A11"**.

2.12.1 The Twelfth Applicant is **BRANDON TRAUT t/a THE PILGRIMS REST GOLF COURSE**, a business conducting business as such with principal place of business building C 52, Pilgrims Rest, Mpumalanga.

2.12.2 I am authorized by the Twelfth Applicant by virtue of supporting affidavit attached hereto as **Annexure "A12"**.

2.13 The Thirteenth Applicant is **MARTINS COFFEE SHOP CC t/a PILGRIMS PANTRY**, a business conducting business from building 60A, Pilgrims Rest, Mpumalanga. I am duly authorized by the Twelfth Applicant as appears from **Annexure "A13"**.

2.14.1 The Fourteenth Applicant is **THE CONCERNED RESIDENTS OF PILGRIMS REST**, a group comprising the residents of Pilgrims

Rest who support this application, and who have organised themselves in support of this application as is evident by a petition attached hereto as **Annexure "A14"**.

2.14.2 I am duly authorised hereto by virtue of a supporting affidavit by the leader of the Twelfth Applicant confirming my authority to act as such. Please see in this regard **Annexure "A14"** hereto being a confirmatory affidavit by Paulus Mashego.

2.14.3 Although the Thirteenth Applicant does not as yet have a constitution etc., it is submitted that it, as representing the communities of Pilgrims Rest and nearby Newtown, represents the residents of these town, and as such poses the necessary *locus standi in iudicio* herein. I refer to **Annexure "A15"** a petition signed by the concerned residence of Pilgrims Rest.

3.

THE RESPONDENTS:

3.1 The First Respondent is **THE PREMIER OF THE PROVINCE OF MPUMALANGA, THE HONOURABLE MR. DAVID DABEDE**

MABUZA, a person duly appointed as the provincial political chief, with principal place of business at Number 7, Government Boulevard, Riverside Park, Extension 2, Nelspruit, Mpumalanga.

3.2 The Second Respondent is **THE MEMBER OF THE EXECUTIVE COMMITTEE FOR PUBLIC WORKS, ROADS AND TRANSPORT FOR THE PROVINCE OF MPUMALANGA, DIKELEDI MAHLANGU**, appointed as such with principal place of business at Number 7, Government Boulevard, Riverside Park, Extension 2, Nelspruit, Mpumalanga.

3.3.1 The Third Respondent is the **MINISTER OF PUBLIC WORKS, THE HONOURABLE MR. THEMBELANI THULAS NXESI**, care of the State Attorney, 8th Floor, Bothongo Heights, 167 Andries Street, Pretoria.

3.3.2 We cite the Third Respondent as an interested party, and save in the event of opposition we do not pray for costs against this Respondent.

- 3.4.1 The Fourth Respondent is the **NATIONAL HERITAGE COUNCIL OF SOUTH – AFRICA**, with principal place of business at 57 Kasteel Road, Domus Building, Lynnwood Glen, Pretoria.
- 3.4.2 We cite the Third Respondent as an interested party, and save in the event of opposition we do not pray for costs against this Respondent.
- 3.5.1 The Fifth Respondent is **TEMBA NGWENYA**, an adult male in the employ of the Second Respondent as the Head of its' Department, with principal place of business at the Second Respondent.
- 3.5.2 At the return date of any order to be granted, we will pray for an order that Fifth Respondent pays the costs of this application jointly and severally with the Second Respondent.
- 3.6.1 The Sixth Respondent is **MANGWANYANI TRADING CC**, a close corporation duly registered and incorporated in accordance with the Close Corporations Act 69 of 1984, with registered place of business ostensibly at Stand number 708, Shatate.

- 3.6.2 The Sixth Respondent is cited herein as entity to which the tenders for the buildings A74, being the business from which First Applicant conducts, building X38, being the building from which the Six Applicant inter alia conducts business were ostensibly awarded to.
- 3.7.1 The Seventh Respondent is **MATLETLE CONSTRUCTION AND PROJECTS CC**, a close corporation duly registered in accordance with the provisions of the Close Corporations 69 of 1984, with principle place of business at Stand Number 94, Thulamahashe, Mpumalanga.
- 3.7.2 The Seventh Respondent is cited herein as ostensibly the entity who successfully tendered for the buildings H16, being inter alia a shop from which the 6th Applicant does business, 60A, being the shop from which the Twelfth Applicant, as well as the Golf Course from which the Eleventh Applicant conducts business, A46, from which the Tenth Applicant does business, the Pilgrims Rest Caravan Park.

3.8.1 The Eighth Respondent is **TIMBHULU CONSTRUCTION AND PROJECTS CC**, a close corporation duly registered in accordance with the provisions of the Close Corporations Act 69 of 1984, with principal place of business at 265 Nkomo Street, Ackonhoek.

3.8.2 The Eighth Respondent appears to have been awarded the building of Mona's Cottage, the Fourth Applicant, A52 being the building from which the 8th Applicant does business, as well as H29, the building from which the business known as Chaitows Inn, formerly operated, a dilapidated building which has since been standing empty due to the immense neglect by the Second Respondent.

