

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA  
(HELD AT BRAAMFONTEIN)

CASE NUMBER: JA. 3/2013

In the matter between:

**RAMADIBA: MOTLATSO ANGELINA**

**Applicant**

And

**LIMPOPO LEGISLATURE**

**1<sup>ST</sup> Respondent**

**MAAKE: JOSIAS SELLO N. O.**

**2<sup>ND</sup> Respondent**

**COMMISSION FOR CONCILIATION, MEDIATION  
AND ARBITRATION ("CCMA")**

**3<sup>RD</sup> Respondent**

**NGOBENI: EVA N. O.**

**4<sup>TH</sup> Respondent**

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**ANSWERING AFFIDAVIT  
(OPPOSING APPLICANT'S "PETITIONS")**

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I, the undersigned

**MOSILA R. NTSOMELE**

Do hereby make oath and say:-

1. I am an adult female and **Senior Legal Advisor** of the First Respondent.

- 1.1. I am also admitted to practice as an **Advocate**.
  
2. I am duly authorized to depose to this Affidavit for and on behalf of the First Respondent.
  
3. In this Affidavit, unless the context otherwise indicates, the facts so contained.
  - 3.1. are within my personal knowledge and
  
  - 3.2. are to the best of my knowledge and belief, both true and correct.
  
4. In this Affidavit, unless the context indicates, "**RAMADIBA**" means **Motlatso Angelina Ramadiba (the Applicant)**.
  
5. I will not, during the course of this Answering Affidavit, necessarily deal *ad seriatim* with all allegations and contentions raised by RAMADIBA's Founding Affidavit.
  - 5.1 My failure to do so must not be construed as an admission of trueness and correctness thereof and such allegations were inconsistent or at variance with what is contained in this Answering Affidavit, must be denied.

5.2 If any conflict, relating to the matters dealt with in this Answering Affidavit, arises between the Answering Affidavit and the allegations contained (on annexed to or referred to) in RAMADIBA's Founding Affidavit, save any Affidavit expressly concurring with this Answering Affidavit:-

- (a) the contents of the Answering Affidavit must prevail, and
- (b) each and every allegations in RAMADIBA's Founding Affidavit is denied as specifically as if herein set out and denied.

**6. BRIEF BACKGROUND OF RAMADIBA'S DISMISSAL DISPUTE.**

6.1. RAMADIBA was suspended from duty on full pay and benefits following investigation(s) of serious misconduct charges on the **28<sup>th</sup> of August 2004**.

6.2. RAMADIBA's Disciplinary Hearing was conducted and culminated when she was dismissed in **December 2004**, i.e. when the Independent Disciplinary Hearing

Chairperson recommended her dismissal and/or demotion. RAMADIBA did not opt for demotion but dismissal.

- 6.3. On the **22<sup>nd</sup> of December 2004**, RAMADIBA, instead of referring the alleged unfair dismissal matter to the CCMA, she filed an Application for Review of the disciplinary proceedings under Labour Court Case Number **JR. 3166/04**.
- 6.4. In the meanwhile the First Respondent, on the **05<sup>th</sup> of January 2005**, implemented the dismissal sanction (which was recommended by the Independent Disciplinary Hearing Chairperson), following RAMADIBA's rejection of the demotion option.
- 6.5. **Two (2)** days after the dismissal sanction was imposed, RAMADIBA, again, instead of referring the alleged unfair dismissal dispute to the CCMA, on the **07<sup>th</sup> of January 2005**, she filed an Urgent Application at the Labour Court, in an effort of setting aside the dismissal decision of the **05<sup>th</sup> of January 2005**.

6.6. RAMADIBA's urgent Application was unsuccessful. When dismissing RAMADIBA's urgent application, Acting Judge Ngcamu commented that RAMADIBA should exhaust the internal processes of the First Respondent.

6.7. On the 11<sup>th</sup> of January 2005 RAMADIBA lodged her Appeal with the First Respondent, which Appeal was finalised on the 04<sup>th</sup> of March 2005, i.e. confirming or upholding the dismissal decision.

6.8. After the Appeal was finalised, RAMADIBA referred her alleged unfair dismissal dispute to the CCMA under **Case Number: LP. 1170/05** and also pursued the Review Application which was pending at the Labour Court under **Case Number JR. 3166/04.**

The First Respondent unsuccessfully requested RAMADIBA to abandon or withdraw one of the processes primarily because they involved the same dispute, the same cause of action and the same relief.

6.9. As a result of the above-mentioned, the First Respondent raised *lis alibi pendens point-in-limine* at the CCMA, (i.e. during Conciliation proceedings of **Case Number:**

LP1170/05). However, **Commissioner Ramotshela** dismissed the First Respondent *point-in-limine*.

6.10. On the **07<sup>th</sup> of November 2006**, the First Respondent, as per Acting Judge Broster's Order, successfully reviewed **Commissioner Ramotshela's** ruling under **Labour Court Case Number JR. 1398/2005**.

6.11. After this Order, it was only on the **10<sup>th</sup> of October 2008** that RAMADIBA decided to refer her alleged unfair dismissal dispute to the CCMA under **Case Number LP. 6471/08**.

6.12. RAMADIBA's matter was set down for Conciliation on the **02<sup>nd</sup> of December 2008** when parties, among other things, argued the Condonation Application.

On the **15<sup>th</sup> of December 2008**, the CCMA Ruling was issued by **Commissioner Josias Sello Maake** refusing RAMADIBA's Condonation Application.

6.13. Thereafter, RAMADIBA unsuccessfully reviewed **Commissioner Josias Sello Maake's** ruling following the Judgment by Van Niekerk, J on the **21<sup>st</sup> of July 2010**

and subsequent refusal of Leave to Appeal on the 13<sup>th</sup> of **October 2010** under **Labour Court Case Number JR.152/08**.

