

7. Prior to filing this application, MMA wrote a letter to the parties requesting consent for MMA to be admitted as an *amicus curiae* in this matter. This letter is attached hereto marked “*WRB1*”.

7.1. On 16 July 2021, the complainant provided MMA with consent to its request to be admitted as an *amicus curiae*. This letter is attached hereto marked “*WRB2*”.

7.2. No response has been received from the respondent. If one is provided, this will be placed before this Court via a supplementary affidavit.

MMA’S INTEREST IN THE PROCEEDINGS

8. MMA is a not-for-profit organisation that operates in the public interest to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent. To avoid unduly burdening these papers, I have not attached the MMA Trust Deed, but it can be provided should the need arise.
9. In the last 28 years, MMA’s work has consistently related to key human rights issues, always with the objective of promoting democracy, human rights, and encouraging a just and fair society. MMA has and continues to play an active role in media monitoring and seeks to proactively engage with media, civil society organisations, state institutions and citizens, and in doing so advocates for freedom of expression and the responsible free flow of information to the public on matters of public interest.
10. MMA has a keen interest in navigating the appropriate balance to be struck between freedom of expression and other competing rights and interests, as is evidenced by its involvement in a range of policy, legislative and advocacy processes. Notably, MMA has made a variety of submissions that relate to the triad of information rights which include the rights to privacy, freedom of expression and access to information. These include submissions to:

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- 10.1. The Department of Justice and Constitutional Development the draft bill on the Prevention and Combatting of Hate Crimes and Hate Speech Bill;
 - 10.2. The Information Regulator on the Draft Regulations of the Personal Information Act 4 of 2013;
 - 10.3. The Select Committee on Security and Justice of the National Council of Provinces on the Cyber Crimes Bill;
 - 10.4. The Portfolio Committee on Justice and Correctional Services on the Promotion of Access to Information Amendment Draft Bill;
 - 10.5. The Competition Commission on the Data Services Market Inquiry;
 - 10.6. ARTICLE 19 on the consultation paper regarding Social Media Councils; and
 - 10.7. The Independent Communication Authority of South on the Discussion Document on the Market Inquiry into Mobile Broadband Services in South Africa.
11. Further to this, MMA has participated in numerous matters as a party or an amicus curiae, including the following:
- 11.1. As an applicant before the Constitutional Court in *Centre for Child Law v Media 24 Limited*,¹ in which the best interest of the child and their rights to equality, privacy and dignity were balanced against freedom of expression and the principle of open justice;

¹ [2019] ZACC 46.



- 11.2. As an amicus curiae before the Supreme Court of Appeal in *Van Breda v Media 24; National Director of Public Prosecutions v Media 24 Limited and Others*,² where it advanced arguments the regarding appropriate circumstances under which the right to freedom of expression can be limited, particularly when it is necessary to protect the rights of vulnerable persons, especially children;
- 11.3. As an amicus curiae before the Constitutional Court in *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku*,³ where it considered section 16 of the Constitution, and the interplay with the right to offend, shock and disturb, taking into account South Africa's repressive history of speech regulation; and
- 11.4. As an amicus curiae before the Constitutional Court in *Amabhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others*,⁴ where it advanced arguments for the protection of children and civil society actors in the context of South Africa's current surveillance regime which unjustifiably infringes on the right to privacy and associated constitutional rights, including freedom of expression.
- 11.5. As an amicus curiae before the Supreme Court of Appeal in *Economic Freedom Fighters and Others v Manuel*,⁵ where it advanced submissions on the unique content created by social media platforms, with a particular focus on the harmful nature of disinformation distributed via such platforms.
12. In addition to this, I have spoken on numerous occasions about issues pertaining to the exercise of freedom of expression online and the appropriate limits that are applicable thereto. This has included, for instance, participating in an expert group on disinformation hosted by the University of Essex along with academics, civil society and

² [2017] ZASCA 97.

³ Case No. CCT 14/19.

⁴ [2021] ZACC 3.

⁵ [2020] ZASCA 172.



United Nations (UN) bodies, as well as speaking at a workshop hosted by the Independent Electoral Commission and the UN Development Programme on combatting online harms during election periods in Africa.

13. The present matter raises important questions related to new media platforms, in particular social media platforms, and the tension between freedom of information and harassing content. Social media platforms facilitate the exchange of information and ideas from diverse sources and create space for people to exercise their right to freedom of expression. However, with these new platforms, new challenges have arisen in terms of the spreading of wrongful and harmful publications. As a result of these challenges, there is a need for courts to grant appropriate, effective and expeditious remedies for persons who have been harmed online and in the broader public interest.
14. MMA respectfully submits that it well-placed to provide this Court with assistance regarding the legal issues that arise in this regard in the context of the present appeal.
15. Moreover, given MMA's established track record of acting in the public interest in matters relating to the advancement of the constitutional right to freedom of expression and competing rights and interests, MMA respectfully submits that it would be of assistance to the Court for it to be provided with legal submissions that do not emanate from only the parties to this dispute.

SUBMISSIONS TO BE ADVANCED BY MMA

16. If admitted as an amicus curiae, MMA seeks to focus on three discrete issues, which MMA respectfully submits will be of use to the Court in its adjudication of this matter. MMA's submissions in this regard are briefly summarised below, and will be expanded upon in the event that MMA is granted leave to file written submissions and present oral argument at the hearing of this matter.



Appropriate balance to be struck between the right to freedom of expression and other competing rights and interests

17. The right to freedom of expression is a crucial right, both in itself and as an enabler of a range of other rights. Provided for in section 16 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), it has been described by the Constitutional Court as “a *sine qua non* for every person’s right to realise his or her full potential as a human being”.⁶ In *South African National Defence Union v Minister of Defence and Another*, the Constitutional Court held:⁷

“Freedom of expression lies at the heart of a democracy. It is valuable for many reasons, including its instrumental function as a guarantor of democracy, its implicit recognition and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally. The Constitution recognises that individuals in our society need to be able to hear, form and express opinions and views freely on a wide range of matters.”

18. According to Milo and Singh, the broad formulation contained in section 16(1) of the Constitution applies regardless of the medium through which the expression is conveyed; this includes the typical forms of communication, such as publishing and broadcasting, as well as newer forms, such as blogging and tweeting.⁸ The Constitutional Court has further accepted that the right to receive or impart information or ideas is applicable “not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb”.⁹ According to the Constitutional Court, freedom of expression extends “even where those views are controversial. The corollary of the freedom of expression and its related rights is tolerance by society of different views. Tolerance, of course, does not require

⁶ *Case and Another v Minister of Safety and Security and Others; Curtis v Minister of Safety and Others* [1996] ZACC 7 at para 26.

⁷ [1999] ZACC 7 at para 7.

⁸ Milo and Singh “Freedom of expression” in Brickhill (ed.) *Public Interest Litigation in South Africa* (2018).

⁹ *De Reuck v Director of Public Prosecutions (Witwatersrand Local Division) and Others* [2003] ZACC 19 at para 49.

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approbation of a particular view. In essence, it requires the acceptance of the public airing of disagreements and the refusal to silence unpopular views”.