3.9.1 The Ninth Respondent is **URIZIMA 83 CC**, a close corporation duly registered in terms of the Close Corporation Act 69 of 1984, with principal place of business at Unit 13, Garsfontein Office Park, 645 Jacqueline Drive.

3.9.2 The Ninth Respondent is cited herein as the entity who successfully tendered for the premises of the 11th Applicant.

- 3.10.1 The Tenth Respondent is **LIGCABHO LE'AFRICA TRADING CC**, a close corporation duly registered in terms of the Close Corporation Act 69 of 1984, with principal place of business at 112 Orion Building, Bester Street, Nelspruit.
- 3.10.2 The Tenth Respondent is cited herein as the entity awarded the Royal Liquor Store, building A52, Pilgrims Rest.
- 3.11.1 The Eleventh Respondent is **SIBUSISO KOCK**, an adult female with principal place of business at building X38, Pilgrims Rest, being the premises of the Third Respondent.
- 3.11.2 The Eleventh Respondent is cited as the person allegedly awarded building X38, Pilgrims Rest, being the premises of the Third Respondent.
- 3.12.1 The Twelfth Respondent is **NNA GAPE TRADING AND PROJECT CC**, a close corporation duly registered in terms of the Close Corporations Act 69 of 1984, with principal place of business at 24 Fever Tree Vilage, Extention 2, Nelspruit.

- 3.12.2 The Twelfth Respondent is cited as the entity awarded the Central Garage, and as an interested party.
- 3.13 The Thirteenth Respondent is **JM CHAPLIN** an adult male businessman with whom I am unfamiliar with at this stage despite otherwise awarded **BELVEDERE METAL CRAFTS**.
- 3.14. The Fourteenth Respondent is **LORRAINE SWANEPOEL**, an adult female with principal place of business at H58, Pilgrims Rest, cited herein as the person who successfully tendered for "the Old Stables" Pilgrims Rest.

4.

PURPOSE OF APPLICATION:

This is an application seeking an interim interdict, both staying the implementation of tenders ostensibly awarded by the Second Respondent to further of the Respondents and Applicants to occupy certain buildings in the Pilgrims Rest jurisdiction, and a prohibitory interdict interdicting and restraining the Respondents and specifically the Second and the Fifth Respondents from performing "evictions" of any of the Applicants from their businesses on 1 August 2012, and from general

taking the law into own hands without due court process, and in general abusing the systems of the Sixth Respondent or any other third party to enforce unlawful conduct or to in general do anything to further intimidate, harass or try to disrupt the businesses of any of the Applicants and in general going on of life in the town of Pilgrims Rest.

5.

THE SALIENT FACTUAL BACKGROUND:

5.1 The historic town of Pilgrims Rest is a well-renowned gold mining town dating to the eighteen hundreds. Most of the buildings in the town have received National Heritage Site status and the town was declared a National Monument in 1986.

5.2 The Second Respondent took over the management of the building portfolio in the town and almost immediately the management of the town of Pilgrims Rest as a nationally relevant tourism destination gradually started declining, due to the failure by the Second Respondent to do maintenance of the properties, as the tenants are not allowed to do so.

- 5.3 For the last ten years the Second Respondent during or about 2000 started placing some of the properties within the Pilgrims Rest jurisdiction out on tender and on some of properties leases were granted. These were initially three year leases which were later increased to five years.
- 5.4 In 2007 the last round of negotiations started when the Second Respondent submitted a valuation report to the owners of businesses within Pilgrims Rest as a starting base for negotiating new rental agreements. Kindly refer in this regard to **Annexure "B"** hereto being a valuation report received from the department on 26 April 2007.
- 5.5 Also see in this regard for instance schematic sketches which were presented to most of the owners in respect of how their rentals were calculated attached hereto as **annexure "B1"** to **"B7"**.
- 5.6 In 2007 a Steering Committee was also brought into being to try and sort out the pressing question of leases, constant water and electricity interruptions in Pilgrims Rest, the failure

by the department to maintain the properties, road, and / or infrastructure whatsoever and other pressing questions.

5.7 In January 2008 the Steering Committee enlisted the assistant of the firm of Dr Matthew Phosa in Nelspruit to try and assist. Please see in this regard **Annexure "C"** hereto being a copy of a feedback to the Steering Committee in respect of discussions with Mr Smuts and Dr Phosa on 25 January 2008 to try and negotiate *inter alia* the extended leases on behalf of the businesses in Pilgrims Rest.

5.8 More specifically the Steering Committee both directly and via their previous attorneys tried to facilitate the conclusion of ten year lease agreements as most of the tenants' previous agreements had expired in 2004 with no new agreements being entered into and it was cumbersome from a business perspective to have to negotiate new leases every three years and only further added to the uncertainty in the town. In January 2008 the Second Respondent eventually replied to the request of the Steering Committee and indicated that new lease agreements would be provided. I attach hereto as **Annexure "D"** a copy of a letter received on 7 January

2008 wherein it is said that the Second Respondent would provide new agreements but that it would be backdated to when the previous lease agreements expired. The Steering Committee on behalf of the Applicants refused to acquiesce to this preposterous proposal seeing as this would have entailed that at the date of the signature of the new agreements they would have already expired.