6.14. After this refusal for Leave to Appeal, RAMADIBA filed a **Petition** to the Judge President of the Labour Appeal Court under **Case Number JA. 90/2010**.

RAMADIBA's Petition was also unsuccessful in terms of the Order dated the **30th of May 2011**.

## **7. BRIEF BACKGROUND OF CASE NUMBER: J. 2568/2010**

7.1. On the 20<sup>th</sup> of **December 2010**, i.e. 5 (five) years after RAMADIBA's dismissal, (i.e. on the 05<sup>th</sup> of **January 2005**) and also 2 (Two) months after **Van Niekerk, J** refused Leave to Appeal on the 13<sup>th</sup> of **October 2010**, (RAMADIBA's petition was finalised on the 04<sup>th</sup> of **May 2011**), RAMADIBA filed the present matter under **Labour Court Case Number J. 2568** with a Notice of Motion setting the matter down on **Tuesday the 18<sup>th</sup> of January 2011**.

7.2. In terms of RAMADIBA's filed matter (J. 2568/10), she sought **eight (8)** different Declaratory Orders. The sought after Declaratory Orders read as follows:-

**7.2.1. "Declaring that the Fourth Respondent was not competent nor empowered to make the decision or directive or advise as contained in her fax message of 4 December 2007 (sic), being Annexure "D5".**

**7.2.2. "Declaring that the Applicant is entitled to prosecute the referral of the dispute of unfair dismissal to the Third Respondent under case number: LP1170/05".**

**7.2.3. "Declaring that the decision or directive or advice by the Third Respondent represented by the Fourth Respondent refusing to refer the dispute under CCMA case number: LP1170/05 to arbitration on 10 December 2007 on the grounds that the CCMA lacks jurisdiction to determine the dispute further and then that the Applicant should re-refer the matter, was not legally**



**competently sanctioned by the Court Order of Broster AJ of 7 November 2006 and is ultra vires Section 191, read with Sections 135 and 136 of Labour Relations Act, No. 66 of 1995, as amended ("the LRA") and Rule 10 of the Rules of the CCMA, and therefore invalid and/or null and void ab initio".**

**7.2.4. "Declaring that the order of Broster AJ did not set aside the referral of the dispute by the Applicant on 10 March 2005 under case number: LP1170/05 and that the said referral is still extant and pending before the Third Respondent".**

**7.2.5. "Declaring that the defense of lis pendens as raised by the First Respondent on 20 May 2005 was merely to stay the conciliation process and did not dispose of the dispute as referred by the Applicant to the Third Respondent on 10 March 2005 under case number: LP1170/05".**

**7.2.6. "Declaring that the withdrawal of the review**

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*application under case number: JR3166/04 in the Labour Court by the Applicant on 5 June 2005 effectively lifted the stay of the conciliation process and disposed of the First Respondent's defence of lis pendens".*

**7.2.7. "Declaring the dispute under case number: LP1170/05 was conciliated upon by Commissioner Mathews Ramotshela on 20 May 2005, and that the relevant certificate of non-conciliation is still extant and binding on the parties".**

**7.2.8. "Declaring the referral process on 10 October 2008 following on the Fourth Respondent's decision or directive or advise under the CCMA case number:LP6471/08 was not competent nor sanctioned by the Court Order of Broster AJ and ultra vires the provisions of Sections 191, read with Sections 135 and 136 of the LRA and Rule 10 of the CCMA rules and thus invalid and/or null and void ab initio".**

7.3. It is vivid that these sought Declaratory Orders are tantamount to re-inventing the will, i.e. RAMADIBA is seeking the same relief that she would have sought at the CCMA under the aforesaid **Case Number LP. 6471/08** and the already finalised Judgment of **Van Niekerk, J** under **Case Number JR. 152/08** and petition under **Case Number JA. 90/2010**.

7.4. It is also apparent from the foregoing judgments of this Honourable Court that RAMADIBA is relying, in her present Declaratory Order **Case Number: J 2568/2010**; on the same facts, as had been placed before the above Honourable Court and the CCMA in the earlier application and / or referral.

These issues have already been considered and decided by the Court in earlier applications.

7.5. In fact, the relief sought from this Declaratory Orders is tantamount to issues or disputes which have already been dealt with by above Honourable Court and are accordingly *res judicata*.

7.6. In the circumstances, RAMADIBA's present application  
(**Declaratory Orders under case Number: J2568/2010**)  
is frivolous, vexatious and without any merits.

In essence, the matter is *res judicata* and should  
accordingly be dismissed with costs *de bonis propriis*  
and/or on Attorney and Own Client scale.

7.7. On the 18<sup>th</sup> of January 2011, the First Respondent  
attended Court as per (**RAMADIBA's aforesaid Notice  
of Motion**) but only to be informed that RAMADIBA's  
Legal Representatives have removed the matter from the  
Roll (of the 18<sup>th</sup> of January 2011 only on **Monday the  
17<sup>th</sup> of January 2011**) and set down same on the Urgent  
Application Roll on **Friday the 21<sup>st</sup> of January 2011**.

7.8. On the 18<sup>th</sup> of January 2011, Molahlehi, J dismissed  
RAMADIBA'S Application with *Cost de bonis propriis*.

Needless to state that RAMADIBA and/or her Legal  
Representatives did not attend Court on **Tuesday the  
18<sup>th</sup> of January**

7.9. On **Friday the 21<sup>st</sup> of January 2011**, the First Respondent attended Court. **RAMADIBA's** Legal Representatives were also present in Court.

After listening to both parties, **Molahlehi, J** reserved Judgment until the **02<sup>nd</sup> of February 2011** when he again dismissed **RAMADIBA's** application with costs.