19. The right to freedom of expression is, however, not absolute, and any limitation of the right requires a careful balance of competing rights and interests in accordance with section 36 of the Constitution. According to Milo and Singh, a three-part test can be distilled when assessing whether a limitation to the right to freedom of expression can pass constitutional muster:¹⁰

“Step 1: Is the expression excluded in terms of s 16(2) of the Constitution? If yes, that is the end of the enquiry. If not, then the expression is protected under s 16(1) and it is necessary to move on to the next step.

Step 2: Is there a common law rule or statutory provision that limits the protection of freedom of expression? If yes, then it is necessary to move on to the next step. If not, that is the end of the enquiry.

Step 3: Is the limitation of freedom of expression reasonable and justifiable, as contemplated under the general limitations clause in s 36 of the Constitution? If yes, the law permissibly limits freedom of expression. If not, then the law is an impermissible limitation of freedom of expression.”

20. In determining whether the impugned tweets constitute harassment in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (“PEPUDA”), this Court will necessarily be called upon to determine the appropriate balance to be struck between the respondent’s right to freedom of expression, weighed against the broader public interest in the protection from harassment online. In doing so, the Court will also be asked to grapple with the unique context presented by social media platforms in the dissemination of content online.

¹⁰ Milo and Singh, above n 8.

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21. Accordingly, MMA seeks to assist the Court by making submissions on the limitations analysis that will need to be conducted in line with sections 16 and 36 of the Constitution, when read together with PEPUDA.

Nature of harassment online

22. The prohibition against harassment contained in PEPUDA is technology-neutral, in that it applies equally whether such harassment is committed on- or offline. However, the reality is that, in the digital era, harassment online raises nuanced and complex considerations when regard is had to the speed with which the content is spread and the amplified audience to which it is addressed. MMA accordingly seeks to make submissions on these unique considerations in determining the impact that the impugned tweets had on the public discourse and in the public interest.
23. A further consideration that arises is in respect of who constitutes the so-called reasonable reader on a social media platform. MMA submits that this is a critical question, and will rely on comparative law from other jurisdictions to assist the Court in answering this question. For instance, in the United Kingdom judgment of *Stocker v Stocker*, it was held that:¹¹

“The advent of the 21st century has brought with it a new class of reader: the social media user. The judge tasked with deciding how a Facebook post or a tweet on Twitter would be interpreted by a social media user must keep in mind the way in which such postings and tweets are made and read.”

24. The court in that matter relied on *Monroe v Hopkins*, which provided guidance on engaging with Twitter posts, wherein the Court noted:¹²

“The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140

¹¹ [2019] UKSC 17 at para 41.

¹² [2017] EWHC 433 (QB).


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character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter.”

25. The Supreme Court in *Stocker v Stocker* endorsed this and held:¹³

“The imperative is to ascertain how a typical (i.e. an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on.”

26. There are varying considerations regarding how courts, in the context of online harassment, should understand the reasonable reader. MMA submits that there are three considerations that could inform this understanding: (i) the actual platform as well as the community of users of the platform; (ii) the users who “follow” the original publisher of the potentially harassing statement; and (iii) shared interests with the person responsible for the initial publication.
27. A further argument that MMA seeks to advance is that harassment is exacerbated when coupled with false information, namely mis- and/or disinformation. In the present matter, such false information also impacts the reputation, dignity, credibility and integrity of the persons at whom the tweets were directed in a manner that undermines the exercise of the right to freedom of expression. Through the creation of a false identity, coupled with the falsehoods contained in the impugned tweets, the respondent appears to have manufactured a discourse that was both harmful and impermissible when read in the relevant context.

¹³ *Stocker v Stocker* above n 11 at para 43.

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Appropriate remedy

28. It is well-established in our law that litigants are entitled to a swift and effective remedy where they have successfully proven their claim. This is all the more applicable when dealing with publications online, given the speed with which the publication may be spread and the amplification of the audience. MMA is therefore of the view that courts need to adopt a robust and creative approach towards online harms and, in particular, must ensure that appropriate, effective and expeditious remedies are available in relation to harassment online.
29. In the context of the need for a swift and effective remedy, MMA will seek to draw on international and comparative law to expound the argument that, in the context of harassment online, particularly where there is the reasonable likelihood of this being harmful in nature and coupled with mis- and/or disinformation, a multi-pronged remedy can often be appropriate and necessary. Furthermore, MMA will seek advance arguments on the relevant consideration that the Court should take into account when determining when such an order would be appropriate, and further the measures to be considered in ensuring that any such order is both practicable and effective when dealing with content published on social media platforms.
30. With regard to the importance of an apology, regard will be had to the weight that our courts have placed on such a remedy. For instance, in *Dikoko v Mokhatla*, the Constitutional Court drew a link between the import of an apology and the idea of *ubuntu* or *botho*, stating that:¹⁴

“In our constitutional democracy the basic constitutional value of human dignity relates closely to *ubuntu* or *botho*, an idea based on deep respect for the humanity of another. Traditional law and culture have long considered one of the principal objectives of the law to be the restoration of harmonious human and social relationships where they have been ruptured by an infraction of community norms. It should be a goal of our law to emphasise, in cases of

¹⁴ [2006] ZACC 10 at paras 68-69.



compensation for defamation, the re-establishment of harmony in the relationship between the parties, rather than to enlarge the hole in the defendant's pocket, something more likely to increase acrimony, push the parties apart and even cause the defendant financial ruin. The primary purpose of a compensatory measure, after all, is to restore the dignity of a plaintiff who has suffered the damage and not to punish a defendant. A remedy based on the idea of *ubuntu* or *botho* could go much further in restoring human dignity than an imposed monetary award in which the size of the victory is measured by the quantum ordered and the parties are further estranged rather than brought together by the legal process. It could indeed give better appreciation and sensitise a defendant as to the hurtful impact of his or her unlawful actions, similar to the emerging idea of restorative justice in our sentencing laws.

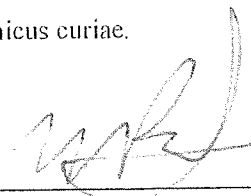
The focus on monetary compensation diverts attention from two considerations that should be basic to defamation law. The first is that the reparation sought is essentially for injury to one's honour, dignity and reputation, and not to one's pocket. The second is that courts should attempt, wherever feasible, to re-establish a dignified and respectful relationship between the parties. Because an apology serves to recognize the human dignity of the plaintiff, thus acknowledging, in the true sense of *ubuntu*, his or her inner humanity, the resultant harmony would serve the good of both the plaintiff and the defendant."

31. It is apparent from our case law that there is a myriad of factors to be taken into account when determining an appropriate remedy, which are all the more complicated when dealing with online harms. MMA seeks to assist this Court by drawing attention to these factors and making submissions on the weight to be attached to each in determining the appropriate remedy in the present matter.

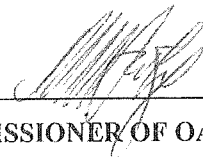


CONCLUSION

32. In the light of the submissions above, MMA requests that this Court grant MMA's application for intervention as an amicus curiae in the present matter. MMA respectfully submits that the arguments MMA that it intends to make are relevant to this matter and will be of assistance to this Court. Accordingly, MMA reserves the right to seek costs against any party that opposes MMA's admission as an amicus curiae.