5.9 A meeting was scheduled on 14 January 2008 to deal with the indication of the Second Respondent in respect of our leases. Please see **Annexure "E"** being a minute of that particular meeting.

5.10 When attempts were made to discuss this situation with the Premier (the First Respondent) and the Head of the Department of the Second Respondent we were summarily told in 2008 that the properties would be put out on tender. Please see in this regard **Annexure "F"** hereto being a copy of a minute of our meeting of 17 January 2008.

5.11 I need to stand still at this minute to specifically refer the Honourable Court to page 2 thereof where *inter alia* the

insecurity of the Applicants approaching the 2010 World Cup was discussed as well as the question broad based black economic empowerment. This discussion was *inter alia* based on a statement by Nkwinika, the previous head of department of the Second Respondent at a meeting a few days earlier where she stated that according to her there were "too many white faces" in Pilgrims Rest and that "the PDI's" (*previous disadvantaged people*) should be able to "cash in (sic)" on the heritage of Pilgrims Rest. It should be noted that in 2008 already apart from the Applicants included in this application, there were in total ten black owned businesses in Pilgrims Rest.

5.12 Also see as **Annexure "G"** a letter hereto dated 18 January 2008 to Nkwinika, the previous HOD of the Second Respondent in which a list of requirements by the Applicants to the Second Respondent which *inter alia* included lease agreements with the up to date included and not the backdated suggestion by the Second Respondent, the HOD and also up to date accounts. It must be stated at this stage that almost resident and business in Pilgrims Rest has at some

stage experienced serious queries in respect of their accounts as the accounts are rarely delivered, and rarely correct.

5.13 Also see a further letter to the First Respondent attached hereto as **Annexure "H"** where his intervention was required as the Second Respondent was ignoring any of the attempts to bring all the numerous problems in Pilgrims Rest to rest.

5.14 A few days after that letter we were informed that the First Respondent would give us an audience to hear our grievances but shortly thereafter we were told that it would be the MEC of Public Works (the Second Respondent *in casu*) to deal with us. Please see **Annexure "I"** being a letter dated 22 January 2008. For the most of 2008 and 2009 none of the attempts to get an amicable settlement of the lease and accounts questions with the Second Respondent came to anything.

5.15 In January 2009 the tenants in the town all received the letter and agreements a master copy of which is attached hereto as **Annexure "J"**. As stated above already the agreements of

most of the tenants expired as far back as 2004 a point with which I will deal with further hereunder.

5.16 As already stated these "new agreements" that had been presented to us were therefore, almost without fail already have expired from a factual viewpoint on a date prior to the signature of the very agreement. We tried again to elucidate the ridiculous nature of the demand by the Second Respondent HOD Temba Ngwenya (The Fifth Respondent) but we were told at that particular meeting that should we refuse to sign the "new agreement" we would all summarily be evicted from our shops. Under duress the tenants of the town signed the new agreement, but it must be stressed that the agreements do not reflect the true terms of the agreement with the Second Respondent, as we had negotiated upon, and was granted five year contracts.

5.17 Things started to progress relatively smooth and most of the tenants started receiving accounts on a relevant constant basis.

5.18 As stated above it is our contention, and should relief be granted we will apply *inter alia* that the agreements be rectified to indicate the true intention of the parties as of date of signature, being that all of us who signed the agreements in 2009 actually have lease agreements which expire in 2014.

5.19 In November 2011 it came to the knowledge of the Applicants by chance that the premises were being put out on tender again.

5.20 I approached Fifth Respondent and enquired as what was going on. I was informed that we would have to tender for the buildings otherwise we would lose them as aforesaid, notwithstanding anything any of the residents/ tenants of Pilgrims Rest had to say. This was relayed to the business community in Pilgrims Rest whereafter the bulk of the Applicants submitted tenders (albeit again not willing) for their premises as well as other premises other premises in town in a frantic attempt to stop the Second Respondent from destroying one of the historic most significant towns in South Africa, which we submit the Fifth Respondent has been actively pursuing for some time now.

5.21 It was and has always been our contention that if a proper procedure is followed and dis-used buildings are allocated to previously disadvantaged individuals on a sustainable basis, and with due consideration to the history of the town, that all of us would whole heartedly supported such a process. It became quite apparent however that this would not be the question a point with which I shall deal with below. It serves to be stated that all the tenants, without fail have been actively ensuring the empowerment of previously disadvantaged individuals in our community.

6.

THE TENDER PROCESS / THE STATUS OF INDIVIDUAL APPLICANTS:

6.1 All of the businesses in Pilgrims Rest were allowed to submit tenders for the re-allocation of the businesses and what it has become apparent that merely a smoke screen to let the process appear lawful.

- 6.2 A master copy of the tender terms and conditions provided to us is attached hereto as **Annexure "K"**, and I have been advised that this is the general government procurement framework in terms of which tenders are normally awarded.

7.