Needless to state that **RAMADIBA** successfully appealed **Molahlehi, J's** Order of the **02<sup>nd</sup> of February 2011** under **Case Number JA. 37/2011**.

7.10. In the meanwhile, **RAMADIBA's** Declaratory Order matter was set down on the **22<sup>nd</sup> of March 2012** before **Rabkin-Naicker, J**.

This is a matter which is the subject of the present application for Leave to Appeal. In a nutshell, **Rabkin-Naicker, J's** Order states, among other things, *"I am very concerned that the applicant is not properly served by her legal team"*.

7.11. In her judgment, Rabkin-Naicker, J made the following Orders:-

7.11.1. ***"The Registrar is directed to make the contents of this file available to the Judge president and/or Deputy Judge President for perusal, in order that they may consider whether the legal team for the applicant should be reported to the relevant Law Society and/or Bar Council".***

7.11.2. ***"The application before me is struck off the roll".***

7.11.3. ***The applicant's attorneys are ordered to pay the costs of this application de bonis propriis".***

7.12. It is my understanding of this judgment that RAMADIBA's Legal Representatives are not precluded or barred from representing her. However, because of, *inter alia*, multiplicity of proceedings and the manner with which this

*MR*

matter has been conducted, **Rabkin-Naicker, J's** first and third paragraph Orders are correct and well founded.

7.13. As would be elaborated later, the court is requested to take judicial notice of the fact that since **Rabkin-Naicker, J's** judgment on the **22<sup>nd</sup> of March 2012** to date, neither RAMADIBA nor her Legal Representatives have ever attempted to re-enroll the matter which was "***struck off the roll***".

Needless to state that, the first Respondent still holds the view that RAMADIBA's Declaratory Order matter under **Case Number J.2568/2010** remains frivolous and vexatious.

## **8. RAMADIBA'S LAWYERS OR LEGAL REPRESENTATIVES**

8.1. A total of about **six (6) different lawyers**, to date , have had fair share of representing RAMADIBA.

8.2. **These Lawyers include, but not limited to:-**

8.2.1. **MAHLASE-NONYANE ATTORNEYS;**

8.2.2. **LEE ATTORNEYS;**

8.2.3. **STAN FANAROFF AND ASSOCIATES;**

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8.2.4. **MASHISHI ATTORNEYS**

8.2.5. **MARTIN HENNIG ATTORNEYS;**

8.2.6. **MATHOPO ATTORNEYS.**

**This list excludes RAMADIBA's present Legal Representatives (M.S. MALATSI ATTORNEYS).**

8.3. In other words, a plausible conclusion can be made that **RAMADIBA** has always been competently and properly advised and that the only reason why all these Lawyers or Legal Representatives have ceased representing her is precisely because she is "*frustrating*" the process.

Again, a plausible conclusion can be made that **RAMADIBA** is not willing to listen to the advice of all these Lawyers or Legal Representatives.

8.4. A further conclusion can be made that surely, it cannot be true that in all instances, these different Lawyers or Legal Representatives, practicing from different areas and backgrounds can all be wrong or be responsible for the sleek litigation and **RAMADIBA** is the only one that is right.

*MR*



It is also common knowledge that all these Lawyers or Legal Representatives are Judicial Officers.

- 8.5. Be that as it may, it is either **RAMADIBA** who is dishonest or these Lawyers/Legal Representatives are dishonest.

It is the First Respondent's submission that having dealt with **RAMADIBA** at a workplace, **she is the one that is dishonest and frustrating the process, and not these Lawyers or Legal Representatives.**

- 8.6. As correctly stated by **Van Niekerk, J's** judgment dated the 13<sup>th</sup> of October 2010, ***"In fact the applicant sought to have a ruling set aside that would have required the CCMA to convene a conciliation hearing more than 5 years after the date of her dismissal in circumstances where the applicant had clearly been less than diligent in prosecuting her claim"***.

- 8.7. As stated above, I believe that **Rabkin-Naicker's, J** first and third paragraphs Order are justified, correct and well founded, primarily because an investigation is imperative in this matter by an independent body, viz:- the Law

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**Society or the Bar Council** for purposes of investigating the root cause of why so many Legal Representatives were instructed by RAMADIBA.

Further, the investigation will also reveal **Rabkin-Naicker, J's** concern ***"I am very concerned that the applicant is not being properly served by her legal team"***.

8.8. It is also worrying that RAMADIBA is pursuing a matter which is frivolous and vexatious yet she is presently represented by Judicial Officers, whose duties, **include but not limited to**, assisting the Court in resolving the matter(s) and advising Client(s) in instances where the matter is frivolous and vexatious or without merits. In the light of the aforesaid, it is the First Respondent's submission that granting **RAMADIBA Petition will be tantamount to traversy of justice.**

## **9. THE TEST FOR LEAVE TO APPEAL**

9.1. It is trite that that the test for RAMADIBA to succeed in a Petition, she must at the very least show that **Rabkin-Naicker, J**, did not act judicially or that she acted on misapprehension of the facts or wrong principles.

*MR*

9.2. Otherwise the decision of **Rabkin-Naicker, J** is unassailable.

***See Giddey NO v JC Barnard and Partners 2007 (5) SA 525 (CC) at paras {19} to {23}.***

9.3. I am also advised that the power of a Court of Appeal to interfere with the exercise of such a discretion is confined to a finding that **Rabkin-Naicker, J** exercised her discretion capriciously or upon a wrong principle, or has not brought her unbiased judgment to bear on the question, or has not acted for substantial reasons.

***See Minister of Education, Western Cape v Governing, Mikro Primary School 2006 (1) SA 1 (SCA) at {25}.***

9.4. In the petition by RAMADIBA and/or her Legal Representatives, there is no basis for any such attack upon the decision and, accordingly, there is no basis for a petition, let alone any prospect of success, for such petition.