**WILLIAM ROBERT BIRD**

I hereby certify that the deponent stated that he knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at Parkhurst on this the 20 day of July 2021. The Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

**COMMISSIONER OF OATHS**

MICHAEL RICHARD HARTY
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA
THE ART HOUSE, No. 4, 4th. AVENUE
PARKHURST, JOHANNESBURG



"WRB1"

// POWER SINGH INCORPORATED

LPC Reg. No: F18433 | CIPC Reg. No: 2018/071686/21

Public Interest Law.

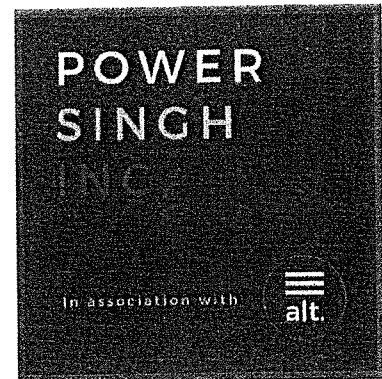
a. 20 Baker Street, Rosebank, South Africa, 2196

t. +2711 268 6881

f. +2786 614 5818

e. connect@powersingh.africa

w. powersingh.africa



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Date: 12 July 2021

Your ref: Case No. 01/2021

Our ref: PSIMM-201912

TO: AZWIDINI VICTOR MAVHIDULA
(ON BEHALF OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION)
 c/o DDKK Attorneys
 Attorneys for the complainant
 By email: mdk@dkkk.co.za / tn@dkkk.co.za


ANTHONY MATUMBA
 c/o Tshilidzi Makuya Attorneys
 Attorneys for the respondent
 By email: antenlegal2@gmail.com

Dear Sir / Madam,

MAVHIDULA (ON BEHALF OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION) //
MATUMBA (CASE NO. 01/2021): REQUEST FOR CONSENT TO BE ADMITTED AS AN AMICUS
CURIAE

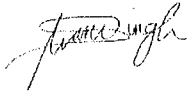
// **Directors:** A Singh B.Comm., LL.B. (UP), M] Power B.A., LL.B., LL.M. (Wits) | **Senior Associate:** T Power B.A., LL.B., LL.M. (Wits).
Associates: T Davis B.A. (RU), LL.B. (UCT), S Khumalo LL.B. (Wits) | **Office Manager:** J Rashid | **Technology Officer:** K Nwana.
 Power Singh Incorporated is a law firm registered with the Legal Practice Council (F18433) and a personal liability company registered in the Republic of South Africa (2018/071686/21).

1. We act for Media Monitoring Africa ("MMA" or "our client"), a not-for-profit organisation that operates in the public interest to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent. In the last 28 years, MMA's work has consistently related to key human rights issues, always with the objective of promoting human rights and democracy.
2. MMA has engaged in a range of legislative and advocacy processes relating to the triad of information rights, which include the rights to privacy, freedom of expression and access to information. This has included, for instance, on issues pertaining to data protection, online content regulation, cybercrimes, copyright, public broadcasting, and various other matters relevant to the exercise of these rights, both on- and offline.
3. MMA has further participated in various litigious proceedings pertaining to the right to freedom of expression, and the appropriate balance to be struck between freedom of expression and other competing rights and interests. This has included, for instance, participating as an applicant before the Constitutional Court in the matter of *Centre for Child Law and Others v Media 24 Limited and Others* [2019] ZACC 46, and as an amicus curiae before the Supreme Court of Appeal in *Van Breda v Media 24 Limited and Others; National Director of Public Prosecutions v Media 24 Limited and Others* [2017] ZASCA 97 and in *Economic Freedom Fighters and Others v Manuel* [2020] ZASCA 172.
4. In line with MMA's particular areas of interest and the work that it pursues, MMA has a clear interest in the present matter, and wishes to participate as an amicus curiae as contemplated in regulation 10(5)(c)(vi) of the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000. Accordingly, we hereby request your client's consent that our client be admitted as an amicus curiae with the opportunity to file an application and make written submissions, as well as to present oral argument, in this matter.
5. MMA does not intend to repeat any matter set forth in the argument of the other parties, and we emphasise that MMA seeks only to address issues that may be useful to the Court in the determination of this matter. In doing so, MMA intends to canvass the following issues, which it submits are relevant to the proceedings and different from those of the other parties to the litigation:
 - 5.1. **First**, MMA seeks to address the appropriate balance to be struck between the right to freedom of expression, on the one hand, and the rights to dignity and reputation, on the other, with a specific focus on the particular context of speech on social media platforms.
 - 5.2. **Second**, MMA seeks to address the nature of harassment online, given the speed with which it spreads and the amplification of the audience, and how the effects of such harassment may be exacerbated in circumstances where this is coupled with the dissemination of intentionally false information (i.e. mis- and/or disinformation).

- 5.3. **Third**, MMA seeks to address the appropriate remedy in such proceedings, including the elements of a swift and effective remedy, the factors to be taken into account in respect of online publications, the particular factors that arise when dealing with dignity and reputation, and the importance of an apology as a remedy.
6. Based on the foregoing, MMA submits that these issues are relevant to the Court in its full consideration of this matter. In making its submissions, MMA will draw on international and comparative law, and seek to offer assistance to the Court in assessing how to deal with the pressing – and global – challenges of balancing competing rights and interests online.
7. In order to enable MMA to properly prepare its application, we request that you advise, in writing, whether you consent to MMA's intervention as an amicus curiae **by no later than 16h00 on Wednesday, 14 July 2021.**
8. We look forward to hearing from you.
9. All our client's rights are reserved.

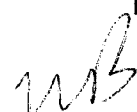
Yours faithfully,



POWER SINGH INC.

Per: Avani Singh | *Director*

E-mail: avani@powersingh.africa



"WRB2"



DDKK

ATTORNEYS • NOTARIES • CONVEYANCERS

19 Watermelon St/Str 19, Platinum Park, Bendor, Polokwane, 0699
 PO Box /Posbus 55, Polokwane, 0700
 Docex: 17, POLOKWANE
 Tel: +27 015 297 3310
 Fax/ Faks: +27 86 617 0297
 E-mail/pos: mdk@ddkk.co.za
 Reg Nr: 1993/006539/21
 BTW/VAT Reg. Nr.: 4160263507

Ons verw: / Our ref: M.C DE KLERK/TN/
 U verw / Your ref: PSIMM-201912/MH005895

POWER SINGH INC

1ST Floor,
 20 Baker Street,
 Rosebank
 South Africa
 2196

16 July 2021

By e-mail: avani@powersingh.africa

Dear Madam,

**MAVHIDULA (ON BEHALF OF THE SOUTH AFRICAN HUMAN RIGHTS
 COMMISSION) // MATUMBA (CASE NO. 01/2021)**

1. We refer to the above matter and your letter dated 12 July 2021.
2. We act for and on behalf of the South African Human Rights Commission ("our client").
3. We confirm that our client has no objection to Media Monitoring Africa being admitted as amicus curiae in this matter.
4. All our client's rights remain reserved.