Highwayman's Garage CC"

- 7.1 I started the business Highway Mans Garage in 1999 when I moved to Pilgrims Rest.
- 7.2 I submit with respect that I still have a valid lease agreement as I concluded a five year lease in the name of the First Applicant in 2009.
- 7.3 From date of submission of the tender we heard nothing further from the Second Respondent and no correspondence was addressed to us to inform us of the process. On Friday 4 July 2012 the document which I attach a copy hereto as **Annexure "L"** was delivered to me by hand, namely a

proposed eviction notice. I specifically deal with the contents of this letter "Notice to Highway Man Garage":

"I hereby give a month's notice to vacate the abovementioned building which shall be effective from 31st July 2012.

The handover inspection on the 31st of July and keys should be handed to Mr N Chima of my office in Pilgrims Rest. Should you fail to vacate the aforesaid property on the aforesaid date; I will have no option but to institute eviction proceedings against you without any further notice and you will bear all the cost."

I have since also gained knowledge that the tender was apparently awarded to the Seventh Respondent who was the second lowest tender.

8.

Synkotey Normitha Maboy trading as Clever Store:

8.1 Nornitha Maboy the Second Applicant was previously employed by the previous owner of Clewer General Store Johnny Van Jaarsveld.

8.2 Mr Van Jaarsveld both due to his age and due to the receding tourism industry in Pilgrims Rest due to the non-compliance by *inter alia* of the Second Respondent with its statutory obligations had fallen into arrears in terms of his lease with the Second Respondent to a substantial amount.

8.3 In September 2010 Van Jaarsveld handed over the business to the Second Applicant and shortly thereafter Van Jaarsveld was sequestrated.

8.4 He *inter alia* owed the Second Respondent, according to them, an amount of R410, and 743.97. According to the Second Applicant the Second Respondent had apparently initially prohibited her from putting anything on any of the

shelves in the shop or conducting any business. Approximately three or four months later she was granted leave to operate from the premises on a month to month basis.

8.5 The Fifth Respondent requested the Second Applicant to start paying rent. He however could not tell her how much she was supposed to pay per month nor was he able to provide her with a lease.

8.6 Second Applicant informs me that when she became aware of the tenders being put out she had approached Fifth Respondent and asked him what was to become of her.

8.7 She informs me that Ngwenya told her not to worry and that she would be first in line to get the premises.

8.8 The premises were awarded to the First Applicant.

9.

Kingdom Africa Silk CC t/a Africa Silk™:

9.1 The Third Applicant is wholly owned and operated by Johanna Petronella Swart.

9.2 She informs me that she did not tender for the premises, partly because she became aware of the tender process too late and secondly because she was of the opinion from the point go that the process was rigged. Kingdom Africa Silks owns the trademark name Africa Silk and nobody else is entitled to operate under that name.

9.3 She tells me that during the past eight months she had not paid her rent to the Second respondent partially due to the fact that she had not been receiving any invoices and/or receipts and due to the fact that the Second Respondent is grossly neglecting its statutory duties to maintain the town.

9.4 Third Applicant is holder of the registered trade mark Africa Silks and nobody is entitled to operate under this name without her leave.

10.

Michael Edward Goodwin t/a as the Old Print Shop and Mona Cottage:

10.1 Mr Goodwin informs me that he started the business in 1998.

10.2 In 2001 Fourth Applicant built Mona Cottage on the old foundation of the initial building that has been taken down in 1958. He tells me that he spent R107, 000.00 in 1998 which the Second Respondent had undertaken to reimburse him for.

10.3 He informs me that he had been involved in a dispute with the Second Respondent and that he has been setting the amounts with interest owed to him against interest on the properties.

- 10.4 The building of the Fourth Applicant was divided in two; Mona was awarded to Ninth Respondent, and The Old Print Shop to the Fifth Applicant.

11.

Kensington BEE (Pty) Ltd / Mona Cottage:

- 11.1 Kensington BEE (Pty) Ltd was awarded The Old Print Shop and is a company wholly owned by Ava Malatji and Sherrennee Flavia Goodwin Mr Michael Edward Goodwin's wife. Malatji had been employed by the Goodwins for many years and this was a *bona fide* attempt at empowering Malatji the business to which she has spent many years of her life.
- 11.2 Please see as **Annexure "A4"** and **"A5"** supporting affidavits of Ava Malatji and Sherrennee Flavia Goodwin in support of what I am saying herein.
- 11.3 On becoming aware on 11 July 2012 of the meeting at the offices of the 2nd Respondent both Malatji and Goodwin attended there to collect their confirmation that Kensington

BEE had been awarded the tender. Goodwin was shunned away and on becoming aware of the fact that Malatji was supporting the Goodwins she was also turned away from the meeting and not provided any documentation in confirmation of the tender being awarded to Kensington BEE. A lot of unconvincing excuses were later offered in the media to get away from this situation, all false.

12.

Shan Paton t/a: Ponyskrantz Stables.