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9.5. Again, it is well established and/or trite that in determining whether or not to grant leave to appeal the Court must consider whether there is a reasonable prospect that another Court might come to a different conclusion to that of Court *a quo*.

9.6. This, therefore does not mean that in order to grant leave to appeal, this Court must find that a Court *a quo* erred or that the Labour Appeal court erred but the crux of the determination is:-

9.6.1. **Is there a reasonable possibility that the Labour Appeal Court may find differently than a Court *a quo*?**

9.7. It is the first Respondent's submission that there is no possibility whatsoever that RAMADIBA's petition, which is frivolous and vexatious, could result in the Labour Appeal Court coming to a different conclusion to that of **Rabkin-Naicker, J's judgment.**

## **10. THE FIRST RESPONDENT'S RESPONSE TO RAMADIBA'S FOUNDING AFFIDAVIT**

**10.1. AD PARAGRAPHS 1, 2 AND 3**

10.1.1. I **admit** that the Deponent is RAMADIBA in this matter.

10.1.2. Save where the contrary appears from the context, all the facts set forth in RAMADIBA's affidavit are not within her personal knowledge and same are both not true and correct.

**10.2. AD PARAGRAPHS 4, 5, 6 AND 7**

10.2.1. The contents of these paragraphs are **admitted**.

**NATURE OF PROCESS**

**10.3. AD PARAGRAPHS 8, 9, 10, 11 AND 12**

10.3.1. The contents of these paragraphs are **noted**.

**10.4. AD PARAGRAPH 13**

10.4.1. The contents of this paragraph is **denied**.

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10.4.2. It is incorrect for RAMADIBA to state *"if left unreversed by the Appeal Court, has serious prejudice and adverse effects on the timeous and continued prosecution and finalisation of my application for declaratory orders..."* primarily because the judgment of **Rabkin-Naicker, J** did not state that RAMADIBA's Legal Representatives are barred, precluded or prevented from representing her.

10.4.3. Further, her judgment did not in any way state that RAMADIBA and/or her Legal Representative should not re-enroll the matter, let alone that the declaratory order matter remains frivolous and vexatious.

10.4.4. **Almost a year (10 months)** after the judgment of **Rabkin-Naicker, J**, RAMADIBA and her Legal Representatives have not attempted to re-enroll the frivolous and vexatious declaratory order matter under **Case Number J.2568/10.**

## 10.5. AD PARAGRAPH 14

10.5.1. The contents of this paragraph are **noted**.

## ON CONDONATION

### 10.6. AD PARAGRAPHS 15 TO 31 (CONDONATION)

Whist the contents of these paragraphs are **noted**, it suffices to state that RAMADIBA and her Legal Representatives' Condonation Application has no merit on the basis of the following:-

10.6.1. In her own admissions, proper and timeous advise was provided by **Vuyo and Poppi** to the effect that RAMADIBA and her Legal Representatives should “ ***just proceed with the petition***” because “***there was no reason for the judge to give me reasons***”.

10.6.2. It was only RAMADIBA and her Legal Representatives' unjustified and uncalled for insistence for “***written request for reasons***”

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that unnecessarily delayed the filing of the appeal by a period of **five (5) months**, i.e. from the **31<sup>st</sup> of July 2012** to **19<sup>th</sup> of December 2012**, when the defective appeal was filed.

10.6.3. Logic and common sense should have dictated to RAMADIBA and/or her Legal Representatives that in a matter such as this (the present matter), that the petition should have been filed timeously and thereafter seek reasons why Leave to Appeal was refused, followed by an amendment, if any, of the petition (i.e. after receipt of reasons for refusal of Appeal).

10.6.4. In any one's calculation, waiting for a period of **five (5) months** for filing of an Appeal is both unheard of and uncalled for. Infact, it was highly negligent for both RAMADIBA and her Legal Representatives to wait for this long period of time.

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10.6.5. Again, it is vivid from the perusal of this Condonation Application that RAMADIBA and her Legal Representatives are playing a blame game, i.e. blaming others (**Vuyo and Poppi**) for their (RAMADIBA and her Legal Representatives) apparent and lackluster conduct and/or attitude.

10.6.6. Be that as it may, all having been said and done, the Court should take a judicial notice that in the midst of all RAMADIBA and her Legal Representative blame game, the Condonation application, filed without the so-called "**written reasons**", does not display that lack of these "**written reasons**" made it difficult or was prejudicial in compiling this Condonation Application and/or Petition.

10.6.7. In the light of the abovementioned, It is my respectful submission that RAMADIBA and her Legal Representatives have not shown good cause and have not made out a case for the above Honourable Court to exercise its

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discretion in favour of condoning the delay in  
***“launching of this petition”***.

**THE SALIENT AND COMMON CAUSE FACTS**

**10.7. AD PARAGRAPHS 32 TO 60 (THE SALIENT AND  
COMMON CAUSE FACTS)**

Whilst the contents of these paragraphs are **noted**, it is denied that these entire paragraphs contains facts which are ***“common cause”***, based on the following:-

10.7.1. RAMADIBA's application, when it was filed on the **20<sup>th</sup> of December 2010**, reflected, on its Notice of Motion, a set down date of **Tuesday the 18<sup>th</sup> of January 2011**.

This practice of a party allocating him/herself a date, without even obtaining same from the Registrar and/or discussing same with the Registrar of the above Honourable Court, **is unheard of**.

10.7.2. Be that as it may, the first Respondent

*MR*

timeously filed its Notice of Opposition and also attended Court on **Tuesday the 18<sup>th</sup> of January 2011**, in accordance with RAMADIBA's Notice of Motion. Needless to state that RAMADIBA and her Legal Representatives did not attend, hence the abovementioned Court Order by **Molahlehi, J.**

10.7.3. It is denied that RAMADIBA and her Legal Representatives approached the Registrar on **Monday the 17<sup>th</sup> of January 2011** due to ***"lack of response to the letter... and failure to file an answering affidavit"*** because the First Respondent had already filed its Notice of Opposition and RAMADIBA's application was not supposed to have been filed containing their unilaterally allocated date of **Tuesday the 18<sup>th</sup> of January 2011**.