Yours faithfully

Thulani-Ngcobo

DDKK ATTORNEYS INC.

Member of the phatshoanehenney group of associated firms.
 the phatshoane henney group is an association of independent
 firms, not practising in partnership and with separate liability

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Directors/ Direkteure: Magdaleen de Klerk, Gert Ehlers, Monja Page
 Non-executive director / Nie-ultvoerende direkteur: Matloane John Mophethe
 Assisted by / Bygestaan deur: Thulani Ngcobo

Members of the Turnoveranti Association of South Africa and of
 the South African Restructuring and Insolvency Practitioners Association

**IN THE EQUALITY COURT OF LOUIS TRICHARDT
(HELD AT LOUIS TRICHARDT)**

Case No: 01/2020

In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Applicant

ANTHONY MATHUMBA

Respondent

WITNESSES AFFIDAVIT


I, the undersigned

DR EILEEN IZETTE CARTER


do hereby make oath and say that

1. I am an adult female attorney and Senior Legal Officer in the Limpopo Provincial Office of the South African Human Rights Commission ("**SAHRC**") with its Head Office situated at 33 Hoofd Street, Braampark – Forum III, Braamfontein, Johannesburg.
2. The facts contained herein are, unless otherwise stated or implied by the context, within my personal knowledge and belief and are both true and correct. Where I rely on facts imparted to me by third parties, I verily believe same to be both true and correct and I understand that I may be guilty of an offence if I wilfully state anything herein which I know to be false.
3. I am duly authorised to depose hereto on behalf of the Commission by virtue of my position as a Senior Legal Officer of the Commission in the Limpopo Province.

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4. I am further involved in the oversight as well as investigation of complaints reported to the SAHRC in Limpopo.
5. During or around August 2020 I was provided with a complaint lodged by one Joshua Carstens (the Complainant) with file reference LP/2021/0096 for further handling.
6. The information in the file included a tracing report by Goldview Tracers as well as the media reports referred to by the Complainant identifying the Respondent as one Anthony Mathumba.
7. After internal consultation, as well as a full assessment on the facts available, a decision was made by the Provincial Manager to institute this matter for further ventilation in the Equality Court of Louis Trichardt through the completion of a Form 2 as determined by the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (the "PEPUDA").
8. As the identified Respondent of this matter denied his involvement, the SAHRC continued with the gathering of more information even after the institution of proceedings at the Equality Court on the 9th of September 2020.
9. This included several engagements with the social media platform Twitter Inc, on which platform the impugned statements were made.
10. The aim of the engagement with Twitter Inc was to request assistance in the SAHRC's further investigation into the matter before it.
11. Correspondence in main occurred telephonically between myself and the legal representatives of Twitter's intellectual property rights in South Africa, Von Seidels attorneys Inc. Written correspondence, samples of which is attached hereto as Annexure "A" and "B", was also provided to the representatives in question.
12. As the SAHRC experienced resistance from Twitter in providing the SAHRC with the required assistance to further its constitutionally mandated

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investigations, it approached the clerk of this court on the 9th of June 2021 to assist it with the issuing of a subpoena in terms of regulation 8.

13. On the 23rd of June 2021 I received the information required from Twitter Inc in the form of a disclosure token, and accessed same accordingly. Attached hereto as Annexure "C" is an affidavit from Alexander Howard Yap, the Senior Manager of Legal Policy at Twitter Inc in respect of the information provided.
14. One of the documents provided on this disclosure token platform by Twitter Inc, was titled "1277615543902756866-phone-number.txt". This document, attached hereto as Annexure "D", revealed the cell-phone number used in creating the "Tracy Zille" Twitter account.
15. The number was included as "+27633914979".
16. In order to further assess and investigate the source and ownership of this number, I inserted this number on my cellphone and saved it accordingly. This allowed me to ascertain that the number was registered on the platform "Whatsapp."
17. In visiting the homepage of this number, and under the caption "About and phone number", the following message was revealed:

"Please be patient, you'll receive vacancy links soon at the moment you can go to jobsdepartment.co.za Just be patient !!!! Thank you !!!!"

Please see a screenshot of this message attached hereto as Annexure "E"

18. As per the message provided from the number furnished by Twitter as the creator of the Tracy Zille account, I visited the website "jobsdepartment.co.za" on the 23rd of June 2021. I was unable to find this particular website as it appeared the website was no longer in existence.

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19. In order to determine whether in fact the website ever existed, and to assess further details regarding this website, I visited www.websiteinformer.com, an online portal which describes itself as "a special service for web masters that gathers detailed information on websites."
20. Upon visiting this website, I inserted the details www.jobsdepartment.co.za into the search function.
21. From the information generated from the insertion of the above, the website allowed me to request to see the email used to create the website www.jobsdepartment.co.za.

A screenshot of this website and interface is herewith attached as Annexure "F"

22. In doing so, and clicking on the link "See owners' email address" the following email address was revealed:

sigogo.sigogo@gmail.com

A screenshot of this information is herewith attached as Annexure "G".

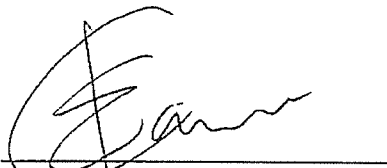
23. At this juncture, I recognised this email address as the email address provided by the Respondent herein, Mr Anthony Mathumba, as his official email address.
24. From the information above, I could therefore conclude the following:
 - a. The number provided from Twitter, which created the "Tracy Zille" account, was registered on Whatsapp.
 - b. This number referred users from Whatsapp to jobsdepartment.co.za
 - c. Jobsdepartment.co.za was created and owned by the email owner of sigogo.sigogo@gmail.com
 - d. Mr Anthony Mathumba, the Respondent in this matter, is the owner of sigogo.sigogo@gmail.com

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e. A clear and unfettered link therefore existed between the creator of the Tracy Zille account, and Mr Anthony Mathumba.

25. Lastly, it should also be noted that I called this number in order to further determine the owner of the account; however, it has repeatedly gone to a voicemail receiver. It appears from our attempts that the number is no longer in use.

26. I have further read the supporting affidavit deposed to by Mr Azwidini Victor Mavhidula and confirm its contents insofar as they relate to me.



Dr E I Carter
Deponent

I **CERTIFY** that the deponent has acknowledged that he knows and understands the contents of this affidavit and has no objection to taking the prescribed oath. Thus done, signed and sworn to before me, at Polokwane on this the 30th day of July **2021**, in terms of the Regulations contained in Government Notice No. R.1258 dated 21 July 1972 (as amended) and Government Notice No. R.1648 dated 19 August 1977 (as amended), which have been complied with.