12.1 Seventh Applicant informs that her building was not put out on tender. The previous owner Coleen Costa got a lease for the stables in 1999 and when she abandoned the business in 2007 it was not put out on tender. By that stage it was a project funded and operated by the Second Respondent. On the property being abandoned it came to the knowledge of some equestrian supporters Rada Van Oosten and her brother Vince that the property had been abandoned and the horses left to die. They came to the town and took over the property and managed it until 2011 with no remuneration

whatsoever from the department who have informed that they can manage the property and do with it what they please and did not need to pay rent.

12.2 In March 2011 Shan was approached by Van Oosten and informed that they were making no money from the stable and that they were abandoning same. Paton took over the stables with the knowledge and approval of Ngwenya who also confirmed that she could stay on the property with no rent payable. Seventh Applicant was informed by 5th Respondent in March 2011 that the Second Respondent would be providing grass etc. to assist in the management of the property. She informs me that none of that had ever occurred and that she invested a substantial amount of money in maintaining the horses etc. that was abandoned on the property in 2007.

12.3 Eleventh Applicant informs me that three days after the service of the eviction notices on all the other Applicants, she received a similar eviction notice a copy of which is attached hereto as **Annexure "M"**. She informs me that she contacted the Second Respondent and asked what was going on. He

informed her that "this is a big mistake" and that she should ignore the notice at her own peril.

- 12.4 Ms' Paton tendered for the business of her mother, Fredah Paton and was ostensibly awarded same. Please see **Annexure "N"** hereto.

13.

J T Reynders CC t/a The Vine Restaurant:

- 13.1 John Thomas Reynders, the owner of the Vine Restaurant opened the business on the 4th of April 1994. He informs me that he has however living in Pilgrims Rest for many years, as he had previously been involved in the management of the Royal Hotel.
- 13.2 He informs me that he always had a three year lease with the Second Respondent and as the head of the Steering Committee he tried unsuccessfully to negotiate for a ten year lease.

- 13.3 An abundance of correspondence I refer to above indicates constant involvement with the plight of Pilgrims Rest, and he has been referred to in the media as the "non – official mayor" of Pilgrims Rest.
- 13.4 Mr Reynders has a similar plight in respect of his lease agreement being that it is in actual fact a lease which expires in 2014 and I attach hereto as **Annexure "O1"** a copy of his lease agreement.
- 13.5 Mr Reynders also tendered for the Vine under the same involuntary circumstances as already elucidated above but the premises from which he operates has apparently also been awarded to Timbhulu Construction.
- 13.6 Similar to all the other Applicants Mr Reynders has also received a "eviction notice". A copy of that document is attached hereto as **Annexure "O2"**.

14.

Tourvest (Pty) Ltd t/a The Spotted Dog, Mrs Mack's Shop, Scotts Cafe:

- 14.1 Mr Robert Gumede the Chairperson of the board of Tourvest, and a large shareholder, informs that he was never advised
- 14.2 He bought the business approximately ten years ago from the Imperial Group. Copies of the lease agreements of the Mr Gumede
- 14.3 Tourvest tendered for Mrs Mack's shop but not Scott's Cafe. The two businesses of Tourvest (Tiger Eye Group) that went on tender were of course Mrs Mack's shop and Scott's Cafe. Where in the past it had been a favourite remark of members of the Second Respondent that one individual or business would operate two or three businesses in Pilgrims Rest they have now awarded as in this case the two businesses to Seventh Respondent.

15.

Gustav Peach / the Daisy:

- 15.1 Similar to the above instances Mr Peach took over The Daisy from Jane Corbett a lady who's currently deep in her eighties approximately fourteen years ago with the knowledge and approval of the Second Respondent.

16.

Christine Grove / Pilgrims Place:

- 16.1 Mrs Grove informs us that she moved into Pilgrims Rest more than 33 years ago and she holds the title deed to Pilgrims Place. Due to the short time period available for the granting hereof, sufficient time was not available to obtain a copy of the title deed from the Registrar of Deeds.
- 16.2 She further informs me that she has over the years paid in excess of R1.2 million *ex gratia* to the Second Respondent in the mistaken but *bona fide* belief that the Second

Respondent would maintain their statutory responsibilities in respect of the historic building on her premises. She confirmed that she is considering legal steps to recuperate the amount of R1.2 million from the Second Respondent for failing to do so. Mrs Grove also received an eviction notice a copy of which is attached hereto as **Annexure "P"**.

17.

Freda Paton / the Iron Store:

- 17.1 Fred Paton is also in a similar situation as me and the Vine in respect of our lease agreements which expires in 2014.
- 17.2 Freda Paton also tendered for the Iron Store. Her daughter, Shan Paton, who had not even tendered, "obtained" the tender.

18.

Brandon Traut / the Golf Course:

Similar to all the above Applicants Mr Trait has what we perceived to be a lease agreement which expires in 2014. The tender for the golf course was apparently awarded to Ninth Respondent for an amount of R33.00 per month.

19.