10.7.4. It is neither here nor there as to who was allocated to adjudicate the matter on **Friday the 21<sup>st</sup> of February 2011**.

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10.7.5. The submission made in Court by the First Legal Representatives' Counsel to the effect that RAMADIBA is abusing the Court processes is justified and logical on the basis of, *inter alia*, the manner with which she has pursued her unfair dismissal dispute, hence even Van Niekerk, J's Judgment of the 13<sup>th</sup> of October 2010 states "***the applicant had clearly been less than diligent in prosecuting her claim***".

10.7.6. In all instances, the First Respondent's Legal Representatives have endeavoured and subsequently been timeous in adhering to the above Honourable Court's Directives, including serving and filing of the Heads of Arguments in the Declaratory Order matter. RAMADIBA's Legal Representatives, in Court, gave bare denials of receipt of the first Respondent's Legal Representatives' Heads of Argument and the Notice of Set Down, despite the fact that proper service by both the

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Registrar and the First Respondent's Legal Representatives was contained in the Labour Courts' file.

10.7.7. The bulk of RAMADIBA's so - called "**common cause facts**", in relation to the Petition, same is irrelevant.

10.7.8. It is denied that the Labour Appeal Court Judgment of the **01<sup>st</sup> of June 2012**, has in any way "**vindicated Counsel who represented me at the hearing on 22 March 2012**" because, *inter alia*, the crux of the LAC Judgment is that "**the order of the Labour Court of 2 February 2011 is set aside**", i.e. Molahlehi, J's Order.

10.7.9. Again, this Judgment does not in any way vindicate "**Counsel who represented me at the hearing on 22 March 2012**" because it also states "**the main ground of Appeal against the judgment is unsurprising. Once a court has pronounced upon a**

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*matter, its decision may not be re-visited. Until its judgment is rescinded, the court is functus officio".*

10.7.10. Lastly, I do not agree that the First Respondent's Legal Representatives **"contributed to the confusion regarding the set down"** because:-

(a) **firstly**, the First Respondent's Legal Representatives attended Court on **Tuesday the 18<sup>th</sup> of January 2011** as per RAMADIBA and her Legal Representative's Notice of Motion filed on the **20<sup>th</sup> of December 2010**;

(b) **secondly**, the First Respondent's Legal Representatives attended Court on **Friday the 21<sup>st</sup> of January 2011** after being notified or informed or becoming aware whilst in Court on **Tuesday the 18<sup>th</sup> of January 2011** that RAMADIBA and her Legal Representatives have

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removed the matter from the roll of  
**Tuesday the 18<sup>th</sup> of January 2011** and  
set it Down on **Urgent Application** roll  
on **Friday the 21<sup>st</sup> of January 2011**.

**THE GROUNDS FOR LEAVE TO APPEAL**

**10.8. AD PARAGRAPHS 61 – 75 (THE GROUNDS FOR  
LEAVE TO APPEAL)**

10.8.1. The contents of these paragraphs are  
**vehemently denied** in so far as they are  
inconsistent with the first Respondent's  
discussion *supra* (**especially paragraphs 9  
[9.1 to 9.7]**).

10.8.2. It suffices to submit that RAMADIBA has no  
case and she is simply clutching the straws on  
an imaginary case.

10.8.3. In fact, from the perusal of these so-called  
**"grounds for leave to appeal"** it appears that  
RAMADIBA and her Legal Representatives

have lost focus of what they are actually appealing because they seem to be focused on the "*lis pendens*" issue and "*merits of the main application under case number J2568/10*" rather than **Rabkin-Naicker, J's** first and third paragraphs Order.

10.8.4. It is patently clear that the petition as it stands and the reasons furnished to support the grounds for Leave to Appeal are based on irrelevant and unmerited submissions by RAMADIBA and her Legal Representatives.

It is accordingly denied that **Rabkin-Naicker, J's** finding/conclusion is wrong or that she misdirected herself.

#### **AD COSTS ISSUE**

#### **10.9. AD PARAGRAPHS 76 TO 80 (AD COST ISSUE)**

10.9.1. The contents of these paragraphs are **vehemently denied** in so far as they are inconsistent with the First Respondent's





discussion *supra* (especially paragraphs 7.3, 7.4, 7.5 and 7.6, including paragraphs 8.3 to 8.8).

10.9.2. It suffices to add and/or state that due to the history of this matter and the manner, conduct and way with which RAMADIBA has pursued this dispute, her conduct and that of her Legal Representatives, warrants an investigation by the relevant Law Society and/or Bar Council as reflected in **Rabkin-Naicker, J's** judgment.

10.9.3. Lastly, costs *de bonis propriis* in the present matter is justified because, **among other things**, it is my belief that the present RAMADIBA's Legal Representatives should and ought to have advised her against referring the frivolous and vexation Declaratory Order under **Case Number J.2568/2010** filed on the 20<sup>th</sup> of December 2010, i.e. **five (5) years** after her dismissal, **two (2) months** after the Leave to Appeal

was refused and still pursue with even after the Labour Appeal Court has refused petition on the 04<sup>th</sup> of May 2011 under case number JA.90/10.

**10.10. AD PARAGRAPHS 81 TO 83 (“I DID NOT SEEK LEAVE TO APPEAL AGAINST PARAGRAPH 2 OF THE ORDER OF RABKIN NAICKER, JU IN HER JUDGMENT OF 22 MARCH 2012”).**

10.10.1. It is noteworthy that to date RAMADIBA and her Legal Representatives have not re-enrolled the matter, instead she states in her Affidavit *“I would in the normal cause simply prepare an Affidavit explaining the reasons why the matter was struck off the roll and asked for same to be re-enrolled for hearing”*.