COMMISSIONER OF OATHS

Name:	Bianca de Vries
Address:	Commissioner of Oaths/ Kommissaris van Ede
Capacity:	Appointed i.t.o. Act 16 of 1963 Aangestel i.t.v. Wet 16 van 1963 25 Bodenstein St / Bodensteinstr 25 Polokwane 0699



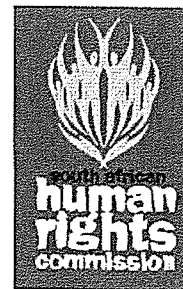
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SOUTH AFRICAN HUMAN RIGHTS COMMISSION

29A Biccard Street
Polokwane
0699

PO BOX 4431
Polokwane
0700

Tel.: 015 291 3500
Fax: 086 608 4097



Date: 10 February 2021

Ms Christine Strutt
Von Seidels Intellectual Property Attorneys
4 East Park, Central Park on Park Lane
Century City
Cape Town
7441
South Africa

Per email: cstrutt@vonseidels.com

Our Ref: LP/2021/0096

ENQ: DR E CARTER SAHRC

Dear Sir/Madam,

RE: REQUEST FOR ACCOUNT INFORMATION

1. The South African Human Rights Commission is a constitutional body created under Chapter 9 of the Constitution of the Republic of South Africa.
2. The mandate of the Commission as contained in Section 184 of the Constitution of the Republic of South Africa, Act 108 of 1996 is as follows:
 1. The South African Human Rights Commission *must* –
 - a) promote respect for human rights and a culture of human rights;
 - b) promote the protection, development and attainment of human rights; and
 - c) monitor and assess the observance of human rights in the Republic.

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2. Under Section 184(2) of the Constitution, the Commission is empowered to *investigate* and to report on the observance of human rights *and to take steps to secure appropriate redress where human rights have been violated.*
3. The Commission has additional powers as regulated by national legislation including the South African Human Rights Commission Act 40 of 2013 (SAHRC Act") and Promotion of Equality and Prevention of Unfair Discrimination Act 1 of 2000 ("Equality Act").
4. In terms of section 13(3) (b) of the SAHRC Act, the Commission is competent to bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons.
5. Section 15 (1) of the SAHRC further determines as follows:

The Commission may, in order to enable it to exercise its powers and perform its functions-

Through a commissioner, or any of staff duly authorised by a commissioner, require from any person such particulars and information as may be reasonably necessary in connection with any investigation.

6. The Commission is further mandated to serve a notice on any person, to appear before it and produce to it articles or documents in the possession or custody or under the control of such person and which may be necessary in connection of that investigation.
7. In September 2020 the Commission undertook an investigation into prima facie human rights violations in the form of hate speech and harassment posted on Twitter by a user, one "Tracy Zille" based within the borders of South Africa. Our office notes that the same prohibitions captured by national legislation such as the Constitution and PEPUDA, are reflected in Twitter's *Hateful Conduct Policy*¹.

¹ <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy> (accessed 5/2/21)

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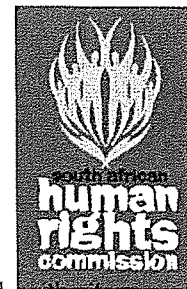
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8. Conversely, jurisdiction settled within the Commission and it commenced with its mandated investigation through its Provincial Office based in Limpopo, under the file reference **LP/2021/0096**.
9. **As part of its authorised investigations, the Commission requires further details in respect of the account used to distribute, propagate and publicise hate speech and harassment as per the definition currently provided for in section 6 and 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act 2000, and in line with paragraph 5 and 6 *supra*.**
10. The information required, is as follows:
 - 10.1 All account information and identifying details in the possession of Twitter in respect of the user associated with the @TracyZille Twitter account with user ID 1277615543902756866 including but not limited to any account registration information, email addresses, phone numbers, IP addresses and account access logs;
 - 10.2 All account information and identifying details in the possession of Twitter in respect of the user associated with the @MatumbaAnthony Twitter account with user ID 1222197599672971271 including but not limited to any account registration information, email addresses, phone numbers, IP addresses and account access logs;
11. **It is to be noted that the Commission attempted to make use of the online portal at https://legalrequests.twitter.com/forms/landing_disclaimer however the Commission's official email address inserted was not recognised so as to provide for further engagement and access.**
12. **The Commission therefore requests the cooperation and assistance from Twitter through its duly mandated representatives, to enable it to proceed with its investigations herein as called for by the relevant national legislation. The Commission also aims to foster a working relationship between itself and your offices in order to address and curb the spread of human rights abuses through social media platforms, within its jurisdiction.**

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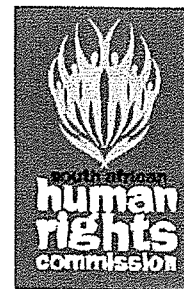
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Should you require any further information in this regard please feel free to contact Dr E Carter on ecarter@sahrc.org.za or 0726389016

We trust the above is in order and await your timeous response herein.

Yours Faithfully

Victor Mavhidula (Mr)
Provincial Manager:LP
SAHRC
SOUTH AFRICA

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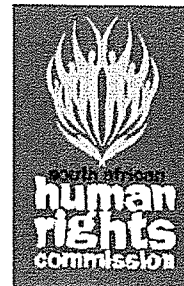
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0700

Tel.: 015 291 3500
Fax: 086 608 4097



Date: 12 March 2021

Twitter, Inc.

San Francisco

Per email: support@twitter.com

Your ref: Case# 0197596992

Our Ref: LP/2021/0096

ENQ: DR E CARTER SAHRC

Dear Sir/Madam,

RE: REQUEST FOR ACCOUNT INFORMATION

1. Your response dated 11 March 2021 to the request for information from the South African Human Rights Commission (the Commission) refers.
2. In your response, you indicate as follows:
 - a. Twitter's Policy is to aid in pending criminal investigations in foreign countries IF these are issued into MLA or letters rogatory
 - b. That the Commission must follow one of these processes for Twitter to consider releasing information to it.
3. The Commission was established by the Constitution of the Republic of South Africa and has jurisdiction to inter alia investigate prima facie human rights violations within the country. We attach the Constitution of the Republic of South Africa herewith for your perusal. Please refer to Chapter 9 thereof.
4. The Commission therefore **must** –
 - a) promote respect for human rights and a culture of human rights;
 - b) promote the protection, development and attainment of human rights; and

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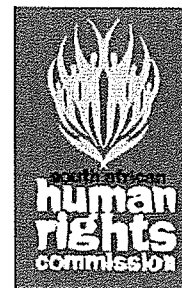
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- c) monitor and assess the observance of human rights in the Republic.
2. Under Section 184(2) of the Constitution, the Commission is empowered to *investigate* and to report on the observance of human rights *and to take steps to secure appropriate redress where human rights have been violated*.
3. The current information required thus forms part of a legitimate constitutionally mandated investigation, which the Commission, as South Africa's human rights watchdog, *must* undertake.
4. Although South Africa has a mutual legal assistance agreement in place with the United States of America, which entered into force on the 25th of June 2001, the current investigation does not relate to a criminal investigation. Your response to our request is therefore misconstrued.
5. In respect however of the Twitter Rules and Policies under the paragraph "Requests for Twitter account information" the following is stated:

"Non-public information about Twitter users will not be released to law enforcement except in response to appropriate legal process such as a subpoena, court order, other valid legal process"
6. In view of Twitter's policy, we therefore refer to paragraph 5 above where Twitter acknowledges "other legal processes" under which it may release information.
7. We maintain the investigation mandate of the Commission necessitates Twitter to consider providing it with the information required under said approach, as it constitutes a valid legal process.
8. We again refer to the Commission's additional powers as regulated by national legislation including the South African Human Rights Commission Act 40 of 2013 (SAHRC Act") and Promotion of Equality and Prevention of Unfair Discrimination Act 1 of 2000 ("Equality Act").

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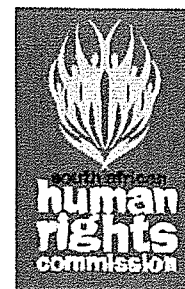
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9. The Commission deems its request in line with international cooperation in furthering the prevention of human rights abuses, which includes hate speech and harassment. As an A-status member of the Global Alliance of National Human Rights Institutions, the Commission values the fostering of a working relationship between itself and your offices in order to address and curb the spread of human rights abuses through social media platforms, within its jurisdiction.
10. The Commission will however not hesitate to cite Twitter as a Respondent in the current investigation and pending civil litigation on this matter, and release media statements on the refusal of Twitter to cooperate with an internationally renowned and acknowledged human rights institution, should it not be given access to the information required in furthering its investigations herein.
11. We therefore request Twitter to:
 - a) Take note that the matter is not a criminal investigation;
 - b) Acknowledge the request as falling under "other valid legal processes" as catered for in its own policies;
 - c) Provide the Commission with the information required to further its investigations herein.

South Africa arises from a history of human rights abuses. To quote our erstwhile President Nelson Mandela: Never, never and never again shall it be that this beautiful land will again experience the oppression of one by another.

It is therefore the unwavering duty of the Commission to prevent and address any attempt to dishonour our democracy, including on developing platforms such as social media. In assisting the Commission with its request, and possible future requests, Twitter will be honouring its global responsibility to address and prevent hate speech, harassment as well as discrimination in various jurisdictions as and when they occur.

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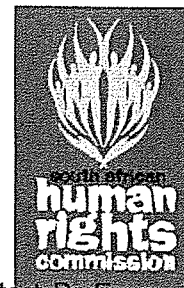
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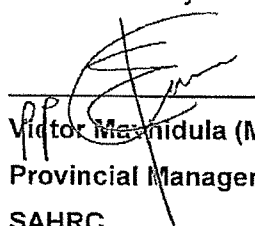


Should you require any further information in this regard please feel free to contact Dr E

Carter on ecarter@sahrc.org.za or 0726389016

We trust the above is in order and await your timeous response herein.

Yours Faithfully


Victor Makhidula (Mr)
Provincial Manager:LP
SAHRC
SOUTH AFRICA

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IN THE EQUALITY COURT AT THE MAGISTRATE'S COURT
HELD AT LOUIS TRICHARDT

CASE NO 01/2020

In the matter between:

MAVHIDULA AZWIDINI VICTOR
(ACTING ON BEHALF OF THE SOUTH
AFRICAN HUMAN RIGHTS COMMISSION)

Complainant

and

ANTHONY MATHUMBA

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

Alexander Howard Yap

do hereby make oath and say that:

1. I am an adult male, currently employed as Senior Manager, Legal Policy by Twitter, Inc. ("Twitter"), at 1355 Market Street, San Francisco, California, 94103, United States of America.
2. As the Senior Manager, Legal Policy at Twitter I am duly authorised to access and disclose account information relating to registered Twitter user accounts where such access and/or disclosure is necessary in order to comply with Twitter's user guidelines and / or legal obligations.

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3. The information relating to the Twitter accounts @TracyZille and @MutambaAnthony was accessed and shared on the 23rd of June 2021, by way of a link referred to as an "access token", with the South African Human Rights Commission ("SAHRC"). The information identified through this link includes:

3.1. Basic subscriber information, including the screen name, email address (as provided by the account registrant and user), and account creation date;

3.2. IP address information as at the date the account was created;

3.3. Session information and related IP addresses; and

3.4. Device information for the account, if any.

4. I confirm that the document attached hereto and marked "Annexure T1" shows information that is true and correct to the best of my knowledge and belief and was retrieved directly from Twitter's database using the link / access token provided to the SAHRC for the purpose of verifying information relating to the Twitter accounts @TracyZille and @MutambaAnthony.



Alexander Howard Yap

The deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at 12 PM on this the 24th day of July 2021.

dn AY Ball

dl

NOTARY PUBLIC

to AP [signature]
A

Jurat

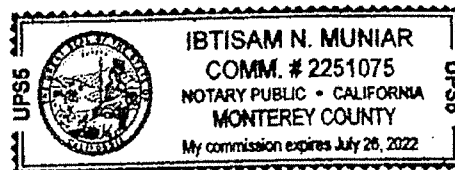
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

Subscribed and sworn to (or affirmed) before me this 24th day of July, 20 21,
by Alexander Howard Yap, proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Signature [Signature]

Ibtisam N. Muniar (Notary)



(Seal)

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Annexure T1

-----BEGIN PGP SIGNED MESSAGE-----
 Hash: SHA512

```
[
  {
    "device" : {
      "phoneNumber" : "+27633914979"
    }
  }
]
```

-----BEGIN PGP SIGNATURE-----
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 aGZlIGZlIHRoZSBHUEcgS2V5IGZvcjB0aGUgZW1haWwgYWxpYXMgc2VjdXJpdH1A
 IGJlaW5nIHJlbmV3ZWQgZm9yIFNFQ1VSSVRZLTlzMtG3LiBUaGZlIGt1eSBpcyBw
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 eSBZ2VudC1Ub29scywgWmlwYmlyZCBhbm5kIFppcGJveCkgPHNlY3VyaXR5QHR3
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 0s7DC/3KXe1NQ8J29mS5E8y1YafFVy3zYH19u0r11fWFrjzK2Rt5sAVz
 =BqtX

-----END PGP SIGNATURE-----

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-----BEGIN PGP SIGNED MESSAGE-----

Hash: SHA512

```
[
  {
    "device" : {
      "phoneNumber" : "+27633914979"
    }
  }
]
```

-----BEGIN PGP SIGNATURE-----

Version: BCPG v1.66

iQIHBAEBCgDxBQJg0yU9wCkcVHdpdHRlciBTZWN1cm10eSBPcGVyYXRpb25zICHU
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0s7DC/3KXe1NQ8J29mS5E8y1YafFVy3zYH19uOr11fWFrjzK2Rt5sAVz
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-----END PGP SIGNATURE-----

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Tap to verify.

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About and phone number

Please be patient you'll receive vacancy links soon at the moment you can go to jobsdepartment.co.za Just be patient !!!!
Thank you!!!!!!

18 January 2017

+27 63 391 4979

Mobile



Other phones

+27 63 391 4979

Mobile



Block



Report contact

BW
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jobsdepartment.co.za at WI. Jobsdepartment.co.za

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website.informer.com

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Search

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IP Whois

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Jobsdepartment.co.za

Keywords: sassa jobs, sassa admin jobs

Last scanned: Mar 25, 2021

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Expires: 1970-01-01
Owner: REDACTED
Hosting company: Afrihost Cloud
Registrar: UniForum Association
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DNS: ns.dns1.co.za
ns.dns2.co.za
ns.otherdns.com
ns.otherdns.net
Email: See owner's emails

website.informer.com



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Stats & Details

Siteadvisor.com

Status: good

Whois

simple CO.ZA whois server
The CO.ZA simple whois server
© Copyright ZACR 1995-2021
Use of this facility subject to the terms of site usage
Your query has generated the following reply:-

Search on jobsdepartment (.co.za)
Match: One

Domain: jobsdepartment.co.za

Accounting info...

Date	Type	Cost	Invoices are E-Mail to....	Paid Date	ICnt	TrkNo	Billing Info
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https://website.informer.com/jobsdepartment.co.za#tab_stats

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jobsdepartment.co.za at Wl. Jobsdepartment.co.za

Flashing RED indicates that payment has not been received - please confirm with the ZACR accounting department, accounts@co.za, should this not be according to your records. You have been sent 0 invoices/statements.

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0j. rcsversion           :
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1b. action               :
1c. Registrar            : Afrihost
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5f. tecfax               : REDACTED
5g. tecemail             : REDACTED
5h. tecnic               : REDACTED
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6m. secns3fqdn           : ns.otherdns.com
6n. secns3ip             :
6o. secns3ipv6           :
6q. secns4fqdn           :
6r. secns4ip             :
6s. secns4ipv6           :

```

https://website.informer.com/jobsdepartment.co.za#tab_stats

7/29/2021

jobsdepartment.co.za at WI. Jobsdepartment.co.za

```

8a. netblock1start      :
8b. netblock1end        :
8c. netblock2start      :
8d. netblock2end        :
8e. netblock3start      :
8f. netblock3end        :
9a. description1        :
9b. description2        :
9c. description3        :
9d. description4        :
9e. description5        :
9f. description6        :

```

Next Query - Domain name

.co.za

Please refer to the CO.ZA contact details should you have any problems

IP Whois

% This is the AFRINIC Whois server.

% The AFRINIC whois database is subject to the following terms of Use. See <https://afrinic.net/whois/terms>

% Note: this output has been filtered.

% To receive output for a database update, use the "-B" flag.

% Information related to '197.242.144.0 - 197.242.151.255'

% No abuse contact registered for 197.242.144.0 - 197.242.151.255

```

inetnum:      197.242.144.0 - 197.242.151.255
netname:      Afrihost-Cloud
descr:        Afrihost Cloud
country:      ZA
admin-c:      PFM1-AFRINIC
tech-c:       PFM1-AFRINIC
status:       ASSIGNED PA
remarks:      abuse e-mail: , phone: +27(11) 612 7300
mnt-by:       AFRIHOST-MNT
source:       AFRINIC # Filtered
parent:       197.242.144.0 - 197.242.159.255

```

```

person:       P F Meintjes
address:      Afrihost HQ
address:      376 Rivonia Boulevard
address:      Sandton
address:      Gauteng
address:      Johannesburg
address:      South Africa
phone:        tel:+27-11-612-7300
fax-no:       tel:+27-86-552-8000
nic-hdl:      PFM1-AFRINIC
mnt-by:       GENERATED-BEWULSCW9BUCE0JVGIETHCY41TT1SDW-MNT
source:       AFRINIC # Filtered

```

% Information related to '197.242.144.0/20AS37611'

```

route:        197.242.144.0/20
descr:        Afrihost
origin:       AS37611
mnt-by:       AFRIHOST-MNT
source:       AFRINIC # Filtered

```

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BW/E

96

**IN THE EQUALITY COURT OF LOUIS TRICHARDT
(HELD AT LOUIS TRICHARDT)**

Case No: 01/2020

In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

APPLICANT

AND

ANTHONY MATUMBA

RESPONDENT

FILING NOTICE

BE PLEASED TO TAKE NOTICE that the Respondent hereby presents the following documents for filing:-

DOCUMENT FILED : SUPPLEMENTARY ANSWERING AFFIDAVIT

FILED BY : MAKUYA TSHILIDZI ATTORNEYS

DATED AT THOHOYANDOU ON THIS THE ¹⁰ DAY OF AUGUST 2021

TSHILIDZI MAKUYA ATTORNEYS
ATTORNEYS FOR THE RESPONDENT
DR RR MASHAPHA BUILDING
OFFICE NO: A 08
BEHIND THOHOYANDOU POST OFFICE
NEXT TO LUVHENGU COMPLEX
THOHOYANDOU, 0950
P.O BOX 6075
THOHOYANDOU
CELL: 072 384 7341
TEL: 015 000 6462
FAX: 015 962 5044
E-Mail: ettmkr@gmail.com
REF: TP/CIV/06/2021

TO: THE CLERK OF THE COURT
LOUSTRICHADT

AND TO: DDKK ATTORNEYS
ATTORNEY'S FOR THE COMPLAINANT
19 WATERMELON STREET
PLATINUM PARK, BENDOR
DOCEX 17
P O BOX 55
POLOKWANE, 0700
TEL: (015) 297 3310
FAX: (015) 297 3422
EMAIL: mdk@ddkk.co.za / tn@ddkk.co.za
Ref: MC DE KLERK/TN/MH005865

AND TO: POWER SINGH INC
ATTORNEYS FOR THE APPLICANT FOR
ADMISSION AS AN AMICUS CURIAE
FIRST FLOOR, 20 BAKER STREET

JOHANNESBURG, 2196

TEL: (011) 268 6881

C/O COXWELL STEYN VISE & NAUDE INC
31 SONGOZWI STREET

LOUIS TRICHARDT

TEL: (015) 516 0116

EMAIL: legall11@csvn.co.za

REF: A STEENKAMP / JF STEYN

**IN THE EQUALITY COURT OF LOUIS TRICHARDT
(HELD AT LOUIS TRICHARDT)**

Case No: 01/2020

In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

APPLICANT

AND

ANTHONY MATUMBA

RESPONDENT

RESPONDENT'S SUPPLEMENTARY ANSWERING AFFIDAVIT

I, the undersigned,

MATUMBA ANTHONY

ID NO: 880921 581 8085

Do hereby make an oath and say:

1.

- 1.1 I am an adult male person residing at stand no: 1057,
Vleifontein Louis Trichardt Limpopo.
- 1.2 The facts disposed to hereunder are within my personal
knowledge except where otherwise indicated and are true
and correct unless otherwise stated and/or it appears
otherwise from the context.
- 1.3 Any legal submissions made herein are so made pursuant
to legal advice given to me by my Legal Representative and
in respect of which I have no reason to disbelieve.

2.

I have read / perused the complainant form 3 in terms of section 20 of promotion of Equality and prevention of unfair Discrimination Act, 2000 (Act no.4 of 2000) and I wish to answer thereto as stated in this supplementary answering Affidavit before I answer to the merits herein.

3

POINT IN LIMINE

3.1

The complainant supplementary affidavit to his founding affidavit (complain form) failed to attach the confirmatory affidavit of **Mr. Joshua Carstens** as indicated in paragraph 22 of the Applicant Supplementary Affidavit. Such an omission renders the whole affidavit defective in that the affidavit is based on hearsay evidence and it would also affect the Applicant's position as the Applicant acting on behalf of the complainant (locus standi). The Applicant's application stands to fall only on the basis of this point in limine alone.

3.2

NON-COMPLIANCE WITH RULES AND COURT PROCEEDINGS

The application by the Applicant is defective in that when it was initiated there was no complainant and Human rights commission appeared to be the Applicant whereas Mr Joshua Carstens being the second Applicant (complainant) lodged his complain on the 10 day of July 2020. It is not clear if the application of the Applicant is based on the provision of section 20 (1) (e) of PEPUDA or it is proceeding in terms of section 20 (1) (f). It is the duty of the applicant to state its case in such a manner that the respondent will be able to present a respond without any prejudice for the purpose of the above Honourable Court to ensure that the Respondent was afforded a fair hearing (trial), the Applicant's application is defective.

3.3

MISJOINDER

The Applicant failed to cite the complainant as a Second Applicant in this matter and such omission shall have a direct remedial consequences in the event the court makes an order against the complainant as indicated in terms of the provision of section 19 © and (d) of the PEPUDA.

3.4

LACK OF LOCUS STANDI

Mr Azwidini Victor Mavhidula (Deponent) does not have the power or authority to act on behalf of the juristic person without having been given a formal (written) authority or power by the Human Rights Commission to proceed on its behalf. The deponent should have at least attach a resolution or any document confirming his position as a provincial Manager as stated in paragraph 1 of his affidavit and also power or authority given to him to institute or to be part of this proceeding.

4.

AD PARAGRAPH 1-2 THEREOF

5.

The contents of these paragraphs are admitted.

6.

AD PARAGRAPH 1-2 THEREOF

The contents of this Paragraph is denied, the Deponent should have been cited as a second Applicant, alternatively he should have attached a resolution or a letter of authority giving him the power to act on behalf of the juristic person (South African Human Rights Commission).

7.

AD PARAGRAPH 4-15 THEREOF

The contents of these paragraphs are admitted.

8.

AD PARAGRAPH 16 THEREOF

The contents of this paragraph are denied. What gave rise to the Complaint is several comment made on twitter by Twitter account under the name Tracy Zille. The complaint have nothing to do with the Respondent's personal Twitter account which is

operated by himself using his actual names, Matumba Anthony, therefore the Applicant is put to the proof thereof.

9.

AD PARAGRAPH 17 THEREOF

The contents of this paragraph are denied. Respondent is not the person behind the Tracy Zille Twitter account and therefore the Respondent did not post any comments under the guise of Tracy Zille. There are no details proving the connection between the Respondent and Tracy Zille Twitter Account. Therefore the Applicant is put to the proof thereof.

10.

AD PARAGRAPH 18-20 THEREOF

The contents of these paragraphs are noted. The Applicant is put to the proof thereof.

11.

AD PARAGRAPH 21 THEREOF

The contents of these paragraphs are noted. The Respondent contends that the order sought by the Applicant will only be granted once the Applicant have provided the court with admissible evidence against the Respondent in support of the connection between the Respondent and Tracy Zille Twitter Account. The Applicant is put to the proof thereof.

12.

AD PARAGRAPH 22 THEREOF

The contents of these paragraphs are denied. The complainant Mr Joshua Carstens like the Applicant is alleging that the Respondent was posting as a racist white woman Tracy Zille and there is no admissible evidence proving that the Respondent is the person behind Tracy Zille Twitter account. Therefore these are repetitive allegations that have been dealt with above. The Applicant is put to the proof thereof.

13.

AD PARAGRAPH 23-24 THEREOF

The contents of this paragraph are noted.

14.

AD PARAGRAPH 25 THEREOF

The contents of this paragraph are noted. The Applicant had limited information of the real perpetrator Tracy Zille, no Home Affairs report showing whether Tracy Zille was looked for, and instead the Applicant located the Respondent which was not a difficult thing to do as he is a South African citizen. The Applicant is further put to the proof thereof.

15.

AD PARAGRAPH 26 THEREOF

The contents of this paragraph are denied. There is no admissible evidence to prove that indeed Goldview Tracers are a registered, qualified tracing company. The Applicant is put to the proof thereof.

16.

AD PARAGRAPH 27 THEREOF

The contents of this paragraph are denied. The 'tracing report' is showing the details of the Respondent and nothing linking him to Tracy Zille. The Applicant is put to the proof thereof.

17.

AD PARAGRAPH 28-29 THEREOF

The contents of these paragraphs are denied. The Respondent's number could have been provided or used by anyone but the Respondent to register the Twitter account as Twitter is an App that you can provide any cell number you want on condition that the number provided must not have been used to register another Twitter account, therefore in this instance the data provided by Twitter Incorporated relating to the creation of the account of 'Tracy Zille' is insufficient to this matter. The Applicant should have furthered their investigation by collecting data from the RICA (Regulation of Interception of Communications and Provision of Communication-Related Information Act) data base where every person's number is registered with their identity number, and then we may conclude that indeed the numbers can be linked to the Respondent's number. The Applicant is put to the proof thereof.

18.

AD PARAGRAPH 30-32 THEREOF

The contents of these paragraphs are noted. The Respondent has a website created by the Respondent called jobsdepartment.co.za, search67, Fela.co.za, Flyingnews.co.za, Hcalthupdate.co.za, Jobsfinder.co.za, olufela.co.za, Number1life.com, whatsappgroup.co.za, governmentjobs.org.za. But the issue of linking the Respondent's number to Tracy Zille remains the major dispute. The sharing of the post can not be used as the prima facie proof of the ownership of the twitter account. Therefore the Applicant is put to the proof thereof.

19.

AD PARAGRAPH 33-34 THEREOF

The contents of this paragraph are noted. The Applicant is put to the proof thereof.

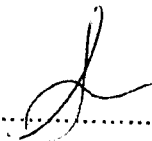
20.

AD PARAGRAPH 35-42 THEREOF

The contents of these paragraphs are denied. The Respondent denies each of the allegations in these paragraphs and further submits that these are repetitive allegations that have been dealt with above.

**WHEREFORE I PRAY THAT THE APPLICANT APPLICATION BE DISMISSED
WITH COSTS.**

"I swear that the contents of this declaration are true, so help me God"


.....

DEPONENT

**SIGNED AND SWORN BEFORE ME AT THOHOYANDOU ON THIS
THE 16 DAY OF August 2021.**

**I CERTIFY THAT BEFORE ADMINISTERING THE PRESCRIBED OATH I
ASKED THE DEPONENT THE FOLLOWING QUESTIONS AND WRITE HIS
ANSWERS IN HIS PRESENCE.**

1. Do you know and understand the contents of this affidavit?

Answer Yes

2. Do you have any objection to taking the prescribed oaths?

Answer NO

3. Do you consider the prescribed oaths to be binding on your conscience?

Answer Yes

I certify that the Deponent has acknowledged that she knows and understands the contents of this declaration, which was sworn to before me and Deponent's signature was thereon placed in my presence.

Khuliso Negota

COMMISSIONER OF OATHS

FULL NAMES :

CAPACITY :

ADDRESS :

STREET ADDRESS :

Khuliso Negota
Commissioner of Oaths
Practising Attorney
Office 4 & 5 Muloovhedzi Building
127 Mphoyandou 0950 P. West