Concerned Residents of Pilgrims Rest:

19.1 The residents of the town of Pilgrims Rest realising the serious nature of what the Second Respondent is trying to do has formed a voluntary society of individuals supporting this application. Due to the urgent nature hereof there was insufficient time for the drafting of a constitution, etc. but a petition on behalf of the Pilgrims Rest residents as well as the residents of the Concerned Residents of Newtown Township as represented by Paulus Mashigo is attached hereto, and I have already referred to same above.

19.2 It serves to be noted that during the evening of 10 July 2012 a meeting was held by the Concerned Residents Pilgrims Rest which meeting was chaired by Mashigo, as a consequence of which the Royal Hotel, which is managed by the Second Respondent summarily dismissed Mr Mashigo the next day "as he spoke against the government". Please refer again to Mr Mashigos' affidavit in this regard.

20.

THE RESPONDENTS WHO OBTAINED TENDERS/ FLAWS IN THE TENDER PROCESS/ WELL FOUNDED FEAR OF CORRUPTION AND NEPOTISM:

20.1 For the sake of brevity I will not deal *nauseum* with each and every entity who obtained tenders.

20.2 As I have already indicated above there is already serious concern as to the motive behind putting the properties out on tender, the basis on which the tenders were rewarded and the concern in respect of the companies that was rewarded.

- 20.3 I specifically reiterate, and point out the following aspects:
- 20.3.1 Nobody in Pilgrims Rest "tendered" willingly for the premises. I attach hereto as **Annexure "Q"** an example of the lease agreement of Mr Reynders, on behalf of the Eighth Applicant, signed by him on 17 January 2009.
- 20.3.2 From this document it appears that the document was signed three years and sixteen days after its' initiation date, as clause 1.1 purports to indicate that the agreement runs from 01 January 2006, which means that the agreement would have expired a mere two years after conclusion.
- 20.3.3 We humbly submit that this is simply not the truth, and that the true agreement was that the entire Applicants' almost without fail obtained five year lease agreements in January 2009, therefore meaning that our leases almost without fail expire in January 2014. I do not attach all the agreements hereto at this stage as this would tremendously burden the papers on a point which we submit appears quite clearly from **Annexure "Q"** above.

20.4 It further appears that there is definitely some or other racially motivated agenda of the Fifth Respondent specifically behind the proposed tenders:

20.4.1 Kindly refer again to the supporting affidavit of Mashigo, attached hereto, indicating that it had come to his knowledge that the Fifth Respondent was actively inciting the community of Newtown against the business owners in Pilgrims Rest.

20.4.2 I also attach hereto at this stage as **Annexure "R"** a copy of list, being circulated by the Fifth Respondent on the internet, in respect of the ostensibly awarded tenders.

20.4.3 According to this list, it seems that First Applicant was allegedly awarded the premises of the Second Applicant, Fifth Applicant allegedly awarded the premises of one of the businesses of the Fourth Applicant, and Seventh Applicant awarded the premises of the Tenth Applicant.

20.4.4 On 11 July 2012, all of the representatives of these Applicants attended at a meeting that was being held without any prior notification to any of the tenants in town, whilst they were consulting with their legal team. On arrival it was found that it was a meeting between only the outsiders to Pilgrims Rest, to "enquire" whether they were ready to take over the town on 1 August 2012. Apparently the Respondents were told that they would be given a "three month trial period". None of the other tenants in the town received tender documentation at this meeting, and they were shunned away, a point with which I deal under the heading urgency hereunder.

20.5 It also serves to note that according to the Applicants' the purported tenders were never advertised as required. We obtained knowledge thereof merely by chance.

21.

THE SUSPECTED FRAUD/ CORRUPTION:

21.1 A so – called “spider search” was done in respect of the major role players in this matter, which raises some serious concerns.

21.2 A copy of the search is attached hereto as **Annexure “S”**. Before I proceed, I point out that we have very little information to our possession at this stage as the Second Respondent refuses to hand tender application in respect of the Respondents' to us. The mechanisms of the Promotion of Administrative Justice Act will thus have to be employed.

21.3 MATLETELE CONSTRUCTION AND PROJECTS CC / TIMBHULU CONSTRUCTION AND PROJECTS CC:

21.3.1 To illustrate why there is serious concern in respect of the transparency of the so – called tender process, I deal with the question of the Eighth and Ninth Respondents.

21.3.2 The Eighth Respondent is a close corporation with one member: SUSAN PATRICIA KHOZA, with identity number: 6905020304089. The principle place of business of Eighth Respondent is Stand 94, Thulamahashe, Mpumalanga.

21.3.3 The Ninth Respondent is a close corporation with one member: RACHEL TSAKANE KHOZA, with identity number: 7212240392088. The principle place of business of the Ninth Respondent is 265 Mkhonzo Trust, Akornhoek, Mpumalanga.

21.3.4 On face value these close corporations are save for the relation in respect of surname unrelated.

21.3.5 The Eighth and Ninth Respondents were between them awarded eight of the seventeen businesses, therefore almost fifty percent.

21.3.6 In most instances the tenders of these two Respondents were not the highest bids.

21.4 As appears from **Annexure "S"** above, Rachel T Khoza and Susan Patricia Khoza are directly related to one another, as

they are also partners in two other businesses Oceanside Trading CC (a deregistered cc), and Springgreen Trading 78 CC.