10.10.2. It is also vivid that RAMADIBA has no reason(s) why almost a year (10 months) after Rabkin Naicker, J's judgment such re-enrolment has not taken place. I can only

submit that the logical reason(s) why same has not been done, is primarily because RAMADIBA realised that her Declaratory Order matter is frivolous and vexatious and that the present Leave to Appeal and Petition is merely pursued in an effort to save her Legal Representative's face in the light of the first and third paragraphs Order of **Rabkin-Naicker, J's** judgment.

10.10.3. It should also be noted that **Rabkin-Naicker, J's** judgment does not in any way, whatsoever, precludes RAMADIBA's Legal Representatives from representing her, hence it is unfounded for RAMADIBA to allege ***"The judgment and order of Rabkin-Naicker J clearly has the effect of denying me these basic and fundamental rights and thus seriously prejudicial to me"***.

10.10.4. It is also incorrect and wrong for RAMADIBA to conclude that ***"paragraph 1 of the order effectively comprises and/or outst my legal***

*MV*

*team*” because her Legal team has not been barred or precluded from practicing and/or representing.

10.10.5. Lastly, the contents of **paragraphs 81 to 83** are **vehemently denied** in so far as they are inconsistent with the submissions *supra* (**paragraphs 7.12 and 7.13**).

#### **RELIEF SOUGHT**

#### **10.11. AD PARAGRAPHS 84 TO 86 (RELIEF SOUGHT)**

10.11.1. The contents of these paragraphs are **vehemently denied** in so far as they are inconsistent with the first Respondent’s *supra* (**paragraphs 9.1. to 9.7**).

10.11.2. It suffices to state that RAMADIBA’s Petition has no merits and there is no possibility that another Court can come to a different conclusion than the judgment of **Rabkin-Naicker, J’s** judgment.

*MP*

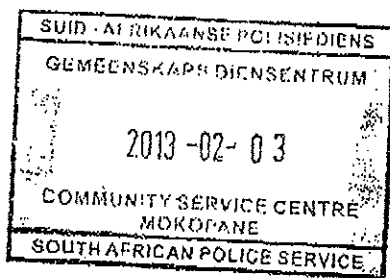
10.11.3. In a nutshell, the above Honourable Court is requested to order punitive costs against RAMADIBA and costs *de bonis propriis* against her Legal Representatives.

**WHEREFORE**, the first Respondent hereby request that the Applicant's Petition be dismissed with costs.

MR Ntsonke

**DEPONENT**

Thus done and sworn to before me on this 03 day of FEBRUARY 2013, the Deponent having acknowledged to me that she knows and understands the contents of this Affidavit. 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.



[Signature]  
**COMMISSIONER OF OATHS**

IN THE LABOUR APPEAL COURT OF SOUTH AFRICA  
HELD AT BRAAMFONTEIN

In the matter between:

CASE NO: J2568/2010

RAMADIBA: MOTLATSO ANGELINA

Appellant

and

LIMPOPO LEGISLATURE

1<sup>st</sup> Respondent

MAAKE: JOSIAS SELLO N.O.

2<sup>nd</sup> Respondent

COMMISSION FOR CONCILIATION,

MEDIATION AND ARBITRATION ("CCMA")

3<sup>rd</sup> Respondent

EVA NGOBENI N.O.

4<sup>th</sup> Respondent

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**APPLICANT'S HEADS OF ARGUMENT**

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1. This matter involves an application by the Applicant for declaratory orders in terms of Rule 7, read with Section 158(1)(a)(iv) of the LRA.

**Notice of Motion:** p 1, para 1 to p 3, para 8;

**LRA Section 158(1)(a)(iv);**

**Labour Court Rule 7**

2. It is common cause that disputes referred to the Third Respondent, the CCMA for conciliation, mediation or arbitration are required to be allocated to and decided

upon by Commissioners of the Third Respondent. A senior case manager or official such as the Fourth Respondent is not empowered in terms of the LRA to pronounce upon or make decisions in respect of such disputes, rather she may only allocate same to Commissioners.

**LRA Sections 191, read with Sections 135 & 136**

3. It is also common cause that the order of 7 November 2006 made by Broster AJ did not set aside the referral of the dispute by the Applicant to the Third Respondent under CCMA case number LP1170/05. That order only affected the ruling made by Commissioner Ramotshela on 20 May 2005.

**Founding Affidavit:** p 18, para 37;

**Annexure "D7",** p 40;

**Annexure "D6",** pp 38 to 39;

**Annexure "D8",** p 43, paras 2.18 and 2.19

4. It is further common cause that the Applicant never withdrew her referral of the dispute under CCMA case number LP1170/05 and that same is still extant before the Third Respondent.

**Founding Affidavit:** p 18, para 36;

**Annexure "D8",** p 44, paras 2.25 & 2.27

5. It is furthermore common cause that at the conciliation hearing which resulted in

the ruling of Ramotshela of 20 May 2005, the First Respondent challenged the jurisdiction of the Third Respondent on the basis of a point *in limine* of *lis alibi pendens*. The basis of such defence was that the Applicant had instituted application proceedings in the Labour Court dealing with the same facts and issues under case number JR3166/04.

**Founding Affidavit:** p 12, para 19;

**Annexure “D6”**, pp 38 to 39

6. It is also common cause that subsequent to the First Respondent’s challenge of the jurisdiction of the Third Respondent based on *lis pendens* and after the ruling of Ramotshela of 20 May 2005, the Applicant withdrew the application proceedings in the Labour Court under case number JR3166/04, and the result was that only the case referred by the Applicant to the Third Respondent under CCMA case number LP1170/05 remained.