21.5 In light of the allegations by specifically Fifth Respondent that this is an exercise in redress, one is left with a sour taste in the mouth as to how two related parties, not even from the area is awarded fifty percent of the tenders.

21.6 In most instances these tenders were not even the highest. See for instance **Annexure "T"** hereto, being the Tender Certificate for the premises of the First Applicant, indicating that the 7th Respondent, who had the second lowest tender, was awarded same.

21.7 If one has regard to the Preferential Procurement Regulations of 2001, it is simply not possible for these bidders to have lawfully been successful in our submission.

21.8 Also, and in light of the admissions made by inter alia the owners of the Seventh – Ninth Respondents, it is of extreme concern how tenders could have been awarded without the

sustainability of the "successful bidders" having been investigated.

- 21.9 In light of the frail nature of the Pilgrims Rest economy, and the historic relevance of the town, one would have expected the Second Respondent to embark on a transparent effort to empower historically disadvantaged individuals within the community into some of the businesses, something which we have promoted for years, but have been denied.

22.

GROUNDS FOR APPLICATION: PRIMA FACIE RIGHT:

- 22.1 We are advised that to enable us to succeed with an application for an interim interdict we have to show a *prima facie* right even if it is open to some doubt entitling us to ultimate relief.

- 22.2 As set out above we not only on a personal basis have a *prima facie* right to the relief sought as there is *prima facie* indication that the tender process was rigged and seriously

flawed but we also have a right in terms of the Constitution of the Republic of South Africa to act in public interest to protect the continued existence of the town of Pilgrims Rest.

22.3 Almost all of the Applicants without fail hold what we submit to be valid lease agreements to January 2014, which have not been cancelled.

22.4 The tender process was in anyway not by the farthest stretch of the imagination transparent.

22.5 Even if one overlooks for a moment what we submit is an above average prospect of having the entire tender process set aside, we submit in accordance with the principles of fair administrative conduct that we are in anyway entitled to an interim interdict.

22.6 Since tendering in November 2011, we have received no correspondence or feedback from the Second Respondent whatsoever.

- 22.7 To provide us with less than thirty days' notice to vacate the properties, pack up our lives and go, in the instance where most of us has been in town for between 10 and 40 years, with no transitional arrangements, simply can never be lawful.
- 22.8 As indicated above, and which in my respectful submission the Honourable Court can take cognisance of Pilgrims Rest is a place of immense historical interest world renowned heritage site where gold was found in the 1800 but also as for instance one of the first towns in South Africa and in the world to have electric street lights.
- 22.9 From 1 – 7 October the World Gold Panning Championships is also to be held in Pilgrims Rest.
- 22.10 South Africa hosted this event in Pilgrims Rest in 2005 and was so successful that 21 countries will be returning in October for this year's event, and thousands of visitors from around the globe are expected. More than two years planning have gone into the event.

- 22.11 On the admission of the most of the Respondents, they are not in possession of fuel licences, liquor licences or any of the other statutory requirements to legally operate the businesses. Furthermore as stated above, the Seventh to Ninth Respondents were apparently of fallacious impression that they were tendering for "going concerns" (although the basis for this misapprehension is unclear).
- 22.12 This event will provide valuable cash injection into the community to try and make up some of the damage caused by the neglect of the Second Respondent, and make up some time in respect of job security for the 160 employees who are reliant on the Applicants for an income.
- 22.13 Should the relief sought not be granted, Pilgrims Rest will be a virtual ghost town by 1 October 2012, and 160 families will be destitute and with no income in its' streets as their simply is no other employment opportunities save for a limited mining and tourism industry.
- 22.14 Pilgrims Rest will become an embarrassment in the history pages of South Africa if the relief sought is not granted as

none of the successful tenderers has the capacity to host this event in October 2012. As stated above Pilgrims Rest will inevitably become a ghost town within two months if the interim relief sought is not granted and the Gold Panning World Championship will be doomed to inevitable failure.

23.

IRREPARABLE HARM REASONABLY APPREHENDED:

- 23.1 The businesses involved employ about 160 employees.
- 23.2 The moveable assets on the properties belong to the Applicants and not to the Second Respondent.
- 23.3 If the Applicants leave they will do so with all their moveable assets and most of the businesses will immediately become inoperable.
- 23.4 It appears with respect that the successful tenderer are under the impression that they are taking over businesses as going concerns which is respectfully not correct.

- 23.5 It is a foregone conclusion that should the interim relief sought not is granted not only the Applicants will be out of business but the 160 employees that are employed by the Applicants will be out of jobs.
- 23.6 In a town which is entirely reliant on the tourism industry and a nearby gold mine there is simply not enough employment opportunities to re-employ these individuals elsewhere.
- 23.7 If one works on an average of four individuals per household then that implies that 640 members of the local community will be stuck with no income and no further way of support.
- 23.8 The socio economic tragedy that will hit the town of Pilgrims Rest almost immediately will be immediate and irreparable.
- 23.9 An integral part of our history will inevitably be lost.
- 23.10 Therefore it is not just the Applicants who will suffer irreparable financial damages, but also the community as a whole who will be irreparable damaged if the relief sought is not granted.