**Founding Affidavit:** p 13, para 22;

**Annexure “D3”**, pp 33 to 34;

**Annexure “D4”**, pp 35 to 36

7. It is respectfully submitted that it is trite law that a plea of *lis pendens* only has a dilatory effect in staying the proceedings involved, and that if one of the proceedings involved is withdrawn the effect of the *lis pendens* plea falls away and the remaining process has to take its course.

**Stephen Peté et al:** “Civil Procedure, a Practical Guide”, (2<sup>nd</sup> Ed),



p 175, para 2.3.1(c)(ii)(b);

**Herbstein & Van Winsen:** “The Civil Practice of the High Courts of South Africa”, (5<sup>th</sup> Ed), Vol 1, p 313, para (iv) *et seq*

8. Accordingly, it is respectfully submitted that the defence of *lis pendens* raised by the First Respondent in respect of the conciliation proceedings which resulted in the ruling of 20 May 2005 by Ramotshela did not dispose of the referral of the dispute by the Applicant to the Third Respondent under case number LP1170/05, but merely had a staying effect which fell away once the Applicant withdrew the application in the Labour Court under case number JR3166/04. Broster AJ’s order of 7 November 2006 also had the same effect.
9. In the circumstances, it is respectfully submitted that the Fourth Respondent’s advice or directive of 4 December 2000 (sic), as contained in Annexure “D5” is not only *ultra vires* her powers, but also wrong in law and untenable.
10. It is respectfully submitted that the Applicant is entitled to the declaratory orders in that there is a clear dispute or uncertainty about the validity or the effect of the administrative action of the Fourth Respondent as contained in Annexure “D5” and the Applicant is a person who has a direct and real interest in the questions of law enquired into in this matter. A determination of such questions will *inter*

*alia* entitle the Applicant to continue with the prosecution of the dispute referred by her to the Third Respondent under CCMA case number LP1170/05.

**TAU v Minister of Agriculture & Land Affairs (1) 2003(4) SA 397** at 403 B to 404 A, and the authorities cited therein.

11. It is common cause that the First Respondent does not deal with the merits of the matter and also does not deal with the specific allegations in the Applicant's Founding Affidavit. Consequently the Court must accept the Applicant's version.
  
12. In the premise, it is respectfully submitted that it may please the Honourable Court to grant the Applicant relief in terms of prayers 1 to 8 of the Notice of Motion and that the First Respondent, alternatively the Third Respondent, further alternatively both the First and Third Respondents pay the costs of the application, jointly and severally, the one paying the others to be absolved, on the scale as between attorney and own client, alternatively attorney and client scale.

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ADV G SHAKOANE

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ADV R M RAMOSHABA  
Applicant's Counsel  
Chambers  
6 March 2012

**IN THE LABOUR COURT OF SOUTH AFRICA  
(HELD AT BRAAMFONTEIN)**

**CASE NUMBER: 2568/10**

In the matter between:

**RAMADIBA MOTLATSO ANGELINA**

Applicant

And

**LIMPOPO LEGISLATURE**

1<sup>ST</sup> Respondent

**MAAKE JOSIAS SELLO N. O.**

2<sup>ND</sup> Respondent

**COMMISSION FOR CONCILIATION, MEDIATION  
AND ARBITRATION ("CCMA")**

3<sup>RD</sup> Respondent

**NGOBENI EVA N. O.**

4<sup>TH</sup> Respondent

---

**NOTICE OF OPPOSITION TO APPLICANT'S PETITION TO THE PRESIDENT  
OF THE LABOUR APPEAL COURT**


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**BE PLEASED TO TAKE NOTICE THAT** the First Respondent intends opposing the Applicant's Petition to the President of the Labour Appeal Court of South Africa.

**TAKE NOTICE FURTHER THAT** the First Respondents will duly file its Answering Affidavit upon receipt of the Applicant's application in compliance with the relevant Rule(s) i.e. not at its present defective format.

**AND TAKE NOTICE FURTHER THAT** the First Respondent will accept service of all notices and pleadings in this Application at the address stipulated herein below.

**DATED AND SIGNED AT ROODEPOORT ON THIS THE 31<sup>ST</sup> DAY OF DECEMBER 2012.**



---

**LOKWE LEBURU ATTORNEYS**  
**Attorneys for First Respondent**  
**No. 1 Mare 7 Cnr Van wyk Streets**  
**Titania Building**  
**ROODEPOORT**  
**Tel: (011) 760 – 5542/763 – 3086**  
**Fax: (011) 763 – 3300**  
**Ref: S. LOKWE**

**TO: THE REGISTRAR OF THE LABOUR COURT  
ARBOUR SQUARE  
BRAAMFONTEIN**

**AND TO: M S MALATSI ATTORNEYS**

**Applicant's Attorneys**

**c/o NDEKWE ATTORNEYS**

**49B Die Uitsig Pad**

**Eldoraigne, Ext 3**

**CENTURION**

**Cell: 082 896 2214**

**Fax: 086 553 8500**

**Ref: CN – RAM-0074**

**AND TO: PETER MHANGWANI ATTORNEYS**

**Applicant's Legal Representative's Attorneys**

**310 Centenary Building**

**23 Bureau Lane**

**PRETORIA, 0002**

**Ref: Mr. P Mhangwani**

**Tel: (012) 753 – 3659**

**Fax: 086 577 4530**

**AND TO: CCMA LIMPOPO PROVINCE**  
**3<sup>RD</sup> Respondent**  
**c/o CCMA HOUSE**  
**104 Hans van Rensburg Street**  
**POLOKWANE**  
**Private Bag X9512**  
**POLOKWANE, 0700**  
**Tel: (015) 297 – 5010**  
**Fax: (015) 297 – 1649**

**AND TO: EVA NGOBENI N. O.**  
**4<sup>TH</sup> Respondent**  
**c/o CCMA HOUSE**  
**104 Hans van Rensburg Street**  
**POLOKWANE**  
**Private Bag X9512**  
**POLOKWANE, 0700**  
**Tel: (015) 297 – 5010**  
**Fax: (015) 297 – 1649**

"MAI"

J2568/10-mb

1

JUDGMENT

IN THE LABOUR COURT OF SOUTH AFRICA

HELD AT BRAAMFONTEIN

CASE NO: J2568/10

DATE: 2012-03-22

In the matter between

**RAMADIBA, MOTLATSO ANGELINA**

Applicant

and

**LIMPOPO LEGISLATURE AND OTHERS**

Respondent

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JUDGMENT

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10

RABKIN-NAICKER, J:

This matter came before me today and I advised the parties that my *prima facie* view was that the merits of the matter could not be properly before this Court as will appear from my judgment below. The legal representatives have submitted various arguments on that basis. The history of the matter may be gleaned under court file numbers JR3166/04, JR1398/05, JR152/09, JR90/10 and J2568/10.

I do not intend to burden this Court's time setting out the history of this matter in detail, it is apparent from the file, suffice to say that the  
20 Notice of Motion in the matter before me, came before My Brother Molahlehi J on 18 January 2011, wherein he dismissed the application.

On 21 January 2011, the matter came before him again and in a judgment handed down on 2 February 2011 under case number J2568/10, he stated in paragraph 2:

"The reason for the dismissal of the application on

M.A.R

18 January 2011, was essentially because the applicant did not appear when the matter was heard. The other reason was that the Court accepted the argument of the first respondent that the applicant in his papers, did not make out a case on the papers before Court."

The Court dismissed the application for the declaratory orders, the precise application before this Court, and ordered the applicant to pay the costs on an attorney and own client scale. What is particularly relevant here, is that Molahlehi J granted leave to appeal his judgment and a Notice of Appeal against the whole of the judgment and order handed down by him on 2 February 2011, was noted.

The Notice of Appeal includes the following words:

"That the appellant hereby notes her appeal to the Labour Appeal Court of South Africa against the whole of the judgment and order delivered and made by the Honourable Mr Justice Molahlehi, the court *a quo* on 2 February 2011, dismissing the appellant's application for declaratory orders and ordering the appellant to pay the cost on an attorney and own client scale on the following grounds."

It then proceeds to set out the grounds. I wish to emphasise that the appeal is against the dismissal of the application for declaratory orders and that application sits before me today. I agree with the submissions made on behalf of the first respondent in their Heads of Argument, that there is no basis for the applicant to ask this Court to

M-A-R



make a new order nullifying the effect of its earlier order of 2 February 2011.

Further, the matter is *lis pendens* and is pending hearing in the Labour Appeal Court. On 8 May 2012 at 10:00, the matter will be heard.

With regard to costs, I have heard submissions on behalf of the applicant that the attorney of record for applicant's facsimile number has changed and counsel for applicant has assured me from the Bar that he would have given different advice to his instructing attorneys  
10 had he read the Heads of Argument of the Respondent for this hearing today:

Even taking into account those submissions, in my view, the conduct of this matter is the most glaring example of vexatious litigation that I have come across, and in my view it amounts to a disrespect and contempt of this Court.

I am very concerned that the applicant is not being properly served by her legal team. I therefore make the following order:

1. The Registrar is directed to make the contents of this file  
20 available to the Judge President and/or Deputy Judge President for perusal, in order that they may consider whether the legal team for the applicant should be reported to the relevant Law Society and/or Bar Council.
2. The application before me is struck off the roll.
3. The applicant's attorneys are ordered to pay the costs of this

M.A.R.

application *de bonis propriis*.

H Rabkin-Naicker

Rabkin-Naicker J

MAR



Labour Courts  
 Private Bag X52  
 Braamfontein, 2017  
 86 Juba Street  
 Braamfontein, 2016  
 Tel: (011) 359 5766  
 Fax: 086 644 7411

# FAX SHEET

To: MS MALATSI ATTORNEYS.

Attention: CN-RAM-0074

Fax no: 086 553 8500

From: Mr Phophi

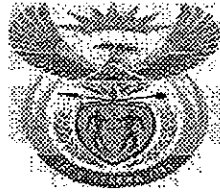
Date: 06-05-2013

Pages: 1 (excluding cover)

Re: JAB/13

**Message**

Herewith attached is the LAC order in the petition for leave to
appeal.



**LABOUR APPEAL COURT OF SOUTH AFRICA  
HELD AT JOHANNESBURG**

Case no.: JA3/13

On the 3<sup>rd</sup> day of May 2013

In the matter between:

RAMADIBA MOTLATSO ANGELINA

PETITIONER

And

LIMPOPO LEGISLATURE

1<sup>ST</sup> RESPONDENT

MAAKE, JOSIAS SELLO N.O.

2<sup>ND</sup> RESPONDENT

COMMISSION FOR CONCILIATION, MEDIATION

AND ARBITRATION

3<sup>RD</sup> RESPONDENT

NGOBENI, EVA N.O.

4<sup>TH</sup> RESPONDENT

---

**ORDER**

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Having read the petition and considered the matter, the Court made the following order in this matter:

- “1. The petition for leave to appeal is granted in respect of the punitive order of costs made by the Labour Court. This leave to appeal may, however, only take effect once the principal application under case number: J2568/10 has been finalised in the Labour Court.
  
2. The Registrar of the Labour Appeal Court must be informed once the principal application has been finalised, where after, he will issue the necessary notice indicating the time limits within which the record must be filed.”

BY THE COURT

  
REGISTRAR