24.

NO ALTERNATIVE REMEDY:

24.1 It might be asked with respect whether correspondence could not have settled the matter amicably.

24.2 We submit with respect that this would not be the instance.

24.3 The First Respondent has thus far been nothing short of toothless in respect of promises pertaining to the Second Respondent. All queries are always referred back to the Second Respondent.

24.4 Not even the provincial representative for the Democratic Alliance Anthony Benade could in two years succeed in obtaining proper assistance from the First Respondent.

24.5 It is so that the letter from Second Respondent indicated that should the Applicants not vacate by 31 July 2012, eviction

proceedings would be instituted. This is however not the factual situation as described hereunder.

24.6 The Fifth Respondent, and one G Mashilo during the meeting at Second Respondents' offices on 11 July 2012, in the presence of my wife, Nicole Brummer, notwithstanding the contents of the letter reading that should the Applicants not leave the premises by the 31st of July they would **then only apply for the eviction of the Applicants** to the ostensibly successful applicants that should the Applicants not have vacated the properties on 31 July 2012, **that they will forcefully and with the assistance of connections in the South African Police Service attend to evicting all the tenants from the involved premises.**

24.7 On being asked about this by my wife Fifth Respondent and Mashilo replied that the only thing that would stop them was a High Court interdict. Not only was this an open challenge to the Honourable Court and to the rule of law but it is a clear indication that any further attempt to talk with the Second

Respondent as represented by Fifth Respondent would be a futile exercise.

25.

BALANCE OF CONVENIENCE:

25.1 It is submitted that the balance of convenience for the granting of the interim relief sought far favours the Applicants.

25.2 It is submitted with respect that the prejudice that will befall the Applicants, employees of the Applicants, the greater community of Pilgrims Rest, the Province of Mpumalanga as a whole and the reputation and heritage of the citizens of the Republic of South Africa far outweighs any minimal prejudice that could befall the Respondents if the relief sought is granted.

26.

URGENCY:

- 26.1 I am advised to submit grounds upon which this application should be regarded as urgent and be heard as such as provided for in Rule 6(12) (a) and (b). I submit that this matter is one of extreme urgency and stands to be heard on the basis on which we apply for this matter to be brought before court on the grounds I deal with below.
- 26.2 One would have been able with an amount of difficulty to perceive how the urgency of this matter could have been alleviated somewhat if Second Respondent as represented by Fifth Respondent and his colleague had not taken the stance that they had.
- 26.3 The Applicants only became aware of the proposed eviction on 4 and 5 July 2012 when the so called eviction notices were served on all the Applicants. The point is widely publicised in the printed media, and we state emphatically that none of us were advised of the tender process developments earlier.

- 26.4 As set out above the town of Pilgrims Rest with the inclusion almost without fail of all the Applicants is currently under severe financial constraint as a consequence of the almost entire collapse of the infrastructures or by the Sixth Respondent.
- 26.5 It was only on 11 July 2012 that the Applicants and the greater community of Pilgrims Rest was in a position to consult with our legal team for the purposes of considering further relief pending review proceedings. At this talks included requesting an undertaking by Second Respondent to stay eviction proceedings pending review.
- 26.6 It was on this date that Fifth Respondent and Mashiloane indicated unambiguously that notwithstanding the notices threatening eviction proceedings **should the parties not wilfully leave the premises on 31 July 2012**, that we all would be summarily and violently evicted on the 31st of July and that nothing would stop them.

26.7 Fifth Respondent and Mashiloane in their capacities as employees of the Second Respondent voiced unambiguously an open threat to all the Applicants that the only thing that would stop them from acting unlawfully on 31st of July 2012 was an order by this Honourable Court.

26.8 This with all due respect appears to be an open threat.

26.9 I believe with respect that I have dealt as completely as possible above with the reasons why should relief not be in place on 31 July 2012 and the Second Respondent placed in a position to follow through with the threats of employing any and all violence required to evict unlawfully all the Applicants from their business premises that the town of Pilgrims Rest will inevitably be brought to a permanent standstill in which instance the livelihood of at least 160 families will be jeopardised as well as the continued existence of an extremely relevant town in South African history.

26.10 With a distance of just shy of 400km, virtually no funds available, and an immense amount of paperwork to sift through this application is filed on 16 July 2012 three court

days after the urgency was created by the Second Respondent.

27.

In the premises I respectfully pray for an order as per the notice of motion. To this effect I have attached hereto a draft order marked **Annexure "XYZ"**.

DEPONENT

I certify that the deponent has acknowledged that he/she knows and understands the contents of this affidavit, which was signed, and affirmed/sworn to before me at PRETORIA on _____ 2012, under compliance with the regulations contained in Government Notice R1258 dated 21 July 1972, (as amended).

COMMISSIONER OF OATHS

FULL NAMES:

AREA:

APPOINTMENT:

ADDRESS: