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Our Reference: DBS/RG  
K213

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CULLINAN & ASSOCIATES  
KENILWORTH WC

Dear Sirs

**RS ZUKULU & OTHERS / MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS & OTHERS**

We refer to our previous correspondence in this matter and annex hereto a copy of the duly served and filed Filing Notice, with annexures.

We look forward to receiving your further instructions herein in due course.

Regards

**ADAMS & ADAMS**

**DAVID SCHEEPERS**

Checked and signed by author and sent electronically

*Pretoria, Johannesburg, Cape Town, Durban, Mozambique (ARIPO), Angola, Tanzania, Burundi, Cameroon (OAPI), Botswana, Lesotho, Namibia, Swaziland, Kenya, Ghana & Nigeria*  
**Partners** Gavin Kotze Howard Rogers Dario Tanziani Johan du Preez Colin MacKenzie Nelia Hickman Mariëtte du Plessis Samantha Copeling Gérard du Plessis Phil Pla  
Louis van der Walt Charné le Roux Russell Bagnall Simon Brown Suzaan Laing Grégor Wolter Joseph Goedhals Blain de Villiers André Visser Nolwazi Gcaba Eugene Honey  
Darren Olivier David Scheepers Megan Moerdijk Marius Gerber Kelly Thompson Nolo Khechane Janice Galvad Nishi Chetty Lucy Signorelli Steven Yeates Johnny Fiandero  
Leander Opperman Jenny Pienaar Danie Dohmen Alexis Apostolidis Bilkis Rassool Manisha Maganbhai-Mooloo Debbie Marriott Michael Gwala Lauren Ross Dale Healy  
Mandy Gordon Roelof Grové Nicolette Koch James Davies Nicky Garnett Vishen Pillay Godfrey Budelli Dieter Welthagen Ferdi Myburg Somayya Khan Theresa Wright Jac Marais  
Danie Strachan Nihabisheng Phaswana Nishan Singh Martin Mota Werina Griffiths Sajidha Gamieldeen Pieter Visagie Jessica Axelson Jani Cronjé Wilhelm Prozesky  
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Natasha Wright Alicia Castleman Udi Pillay Amina Suliman Andrew Phillips Nicole Smalberger Renee Nienaber Tiffany Conley Charl Marais Nondumiso Msimang Paul Muscat  
Laurika van Deventer Jean-Louis La Grange Wynand Fourie Vuyokazi Ndamse Jan-Harm Swanepoel Suraya Veerasamy Dakalo Luvhimbi Dionne Mubika Wensel Britz  
Kim Rampersadh Liezal Mostert Thamaray Govender Zunaïd Olivier Lita Miti-Qamata Kerry Rodgersson Nicole Haworth Catherine Wojtowicz Richard Wiers Ashlin Perumall  
Kareema Shaik  
**Assisted by** Adre Greeff Jevonne Booysen Farzana Rassool Melissa Dreyer Danielle Oosthuizen Karen Lam Zamokuhle Sokhela Tayyiba Naila  
Thando Manentsa Gabi Mailula Nazi Parker Nevashni Pillay John Ndlovu Jeanette Visagie Deirdre Daniel-Naudé Raeesah Gani Francois Landman Megan Dinnie Sinai Govender  
Gillian Griffiths Katherine Harding Alissa Nayanah Misha Post Kharysile Khanyile Dineo Modibedi Helgard Janse Van Rensburg David Gauna Ian Learmonth Luzaan Dudley

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

In the interlocutory application between:

**THE SOUTH AFRICAN NATIONAL ROADS AUTHORITY  
LIMITED**

and

**REINFORD SINEGUGU ZUKULU**

**THE AMADIBA TRIBAL AUTHORITY**

**THE KHIMBILI COMMUNAL PROPERTY ASSOCIATION**

**THE BALENI COMMUNITY**

**THE SIGIDI COMMUNITY**

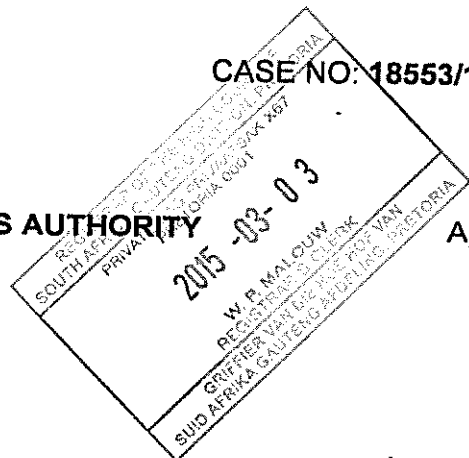
**THE MDATYA COMMUNITY**

In the matter between:

**REINFORD SINEGUGU ZUKULU**

**THE AMADIBA TRIBAL AUTHORITY**

**CASE NO: 18553/12**



**Applicant**

**1<sup>st</sup> Respondent**

**2<sup>nd</sup> Respondent**

**3<sup>rd</sup> Respondent**

**4<sup>th</sup> Respondent**

**5<sup>th</sup> Respondent**

**6<sup>sh</sup> Respondent**

**First Applicant**

**Second Applicant**

<b>THE KHIMBILI COMMUNAL PROPERTY ASSOCIATION</b>	Third Applicant
<b>THE BALENI COMMUNITY</b>	Fourth Applicant
<b>THE SIGIDI COMMUNITY</b>	Fifth Applicant
<b>THE MDATYA COMMUNITY</b>	Sixth Applicant

and

<b>THE MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS</b>	First Respondent
<b>THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS</b>	Second Respondent
<b>THE SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED</b>	Third Respondent
<b>THE MINISTER OF TRANSPORT</b>	Fourth Respondent
<b>N2 WILD COAST CONSORTIUM</b>	Fifth Respondent

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### FILING NOTICE

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Documents filed herewith:

1. Notice of Motion
2. Founding affidavit of **Cormac Cullinan**
3. Additional affidavit of **Nomvelwana Mhlengana**
4. Confirmatory affidavit of **Siqhamo Yamkela Ntola**
5. Supporting affidavit of **Danjelle Midgley**

6. Supporting affidavit of **Mzamo Richman Dlamini**
7. Confirmatory affidavit of **Mashona Wetu**

Signed at Kenilworth on 25 February 2015

**CULLINAN & ASSOCIATES**  
(Attorneys for the Applicants)

Per : 

Cormac Cullinan


Cullinan & Associates  
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TO: Registrar of the above Honourable Court

AND TO: **South African National Roads Agency Limited**  
(Applicant in SANRAL's Interlocutory Application and Third Respondent in the Review Application)  
Fasken Martineau  
Applicant's Attorneys  
Building 2  
Inanda Greens  
54 Wierda Road West  
Sandton

**Fasken Martineau**  
(Incorporated in South Africa as Bell Dewar Inc.)  
Inanda Greens  
54 Wierda Road West  
Sandton

**"ACCEPTED WITHOUT PREJUDICE"**

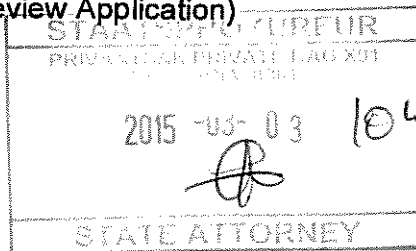
 26/2/15 11h46

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 Tel: (011) 586 6044  
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AND TO: **Minister of Environmental Affairs**  
 (First Respondent in the Review Application)

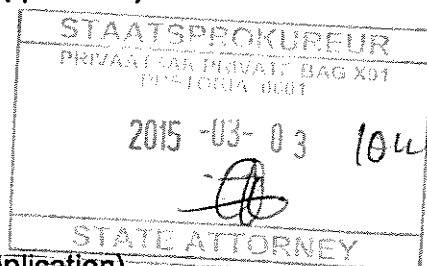
c/o the State Attorney  
 The Fedsure Forum  
 4<sup>th</sup> Floor South Block  
 Van Der Walt Street  
 PRETORIA

2651/12/2014



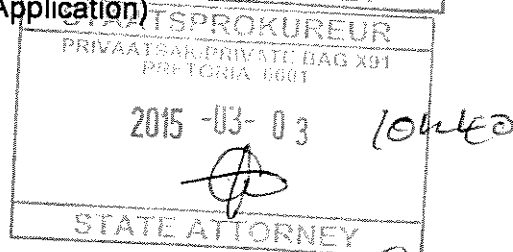
AND TO: **The Department of Environmental Affairs**  
 (Second Respondent in the Review Application)

c/o the State Attorney  
 The Fedsure Forum  
 Van Der Walt Street  
 PRETORIA



AND TO: **Minister of Transport**  
 (Fourth Respondent in the Review Application)

c/o the State Attorney  
 The Fedsure Forum  
 Van Der Walt Street  
 PRETORIA



AND TO: **N2 Wild Coast Consortium**  
 (Fifth Respondent in the Review Application)

c/o Aveng Grinaker- LTA  
 Aveng Grinaker -LTA Park  
 Jurgens Street  
 Jet Park  
 Boksburg

17450

2062/2015

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 18553/12**

In the interlocutory application between:

**THE SOUTH AFRICAN NATIONAL ROADS AGENCY  
LIMITED**

**Applicant**

and

**REINFORD SINEGUGU ZUKULU**

**1<sup>st</sup> Respondent**

**THE AMADIBA TRIBAL AUTHORITY**

**2<sup>nd</sup> Respondent**

**THE BALENI COMMUNITY**

**4<sup>th</sup> Respondent**

**THE SIGIDI COMMUNITY**

**5<sup>th</sup> Respondent**

**THE MDATYA COMMUNITY**

**6<sup>th</sup> Respondent**

In the matter between:

**REINFORD SINEGUGU ZUKULU**

**1<sup>st</sup> Applicant**

**THE AMADIBA TRIBAL AUTHORITY**

**2<sup>nd</sup> Applicant**

**THE KHEMBILI COMMUNAL PROPERTY ASSOCIATION**

**3<sup>rd</sup> Applicant**

**THE BALENI COMMUNITY**

**4<sup>th</sup> Applicant**

**THE SIGIDI COMMUNITY**

5<sup>th</sup> Applicant

**THE MDATYA COMMUNITY**

6<sup>th</sup> Applicant

and

**MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS**

1<sup>st</sup> Respondent

**THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS**

2<sup>nd</sup> Respondent

**SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED**

3<sup>rd</sup> Respondent

**MINISTER OF TRANSPORT**

4<sup>th</sup> Respondent

**N2 WILD COAST CONSORTIUM**

5<sup>th</sup> Respondent

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**APPLICATION TO FILE A FURTHER AFFIDAVIT IN TERMS OF RULE  
6(5)(e) OF THE UNIFORM RULES OF COURT**

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TAKE NOTICE that the applicant intends to apply to the above Honourable Court for an order in the following terms:

1. That the court exercise its discretion and allow the following further affidavits be permitted to be filed –

- 1.1. The founding affidavit of **Cormac Patrick Cullinan**;

- 1.2. The additional affidavit of **Nomvelwana Mhlengana** dated 23 January 2015;
  - 1.3. The confirmatory affidavit of **Mzamo Richman Dlamini** dated 12 February 2015; and
  - 1.4. The confirmatory affidavit of **Siqhamo Yamkela Ntola** dated 13 February 2015.
  - 1.5. The supporting affidavit of **Danjelle Midgley** dated 20 February 2015.
2. **SANRAL** is ordered to pay the costs of the application, including the costs of two counsel, on the attorney and client scale.
  3. Granting further or alternative relief.

**TAKE NOTICE FURTHER** that the respondents are called upon to show cause as to why the above mentioned affidavits should not be permitted to be filed and why the relief sought should not be granted.

**TAKE NOTICE FURTHER** that if no notice of intention to oppose is given, the application will be made on **13 March 2015** at **10:00** or so soon thereafter as Counsel may be heard.

**KINDLY SET THE MATTER DOWN FOR HEARING ACCORDINGLY.**



DATED at CAPE TOWN on 20 February 2015.

**CULLINAN & ASSOCIATES**  
(Attorneys for the Applicants)

Per : 

Cormac Cullinan

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[cormac@greencounsel.co.za](mailto:cormac@greencounsel.co.za)

TO: Registrar of the above Honourable Court

AND TO: **Minister of Water and Environmental Affairs**  
(First Respondent in the Review Application)  
c/o the State Attorney  
The Fedsure Forum  
4<sup>th</sup> Floor South Block  
Van Der Walt Street  
PRETORIA

AND TO: **The Department of Water and Environmental Affairs**  
(Second Respondent in the Review Application)  
c/o the State Attorney  
The Fedsure Forum  
Van Der Walt Street  
PRETORIA

AND TO: **South African National Roads Agency Limited**  
(Applicant in SANRAL's Interlocutory Application and Third Respondent in the Review Application)

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Ref 158210.00080  
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mburnell@fasken.com

AND TO: **Minister of Transport**  
(Fourth Respondent in the Review Application)  
c/o the State Attorney  
The Fedsure Forum  
Van Der Walt Street  
PRETORIA

AND TO: **Minister of Transport**  
(Fourth Respondent in the Review Application)  
c/o the State Attorney  
The Fedsure Forum  
Van Der Walt Street  
PRETORIA

AND TO: **N2 Wild Coast Consortium**  
(Fifth Respondent in the Review Application)  
C/O Aveng Grinaker- LTA Park  
Jurgens Street  
Jet Park  
Boksburg



13450

26/02/2015

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 18553/12**

In the interlocutory application between:

**THE SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED** Applicant

and

**REINFORD SINEGUGU ZUKULU** 1<sup>st</sup> Respondent

**THE AMADIBA TRIBAL AUTHORITY** 2<sup>nd</sup> Respondent

**THE KHIMBILI COMMUNAL PROPERTY ASSOCIATION** 3<sup>rd</sup> Respondent

**THE BALENI COMMUNITY** 4<sup>th</sup> Respondent

**THE SIGIDI COMMUNITY** 5<sup>th</sup> Respondent

**THE MDATYA COMMUNITY** 6<sup>th</sup> Respondent

In the matter between:

**REINFORD SINEGUGU ZUKULU** First Applicant

**THE AMADIBA TRIBAL AUTHORITY** Second Applicant

**THE KHIMBILI COMMUNAL PROPERTY ASSOCIATION** Third Applicant

**THE BALENI COMMUNITY** Fourth Applicant

**THE SIGIDI COMMUNITY** Fifth Applicant

**THE MDATYA COMMUNITY** Sixth Applicant

and

*CPC . 10*

**THE MINISTER OF WATER AND ENVIRONMENTAL  
AFFAIRS**

First Respondent

**THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS**

Second Respondent

**THE SOUTH AFRICAN NATIONAL ROADS AGENCY  
LIMITED**

Third Respondent

**THE MINISTER OF TRANSPORT**

Fourth Respondent

**N2 WILD COAST CONSORTIUM**

Fifth Respondent

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**FOUNDING AFFIDAVIT IN APPLICATION UNDER RULE 6(5)(e)**

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I the undersigned

**CORMAC PATRICK CULLINAN**

do hereby make oath and state the following:

1. I am a practising attorney and director of the law firm Cullinan and Associates Incorporated which is representing the First, Second, Fifth and Sixth Applicants in the Review Proceedings (these parties are the First, Second, Fifth and Sixth Respondents in this interlocutory application).

2. In this affidavit I refer to:

2.1. the parties to this interlocutory application in the same manner as they are cited in the founding affidavit in the Review Proceedings; and

*CPC*

2.2. the First, Second, Fifth and Sixth Applicants in the Review Proceedings collectively as the "Wild Coast Communities."

3. The facts in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.
4. I depose to this affidavit on behalf of the Wild Coast Communities and, to the extent necessary, on behalf of Cullinan and Associates Inc.. I am duly authorised to depose to this founding affidavit on behalf of the Wild Coast Communities and on behalf of Cullinan and Associates Inc.
5. On 25 November 2014 the South African National Roads Agency (SANRAL) filed its replying affidavit in this interlocutory application. The replying affidavit was deposed to by the Chief Executive Officer of SANRAL, Mr Nazir Alli on 24 November 2014 ("SANRAL's replying affidavit"). SANRAL now wish to set the interlocutory application down for hearing.
6. The Wild Coast Communities are making this application under Rule 6(5)(e) of the Uniform Rules of Court for leave to file this affidavit and the affidavits referred to in paragraph 8 (which I refer to collectively as "the additional affidavits") because four of the "affidavits" annexed as NAR11 and NAR12 to SANRAL's replying affidavit are forged.

7. I submit that the evidence in the additional affidavits is highly material to the issues before the Court in the interlocutory application, and that it would be in the interests of justice for this Court to permit the filing of these affidavits.
8. A number of supporting and confirmatory affidavits will be filed with this affidavit. These include:
- 8.1. the affidavit of **Nomvelwana Mhlengana**, the assistant to Headwoman Baleni, and elected council member of the **Umgungundlovu Traditional Council** and the **Amadiba Traditional Authority**;
  - 8.2. the confirmatory affidavit of **Siqhamo Yamkela Ntola**, a candidate attorney at **Cullinan and Associates Inc.**;
  - 8.3. the supporting affidavit of **Mzamo Richman Dlamini**; a member of the **Sigidi community**;
  - 8.4. the confirmatory affidavit of **Mashona Wetu** an elder and member of the traditional council of the **Sigidi Community**; and
  - 8.5. the confirmatory affidavit of **Danjelle Midgley**, a candidate attorney at **Cullinan and Associates Inc.**
9. On 26 September 2014 **Nomvelwana Mhlengana**, the assistant to Headwoman Baleni, and elected council member of the **Umgungundlovu Traditional Council**

and the Amadiba Traditional Authority, deposed to two supporting affidavits which we filed together with the answering affidavit of Zukulu in this interlocutory application.

9.1. One of those affidavits records the fact that although Ms Mhlengana is an elected member of the council of the Amadiba Tribal Authority (the Second Applicant), to the best of her knowledge and belief, the Amadiba Tribal Authority has not resolved to terminate the mandate that it had given Cullinan and Associates Inc. to represent it (I refer to this affidavit as "the first Mhlengana affidavit").

9.2. Ms Mhlengana deposed to the other affidavit in her capacity as a member of the Umdatya (Mdatya) community and refutes SANRAL's allegations that Cullinan and Associates and Zukulu are not acting in accordance with a mandate from that community. (I refer to this affidavit as "the second Mhlengana affidavit").

10. In both the first Mhlengana affidavit and the second Mhlengana affidavit, Ms Mhlengana makes it very clear that she and the Mdatya community as whole are strongly opposed to the proposed N2 Wild Coast Toll Road and that both Cullinan and Associates and Zukulu have a mandate to represent the Mdatya community and the other communities in Administrative Area 24 in the Review Application.

10.1. For example, in paragraph 7 of the first Mhlengana affidavit Ms Mhlengana states that:

*"We [i.e. Headwoman Cynthia Baleni and Ms Mhlengana] would never have agreed to such a letter [i.e. a letter withdrawing support for the Review Proceedings] being sent in the name of the Amadiba Tribal Authority because the Umgungundlovu Komkhulu as a whole and all six villages in the Amadiba Administrative Area 24 that we represent are strongly opposed to the N2 Wild Coast Project and support this litigation."*

10.2. In paragraph 12 of in paragraph 7 of the second Mhlengana affidavit Ms Mhlengana states that:

*"As I have explained, everything that Cullinan and Associates has done to represent the people of our village as well as the other people who reside in Administrative Area 24, has been done with our authority and with our knowledge. We have specifically authorised them and Reinford Sinegugu Zukulu to bring these court proceedings on our behalf."*

11. When SANRAL filed its reply in this interlocutory application my colleagues and I observed that one of the supporting affidavits in Annex NAR11 to SANRAL's replying affidavit purported to have been signed by Nomvelwana Mhlengana on 21 November 2014 ("the third Mhlengana affidavit"). The signature in question appears in the space designated for the commissioner of oaths to sign.



12. If one compares the handwritten name and signature in the third Mhlengana affidavit with the examples of Ms Mhlengana's actual signature it is apparent that although the forged signature in the third Mhlengana affidavit is similar to Ms Mhlengana's actual signature, there are distinct differences. For example, in the forged signature the initial "N" has been formed differently and the surname slopes upwards diagonally from the initial whereas it doesn't in the authentic signatures.

13. The person who signed the third Mhlengana affidavit clearly based the forged signature on Ms Mhlengana's actual signature. As a member of the Umgungundlovu Traditional Council and the Amadiba Traditional Authority, Ms Mhlengana often has to sign documents which are in the public domain.

14. Several authentic signatures of Ms Mhlengana appear in the pleadings in this matter including on:

14.1. the first and second Mhlengana affidavits;

14.2. the confirmatory affidavit which she deposed to on 23 January 2015 which is filed with this affidavit ("the fourth Mhlengana affidavit");

14.3. the Amadiba Traditional Authority's attendance register which is annexed as RSZ55 (third name);

14.4. the Umgungundlovu Komkhulu 's attendance register of 25 September 2014 which is annexed as RSZ59 to Zukulu's Answering Affidavit of 2 October 2014 (the third name from the bottom); and

14.5. the Umgungundlovu Komkhulu attendance register of 22 January 2015 which is annexed to the confirmatory affidavit deposed to by Mr Siqhamo Ntola on 13 February 2015 which is filed with this affidavit (third last name on page three ).

15. In order to provide further evidence that the signature on the third Mhlengana affidavit is not the signature of Ms Mhlengana, we engaged the services of a handwriting expert. Unfortunately the handwriting expert was unable to form a conclusive view, in large measure because he was not able to examine the original forged signature because SANRAL's replying affidavit appears to have been uplifted from the court file by unknown persons.

16. The affidavit of Ms. Danjelle Midgley filed with this affidavit, explains that the SANRAL's replying affidavit (or indeed any of SANRAL's papers in the interlocutory application) have not been found despite exhaustive efforts by the staff of our correspondents in Pretoria and by a Deputy Registrar personally. I confirm the correctness of the statements made in Danjelle Midgley's affidavit in so far as they concern me. The attempts to locate these documents has delayed the launching of this application

17. The "affidavits" in NAR 11 are also defective in that they:

17.1. were signed on 11 November 2014 but bear a stamp of the Mzamba Police Station dated 12 November 2014 – they can therefore not have been signed in the presence of the person who placed that stamp on them; and

17.2. have not been signed by the person who is identified as the commissioner of oaths (Police Officer Nomfuneko Matara).

18. The third Mhlengana affidavit contradicts the first and second Mhlengana affidavits and includes the following statements:

*"3. I support the proposed N2 Wild Coast Toll Highway Project.*

*....*

*5. I do not support the review application. I have never been provided with an opportunity to dissociate myself from the review application.*

*6. I have not authorised Cullinan & Associates Incorporated to act on my behalf.*

*7. I have not authorised Reinford Zukulu to act on my behalf or to depose to any affidavit on my behalf."*

19. It seemed to me highly improbable that within the period of less than two months that had elapsed between the date on which Ms Mhlengana had deposed to the first Mhlengana affidavit (26 September 2014) and the date of the third Mhlengana affidavit (11 November 2014) she would have adopted a

diametrically opposed position in relation to the proposed N2 Wild Coast Toll Road. I have also heard Ms Mhlengana express her strong opposition to the proposed N2 Wild Coast Toll Road and her support for the Review Proceedings in meetings at the Umgungundlovu Komkhulu, the Traditional Council of Administrative Area 24 (Coastal Region) on more than one occasion.

20. Consequently I instructed a candidate attorney in my office, Ms Danjelle Midgley, to email copies of Mr Alli's replying affidavit and the annexes to members of the Wild Coast communities who had access to email with the request that they investigate what had happened as a matter of urgency.

21. Within a few days we received email confirmation that Nonhle Mbuthuma, a member of the Sigidi community, had spoken to Nomvelwana Mhlengana, who had denied any knowledge of the third Mhlengana affidavit. As appears from the affidavit deposed to by Ms Mhlengana on 23 January 2014 which is filed with this affidavit ("the fourth Mhlengana affidavit"), Ms Mhlengana denies:

21.1. any knowledge of the third Mhlengana affidavit;

21.2. that she signed the third Mhlengana affidavit;

21.3. that she went to the Mzamba police station on either 11 or 12 November 2014;

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21.4. the statements attributed to her in the third Mhlengana affidavit (apart from the fact that she is aware of the review application).

22. Furthermore it appears that the three affidavits attached as NAR12 to the replying affidavit of Mr Nazir Alli are also forgeries.

22.1. The fourth Mhlengana affidavit (filed with this affidavit) states that she has never heard of the alleged deponents to the three affidavits annexed as NAR 12 (Msulwa Ndovela, Mfihlelwa Mdatya and Gotyelwa Mathumbu) and believes that none of them are members of the Sigidi Community (if indeed they exist at all).

22.2. The attached confirmatory affidavit of Siqhamo Ntola confirms that none of the more than 80 community members of communities within Administrative Area 24 (Coastal Region) who attended an Imbizo (meeting) of the Umgungundlovu Komkhulu (the Traditional Council for Administrative Area 24) had ever heard of these three people. Furthermore the members of the Sigidi community who were present at that Imbizo specifically confirmed that these people were not members of the Sigidi community as claimed in the affidavits filed as NAR12.

23. It is inconceivable that the three persons alleged to have signed the affidavits in NAR12 could be members of the Sigidi community and reside in Sigidi village (as alleged in paragraph 1 of the affidavits in NAR 12) without anyone who attended the meeting at the Komkhulu knowing them. SANRAL is invited to place evidence

before this Court that these people exist (the affidavits in NAR 12 do not include identity documents), that they live within the Sigidi village and are members of the Sigidi community and that they deposed to the affidavits in NAR 12.

**Circumstances under which the affidavits were forged**

24. There are good reasons for believing that that SANRAL (or persons acting on its behalf) forged the affidavits in order to manufacture evidence to support SANRAL's allegations that Zukulu and Cullinan and Associates do not have a mandate from the Sigidi and Mdatya communities, after they had failed in their attempts to get these communities to withdraw the Review Proceedings and to sign affidavits to that effect.

25. The various attempts made by SANRAL in this regard are summarised below and are explained more fully in:

25.1. the supporting affidavit deposed to by Mzamo Richman Dlamini on 26 September 2014 and filed with Zukulu's answering affidavit (Mzamo Dlamini's first supporting affidavit); and

25.2. the supporting affidavit deposed to by Mzamo Dlamini on 12 February 2015 and filed with this affidavit (Mzamo Dlamini's second supporting affidavit) as read with the confirmatory affidavit of Mashona Wethu deposed to on 12 February 2015.

26. In October 2013 SANRAL held meetings with the Sigidi community (at the Sigidi Primary School) and with the Mdatya community (at the Mdatya Senior Secondary School) at which the Chief Executive Officer of SANRAL, Mr Nazir Alli, made extravagant promises about how these communities would be rewarded if it withdrew the Review Proceedings. Both these communities asked Mr Alli to give them these promises in writing. Neither of them agreed to support the construction of the proposed N2 Wild Coast Toll road or to withdraw the Review Proceedings. (These events are described in paras 4 to 8 of Mzamo Dlamini's first supporting affidavit.)

27. However in SANRAL's founding affidavit in these interlocutory proceedings Mr Nazir Alli states in paragraph 30.2 that at the meetings at the Sigidi Primary School and the Mdatya Senior Secondary School "members of the public from the villages concerned unanimously expressed support for the construction of the highways and expressed their opposition to, and desire to dissociate themselves from, the Review." Mzamo Dlamini attended both meetings and states in paragraph 10 of his affidavit that this statement by Mr. Alli is completely untrue. He also states that when these communities heard that SANRAL had written to Cullinan and Associates saying that the firm no longer had a valid mandate to represent the communities because they were now in favour of the proposed toll road:

*"The community was furious to hear this because no agreement between them and SANRAL had been made and they had never decided to withdraw the review."* (paragraph 19 of Mzamo Dlamini's first supporting affidavit).

28. In November 2014 the Ward Councillor from the Mbizana Local Municipality, Mr Dimane, asked Mr Mashona Wetu, a senior community leader of the Sigidi community, to sign an affidavit in support of SANRAL's case. (This appears from paragraph 4 of Mzamo Dlamini's second supporting affidavit.)

29. On Thursday 13 November 2014 Mr Mongezi Noah of SANRAL and Mr Dimane the ward counsellor from the Mbizana Local Municipality held a meeting with selected members of the Sigidi community. The meeting was arranged despite Mr Mashona Wethu informing Mr Noah and Mr Dimane that they must postpone the meeting because the elders and other senior members of the community would not be able to attend because they would be away attending a meeting of the Komkhulu.

30. At the meeting on Thursday 13 November 2014:

30.1. Mr Noah and Mr Dimane asked those community members present to sign a document which allegedly confirmed the promises which Mr Nazir Alli had made to the affected communities in return for them dropping the Review Proceedings, and to sign affidavits to stop the challenge to the toll road in court (presumably in the form of the affidavits on the letterhead of the Mbizana Local Municipality which are attached as NAR11 and were signed two days before that meeting); and



30.2. the community members present informed Mr Noah that they would not discuss the proposed N2 Wild Coast toll road or sign any documents in the absence of the Headwoman, sub-headmen and other community leaders who were attending the meeting at the Komkhulu that day (see paragraphs 5 and 6 of Mzamo Dlamini's second supporting affidavit).

31. Mr Dimane and Mr Noah then agreed to attend a meeting of the Sigidi community on Friday 21 November 2014 to enable Mr Noah and Mr Dimane to put their requests to the Sigidi community as a whole. The meeting was attended by about 50 community members (including the subheadmen and senior community leaders), but Mr Dimane and Mr Noah failed to attend. (These events are described in paragraphs 7 to 9 of the Mzamo Dlamini's second supporting affidavit.)

**Relevance of the forged affidavits to the issues before this Court**

32. The filing of these forged affidavits is very material to the issues which this Honourable Court is being asked to decide in this interlocutory application. As explained in the answering affidavit of Reinford Sinegugu Zukulu in this interlocutory application ("Zukulu's answering affidavit"), SANRAL has made this interlocutory application in an attempt to obtain an order that would have the effect of preventing the Review Proceedings continuing (Zukulu's answering affidavit, paragraphs 8 to 10).

33. Among the relief sought by SANRAL in these interlocutory proceedings is an order directing that Cullinan and Associates may not act for the Second to Sixth

Applicants in the main proceedings until they have satisfied the Court that they have such authority. Central to SANRAL's challenge to the mandate of Cullinan and Associates Inc, is an attack on the integrity of Reinford Sinegugu Zukulu (the First Applicant and deponent to the founding affidavit in the Review application), on my personally, and on Cullinan and Associates Inc.

33.1. As Zukulu states in his answering affidavit:

*"14. At the heart of SANRAL's interlocutory application are the allegations first that the Second to Sixth Applicants do not have the necessary legal standing to institute the Review Proceedings ("the legal standing issues"), and secondly that neither the law firm of Cullinan and Associates Inc. nor I have been properly authorised by the Second, Fifth and Sixth Applicants to bring the Review Proceedings on their behalf ("the mandate issues").*

.....

59 *The essence of SANRAL's attack on the mandate of Cullinan and Associates is that it brought the Review Proceedings in order to pursue its own agenda and that it is not representing the parties whom it claims to represent. SANRAL avers that Cormac Cullinan, and the law firm of Cullinan and Associates, have not displayed the professional detachment required of an officer of the court, have entered into the arena as participants rather than representatives*

and are acting without proper instructions from the clients whom they purport to represent (IFA para 5.5). In support of these attacks on the professional integrity of the attorneys representing the applicants, Nazir Alli refers to the fact that Cormac Cullinan has deposed to a supporting affidavit in the Review Proceedings and quotes from the website of Cullinan and Associates in which it refers to the Review Proceedings (IFA para 5.5.4.).

.....

62. *The unwarranted personal attacks made by Nazir Alli on Cullinan and Associates are without merit and are intended to create the false impression that the communities in Amadiba Administrative Area 24 are not really opposed to the construction of the toll highway through their ancestral lands and are merely being manipulated by outsiders. Nothing could be further from the truth. ...."*

34. Zukulu also states in his answering affidavit that:

9. *As I explain below, I have good reason to believe that SANRAL has brought this interlocutory application in an attempt to conceal the widespread opposition among amaMpondo communities to the proposed construction of a toll highway through the Wild Coast area from near Port Edward to Umtata/ Mthatha (the "greenfields section") as part of the N2 Wild Coast Toll Highway Project ("the Project"). This opposition*

CPC

*is particularly embarrassing to SANRAL because one of the primary justifications advanced for the Project is that it will be beneficial for these communities (see FA paras 36 to 45.4) and SANRAL has made repeated public claims that these communities support the Project.*

35. SANRAL has filed these forged affidavits as evidence that the Amadiba Traditional Authority has withdrawn its mandate to Zukulu and Cullinan and Associates and that some members of the Mdatya and Sigidi communities have not given Zukulu or Cullinan and Associates a mandate to represent them and do not support the Review Proceedings (see SANRAL's replying affidavit at para 125). This was done in response to the overwhelming evidence confirming that Zukulu and Cullinan and Associates are acting in accordance with mandates given to them by the Wild Coast communities which was presented in Zukulu's answering affidavit and in more than 30 supporting and confirmatory affidavits from residents in Administrative Area 24 (at least 15 of whom are members of the Wild Coast Communities).

36. In SANRAL's founding affidavit in this interlocutory application Mr. Alli makes serious and unsubstantiated allegations of professional impropriety against both me and the law firm of which I am a director. He questions the veracity of the averments made by both Zukulu and me to the effect that Cullinan and Associates Inc. have a valid mandate to represent the Wild Coast Communities and suggests that we are pursuing the Review Proceedings to further our own agendas instead of acting in the interests of our clients (see for example SANRAL's founding affidavit in this interlocutory application at paragraphs 5.5).

We answered by providing overwhelming evidence of widespread support among the members of the Wild Coast Communities for the Review Proceedings and for the mandates of both Zukulu and Cullinan and Associates Inc. to continue representing them. In reply SANRAL introduces four forged "affidavits" in a blatant attempt to mislead the Court.

37. SANRAL has virtually unlimited access to funds (from the public purse) to pursue this litigation and to make interlocutory applications. The clients whom we represent have very limited financial resources and can only litigate because Cullinan and Associates is willing to act for substantially reduced fees and various donors are willing to provide funding. SANRAL is very well aware of the widespread opposition to the proposed N2 Wild Coast Toll Road among the communities most affected. This interlocutory application, supported as it is with forged affidavits, is a cynical attempt to deny these communities their constitutional rights of access to justice, administrative justice and to protect the environments within which they live.

38. In conclusion I submit that it would be proper for this Honourable Court to exercise its discretion under rule 6(5)(e) and to permit the filing of the additional affidavits because:

38.1. the evidence in the additional affidavits filed is material to the issues before the Court in the interlocutory application;

- 38.2. the filing of forged affidavits in reply is an extraordinary occurrence that could not have been foreseen;
- 38.3. the filing of the forged affidavits introduces new and material facts that could not have been dealt with in answer;
- 38.4. the Wild Coast Communities will be prejudiced if the additional affidavits are not admitted and the forged affidavits are allowed to stand uncontested; and
- 38.5. it would be in the interests of justice for this Court to permit the filing of the additional affidavits.

39. SANRAL's attempts to mislead the Court by making averments that it knows to be untrue (such as alleging the Mdatya and Sigidi communities are unanimous in their support for the toll roads) and then filing forged affidavits in an attempt to substantiate its false claims merits censure. This aspect will be addressed in legal argument.

OP Cullinan

**CORMAC PATRICK CULLINAN**


I certify that:

1. The deponent acknowledged to me that:
  - 1.1 he knows and understands the contents of this declaration;
  - 1.2 he has no objection to taking the prescribed oath;
  - 1.3 he considers the prescribed oath to be binding on his conscience.
2. The deponent thereafter uttered the words: "I swear that the contents of this declaration are true, so help me God".

3. The deponent signed this declaration in my presence at

on this the 20<sup>th</sup> day of **February 2015**.

Harfield Village  
Cape Town



**COMMISSIONER OF OATHS**

ADAM PIKE  
Commissioner of Oaths  
Practising Attorney (RSA)  
8 Oxford Street, Wynberg

IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 18553/12

In the matter between:

REINFORD SINEGUGU ZUKULU

First Applicant

THE AMADIBA TRIBAL AUTHORITY

Second Applicant

THE KHEMBILI COMMUNAL PROPERTY ASSOCIATION

Third Applicant

THE BALENI COMMUNITY

Fourth Applicant

THE SIGIDI COMMUNITY

Fifth Applicant

THE MDTYA COMMUNITY

Sixth Applicant

And

THE MINISTER OF WATER AND ENVIRONMENTAL  
AFFAIRS

First Respondent

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

Second Respondent

THE SOUTH AFRICAN NATIONAL ROADS AUTHORITY  
LIMITED

Third Respondent

THE MINISTER OF TRANSPORT

Fourth Respondent

N2 WILD COAST CONSORTIUM

Fifth Respondent

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AFFIDAVIT

Nl. m.



I the undersigned

**NOMVELWANA MHLENGANA**

do hereby make oath and state the following:

1. I am adult woman and a member of the Mdatya community and live in Amadiba Administrative Area Number 24 (Coastal Region). I have previously deposed to a supporting affidavit in this interlocutory application.
2. The facts in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.
3. I am an elected member of the council of the Umgungundlovu Traditional Authority (Amadiba Administrative Area 24) and am the assistant to the Headwoman Mrs Cynthia Baleni. I am also a member of the council of the Amadiba Traditional Authority.
4. The attorneys representing the Mdatya community in this matter, Cullinan and Associates, informed me that on 25 November 2013 they received SANRAL's replying affidavit in the interlocutory application in the above matter which was deposed to on 24 November 2014 by the Chief Executive Officer of SANRAL, Mr Nazir Alli. Six supporting affidavits were annexed as **NAR11** and **NAR12** to the replying affidavit of Mr Alli. The content of each affidavit is the same (except for the names of the persons who signed them).

5. **NAR11** consists of three affidavits on the letterhead of the Mbizana Local Municipality. The affidavits appear to have been deposed to by Tshilibe Sithembiso, (who is described as the headman of the Mdatya community but is in fact a sub-headman of that community); myself and Ndovela Thembile Nelson, respectively.
6. I did not depose to the affidavit in **NAR11** that identifies me as the deponent and did not know of its existence prior to being told that it had been filed by SANRAL. I deny all the allegations made in that affidavit (apart from the fact that I am aware of the review application). I do not support the N2 Wild Coast Toll Highway Project as can be seen from the supporting affidavit I deposed to in the Answering Affidavit of 7 November 2014 in the Interlocutory Application.
7. The signature purporting to be my signature (on the line provided for the commissioner of oaths to sign) is similar to my signature but is a forgery. This is apparent if one compares the signature on that affidavit with my signatures which appear on:
- 7.1. the attendance register for the meeting of the Amadiba Traditional Authority held on 30 May 2013 (second signature) which is annexed marked "CB1" to the supporting affidavit of Headwoman Baleni filed with the answering affidavit in this interlocutory application;
- 7.2. the attendance register for the meeting held at the Umgungundlovu

Komhulu on 25 September 2014 (third line) which is annexed marked "RSZ59" to the answering affidavit of Reinford Sinegugu Zukulu filed in this interlocutory application; and

7.3. the supporting affidavit in this interlocutory application which I deposed to on 26 September 2014 and which was filed with the answering affidavit in this interlocutory application.

8. These "affidavits" in **NAR 11** are also defective in that:

8.1. they were signed on 11 November 2014 but were stamped by at the Mzamba Police Station on 12 November 2014; and

8.2. they have not been signed by the person who is identified as the commissioner of oaths (Police Officer Nomfuneko Matara).

9. I am very angry that SANRAL has filed a forged affidavit in my name which makes it look like I committed perjury because it directly contradicts my previous affidavit. I am an elected member of the council of the Umgungundlovu Traditional Authority, assistant to the Headwoman Cynthia Baleni and a member of the council of the Amadiba Traditional Authority and am known as outspoken opponent of the proposed toll road. It appears that whoever forged this affidavit intended to damage my reputation and standing in the community. Since I did not go to the Mzamba Police Station on either 11 or 12 November 2014 I do not understand how anyone at the police station could have stamped an affidavit that bore my name.

10. Not only is the affidavit purporting to be mine a forgery, but I believe that three affidavits attached as **NAR12** are also forgeries. I have never heard of the alleged deponents to the three affidavits annexed as **NAR 12** (Msulwa Ndovela, Mfihlelwa Mdatya and Gotyelwa Mathumbu). I have also asked many other members of the Sigidi and Mdatya communities if they have ever heard of any of these names and nobody has. I believe that these three people are not members of the Sigidi Community (if indeed they exist at all).
11. The three affidavits annexed as **NAR 12** appear to have been signed on 21 November 2014.
12. I have been informed that SANRAL attempted to arrange a meeting with a few members of the Sigidi community in mid-November because they wanted signatures on a document related to the toll road litigation. When other members of the community who could not attend that meeting found out about it, they asked for the meeting to be postponed to 21 November 2014. However neither the SANRAL representatives nor the local ward councillor arrived at that meeting. I believe that the SANRAL representatives knew that members of the Sigidi community would not sign affidavits that they had prepared and so instead of attending the meeting they simply prepared forged affidavits with the assistance of members of the South African Police Services based at the Mzamba police station.

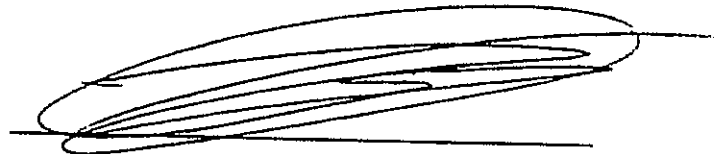
N. MHLWANA

**NOMVELWANA MHLENGANA**

I certify that:

1. The deponent acknowledged to me that:
  - 1.1 she knows and understands the contents of this declaration;
  - 1.2 she has no objection to taking the prescribed oath;
  - 1.3 she considers the prescribed oath to be binding on her conscience.
2. The deponent thereafter uttered the words: "I swear that the contents of this declaration are true, so help me God".

3. The deponent signed this declaration in my presence at Port Edward  
on this the 23 day of January 2014.



**COMMISSIONER OF OATHS**

I hereby certify that the above statement was taken  
by me and that the deponent has acknowledged that  
he/she knows and understands the contents thereof,  
and further, that the statement was sworn to/affirmed  
before me and the deponent's signature/initials  
were placed thereon in my presence.  
Certified at Port Edward on this 23 day of January 2014.  
DEPONENT'S SIGNATURE: NOMVELWANA MHLENGANA  
COMMISSIONER OF OATHS SIGNATURE: DAVID J. MATHSON  
NAME OF COUNCILLOR  
COUNCILLOR FOR THE HIBISCUS COAST  
MUNICIPALITY CIVIC CENTRE  
10 CONNOR STREET PORT SHEPSTONE 4240

**IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)**

**CASE NO:18553/12**

In the matter between:

**REINFORD SINEGUGU ZUKULU**

First Applicant

**THE AMADIBA TRIBAL AUTHORITY**

Second Applicant

**THE KHIMBILI COMMUNAL PROPERTY ASSOCIATION**

Third Applicant

**THE BALENI COMMUNITY**

Fourth Applicant

**THE SIGIDI COMMUNITY**

Fifth Applicant

**THE MDATYA COMMUNITY**

Sixth Applicant

And

**THE MINISTER OF WATER AND ENVIRONMENTAL  
AFFAIRS**

First Respondent

**THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS**

Second Respondent

**THE SOUTH AFRICAN NATIONAL ROADS AUTHORITY  
LIMITED**

Third Respondent

**THE MINISTER OF TRANSPORT**

Fourth Respondent

**N2 WILD COAST CONSORTIUM**

Fifth Respondent

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**CONFIRMATORY AFFIDAVIT**

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I the undersigned

**SIQHAMO YAMKELA NTOLA**

do hereby make oath and state the following:

1. I am a candidate attorney at the firm Cullinan and Associates Incorporated.
2. The facts in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.
3. I have read the affidavit deposed to by Ms Nomvelwana Mhlengana on 23 January 2015 in paragraph 10 of which she expresses the belief that the persons who allegedly deposed to the three affidavits annexed as **NAR12** to the replying affidavit of Mr Nazir Alli of 25 November 2014, are not members of the Sigidi Community as they allege. In this affidavit I provide further confirmation that Ms Mhlengana's belief in that regard is correct.
4. On 22 January 2015, I attended an Imbizo (meeting) of the Umgungundlovu Komkhulu, the Traditional Council of Administrative Area 24 (Coastal Region). The Traditional Council was attended by over 80 community members, many of whom are from the Sigidi and Mdatya communities.
5. At that meeting I read out the names of the persons who allegedly deposed to the affidavits attached as **NAR12** (Msulwa Ndovela, Mfihlelwa Mdatya and

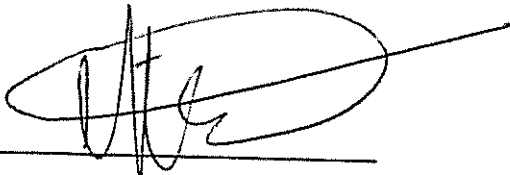
Gotyelwa Mathumbu) and asked everyone present if they knew any of them. None of the approximately 80 people present at the Komkhulu recognised these names. Furthermore, the members of the Sigidi community who were present specifically confirmed that these people were not members of the Sigidi community. In order to provide proof of this, an attendance register was circulated to record the names of the people who had never heard of Msulwa Ndovela, Mfihlelwa Mdatya and Gotyelwa Mathumbu. I annex "SYN1", a copy of the attendance register for that meeting.

6. Ms Nomvelwana Mhlengana was present at that meeting of the Komkhulu. When I read out her name as a person who had allegedly signed an affidavit filed by SANRAL, the people attending the meeting were visibly confused because that Ms Mhlengana is well-known for her opposition to the proposed toll road and had also recently deposed to an affidavit confirming her opposition to it. She had to explain to the meeting that she had never signed such an affidavit and that her signature had been forged.

S.Y.N

KK





**SIQHAMO YAMKELA NTOLA**

I certify that:

1. The deponent acknowledged to me that:
  - 1.1 he knows and understands the contents of this declaration;
  - 1.2 he has no objection to taking the prescribed oath;
  - 1.3 he considers the prescribed oath to be binding on his conscience.
2. The deponent thereafter uttered the words: "I swear that the contents of this declaration are true, so help me God".
3. The deponent signed this declaration in my presence at ..... Kenilworth .....  
on this the 13 day of **February 2015**.



**COMMISSIONER OF OATHS**

Ayaz Ahmed Camroodien  
Commissioner of Oaths  
Practising Attorney & Conveyancer RSA  
2 Dingle Avenue  
Kenilworth  
7708

Names

Phone no

"SYN1"

Sn

Jali m  
m. Dlamini  
m. Dimani  
m. ndovela  
M. Yalo  
S. ndovela  
m. ndovela  
B. Danca  
m. Dimani  
S. Dimani  
Z. ndovela  
~~N. Denge~~  
m. Denge  
P. Lenge

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0733 072950

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~~N. Denge~~

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D. Danca

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m. Jali

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N. Tshude

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Z. ndovela

083 991 9845

T. Dlamini

071 003 9140

S. m. ndovela

073 89 744 76

ALBETHLELE

071 765 1342

Thembalethu

081 077 6232

T. Danca

I. N. M. Tshude

071 591 0851

~~A. Dlamini~~

078 773 1391

A. Dlamini

0733 408 286

Dotyi Dlamini

X  
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~~N. Denge~~

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S. m. ndovela

~~N. Denge~~

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~~N. Denge~~

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~~N. Denge~~

CERTIFIED A TRUE COPY OF THE ORIGINAL  
GESERTIFIEER 'N WARE AFSKRIF VAN DIE  
OORSPRONKLIKE

ayaz ahmed camroodien  
attorney & conveyancer  
commissioner of oaths  
2 dingle ave, kenilworth, 7708

Names

Phone

Sn

BAFANA

07873406815

DENGE

078 298 22 69

M. Mdukiso

0824335203

M. Mdukiso

0787746280

Dolly

0835967040

MA AYINA

NONTEMBEKO

BUSISIWE

NELESWA

N. Yalo

0788238782

0786522408

Simphele

0783831774

M. Nakano

LEE-DANOR

0734270049

VELILE

0209467752

MOSES

078229518

ANILE

0603988049

Tobani

0786878291

W. Ndouela

11

N. Tuma

0604441133

Membodih

06030241132

Z

D. Jali

B. Shude

Bhusime

Phezumeleko

Denge

V. Dwayisa

Winnie Jali

Bhenathi Mlamini

07833169102

CERTIFIED A TRUE COPY OF THE ORIGINAL  
DESSERT FISEER IN WARE AFSHRIF VAN DIE  
OORSPRONKLIE

ayaz ahmed camroodien  
attorney & conveyancer

commissioner of oaths  
2 dingle ave, kenilworth, 7708

0788166274

<u>Names</u>	<u>Phone</u>	<u>SW</u>
N. ndouela	11	X
volifikle	NDOUELA	0797286029
D mathumbu	0832766229	
Njampani	Denge	0719595525
<del>S. Syabango</del>	Mthusa	0782827869
Mzekelua	Mthusa	(11)
MDUKI24	F	0782612030
NDUK.	M.	<del>000</del>
MTHUSA	G.	0730102493
Ndove	Si	0832406564
L. nzimakwe	11	X
m. ntuli	11	X
m. mathumbu	11	X
m. Danca	11	X
m. NDOUELA	11	X
S- MDing.	11	0834738668
C. Mdukisa	11	0784271655 <del>078</del>
Nanki MBUTHUMA	076589282	<del>078</del>
Mthutha ndokela		X
M Sweli		
BAKEMI. DANCA	0603791143	B.D
Mkingi ndovele		
CHEF Yalo		
M. MTHUSA		
Duduzile BAKEMI	0781815472 (T. leader)	<del>D. Bato</del>
M. INETU	0783623345	M. B
N Mthengana	0796492714	M. Mthle
Zada Dlamini	0733072950	
Micky Jali		

CERTIFIED A TRUE COPY OF THE ORIGINAL  
 GESERTIFISEER 'N WARE AFSKRIF VAN DIE  
 OORSPRONKLIKE.

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 18553/12**

In the interlocutory application between:

**THE SOUTH AFRICAN NATIONAL ROADS AUTHORITY  
LIMITED**

**Applicant**

and

**REINFORD SINEGUGU ZUKULU**

**1<sup>st</sup> Respondent**

**THE AMADIBA TRIBAL AUTHORITY**

**2<sup>nd</sup> Respondent**

**THE KHIMBILI COMMUNAL PROPERTY ASSOCIATION**

**3<sup>rd</sup> Respondent**

**THE BALENI COMMUNITY**

**4<sup>th</sup> Respondent**

**THE SIGIDI COMMUNITY**

**5<sup>th</sup> Respondent**

**THE MDATYA COMMUNITY**

**6<sup>th</sup> Respondent**

In the matter between:

**REINFORD SINEGUGU ZUKULU**

**First Applicant**

*M-R.*

THE AMADIBA TRIBAL AUTHORITY

Second Applicant

THE KHEMBILI COMMUNAL PROPERTY ASSOCIATION

Third Applicant

THE BALENI COMMUNITY

Fourth Applicant

THE SIGIDI COMMUNITY

Fifth Applicant

THE MDATEYA COMMUNITY

Sixth Applicant

and

THE MINISTER OF WATER AND ENVIRONMENTAL  
AFFAIRS

First Respondent

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

Second Respondent

THE SOUTH AFRICAN NATIONAL ROADS AUTHORITY  
LIMITED

Third Respondent

THE MINISTER OF TRANSPORT

Fourth Respondent

N2 WILD COAST CONSORTIUM

Fifth Respondent

---

SUPPORTING AFFIDAVIT

---

I the undersigned

**MZAMO RICHMAN DLAMINI**

do hereby make oath and state the following:

1. I am member of the Sigidi community and live in the Sigidi village in Amadiba Administrative Area Number 24 (Coastal Region).
2. The facts in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct. I refer in paragraphs 4 to 7 of this affidavit to events which occurred when I was not present. As I explain in paragraph 8 below, my statements in this regard are based on what I was told by elders of the Sigidi community on Thursday 13 November 2014.
3. I have read the affidavit of Ms Nomvelwana Mhlengana of 23 January 2015. In paragraph 12 of Ms Mhlengana's affidavit she refers to meetings which SANRAL attempted to convene with members of the Sigidi community to discuss whether or not the community supported the litigation that has been brought in their name to set aside the authorisations for the proposed N2 and to get members of the community to sign certain documents. In this affidavit I confirm the account of those meetings given in Ms Mhlengana's affidavit and how they came about.
4. During the week of 10 November 2014, the ANC Ward Councillor for the area, Mr Jackson Madayisa Dimane contacted Mr Mashona Wetu who is a traditional

councillor/induna and a senior community leader in the Sigidi community. Mr Dimane informed Mr Wetu (whom the community refer to as Mr Mashona Wetu Dlamini) that he had a document to give Mr Wetu which confirmed the oral promises which the Chief Executive Officer of SANRAL, Mr Nazir Alli, had made to the Sigidi community in return for the community dropping the litigation against the proposed toll road. (I explain the circumstances in which Mr Alli made these promises in the supporting affidavit which I deposed to on 26 September 2014 and which was filed with Zukulu's answering affidavit in this interlocutory application.) Mr Wetu told me that Ward Councillor Dimane also asked him to sign an affidavit for SANRAL but Mr Wetu told Mr Dimane that he would not sign any document or affidavit without the consent and knowledge of the community.

5. Mr Wetu also told me that Mr Dimane informed him that a lawyer sent by SANRAL was with him and that the lawyer had requested a meeting with Mr Wetu and members of the Sigidi community on Thursday 13 November 2014. Mr Wetu told me that he did not agree to the meeting because community members, elders, sub-headmen and the Headwoman of Administrative Area 24 (Coastal Region) would be at the Umgungundlovu Traditional Council which meets every Thursday. Mr Dimane agreed that the meeting should not proceed without the community leaders. However without informing Mr Wetu, Mr Dimane then phoned members of the community to try to encourage them to attend a meeting with him and the SANRAL representatives on Thursday 13 November 2014 despite the fact that the Komkhulu meeting was on the same day.



6. On Thursday 13 November 2014, Mr Dimane and Mr Mongezi Noah, SANRAL's "Community Development Specialist" met with about 20 community members who were not attending the Komkhulu. The community members who were present informed Mr Noah that they would not discuss the proposed N2 Wild Coast toll road in the absence of the Headwoman, sub-headmen and other community leaders. Nevertheless Mr Noah and Mr Dimane asked those community members present at the meeting to sign a document which allegedly confirmed the promises which Mr Nazir Alli had made to the affected communities. Mr Noah also had affidavits which he wanted those present to sign. When the community asked what the affidavits said, Mr Noah told them that they were to stop the challenge to the toll road in court. Mr Dimane told those at the meeting that he would organise a meeting with more community members and leaders present where the document would be read out. The community members present at the meeting refused to sign SANRAL's document without the agreement of those at the Komkhulu.
7. After this refusal, Ward Councillor Dimane proposed that another meeting take place at the Sigidi School the following week at 10h00 on Friday 21 November 2014.
8. At 10h00 on Friday 21 November 2014 I and about 50 community members (including the subheadmen and senior community leaders) arrived at the Sigidi School for the meeting. Mr Dimane and the SANRAL representatives did not arrive. We waited for about an hour and then at about 11h00 we phoned Mr Dimane who said he had been delayed due to a family tragedy but would arrive at 11h30. However neither he nor the SANRAL representatives arrived. We

phoned Mr Dimane several times and he assured us that he was close by and would be arriving shortly and told the community members that they should buy food after having waited for him for so long. However we did not do so because we believed that if we decided not to sign the documents he wanted us to sign at the meeting he would not repay us for the food. After waiting about 5 hours, most of the community members left. However I stayed longer and while we were waiting Mr Wetu and the other elders told me about the previous interactions with SANRAL which I discuss in paragraphs 4 to 7 above.

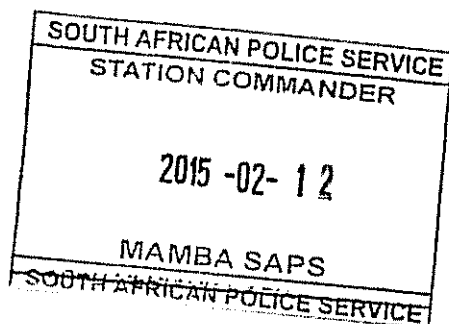
9. Mr Dimane and Mr Noah finally arrived at the Sigidi School at about 4 p.m. By that time only Mr Wetu, myself and a few elders (including Mr Zenzele Gampe) were there. Mr Wetu asked Mr Dimane why he had kept the community waiting for so long, why Mr Dimane had secretly organised a meeting on Thursday 13 November 2014 when it had been explained to him that many members of the community, including the community leaders, would not be able to attend because they would be at the Komkhulu. Mr Wetu was very angry that SANRAL had set up a meeting behind his back while he was at Komkhulu and had then promised to meet the whole community but instead had kept the community waiting for hours without explanation. Ward Councillor Dimane looked very worried and anxious and apologised to Mr Wetu. Mr Noah did not say anything but he also looked very concerned.
10. I believe that Mr Dimane and Mr Noah deliberately organised the first meeting on Thursday 13 November 2014 because they knew that many of the Sigidi people who are most opposed to the proposed toll road would not be able to

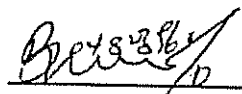
attend. When that strategy failed because none of the members of the community would sign anything until the community as a whole had met and discussed the matter, Mr Dimane had to agree to another meeting. However he must have realised that he would not be able to persuade the community as a whole to sign affidavits to stop the litigation and so did not arrive at the Sigidi School until almost everyone had left.

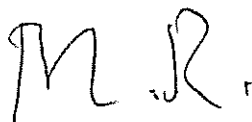
  
MZAMO RICHMAN DLAMINI

I certify that:

1. The deponent acknowledged to me that:
    - 1.1 he knows and understands the contents of this declaration;
    - 1.2 he has no objection to taking the prescribed oath;
    - 1.3 he considers the prescribed oath to be binding on his conscience.
  2. The deponent thereafter uttered the words: "I swear that the contents of this declaration are true, so help me God".
  3. The deponent signed this declaration in my presence at Mzamba
- on this the 12 day of February 2015.



 M.C. BIDA  
COMMISSIONER OF OATHS



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 18553/12**

In the interlocutory application between:

**THE SOUTH AFRICAN NATIONAL ROADS AUTHORITY  
LIMITED**

**Applicant**

and

**REINFORD SINEGUGU ZUKULU**

**1<sup>st</sup> Respondent**

**THE AMADIBA TRIBAL AUTHORITY**

**2<sup>nd</sup> Respondent**

**THE KHIMBILI COMMUNAL PROPERTY ASSOCIATION**

**3<sup>rd</sup> Respondent**

**THE BALENI COMMUNITY**

**4<sup>th</sup> Respondent**

**THE SIGIDI COMMUNITY**

**5<sup>th</sup> Respondent**

**THE MDATYA COMMUNITY**

**6<sup>th</sup> Respondent**

In the matter between:

**REINFORD SINEGUGU ZUKULU**

**First Applicant**

THE AMADIBA TRIBAL AUTHORITY

Second Applicant

THE KHEMBILI COMMUNAL PROPERTY ASSOCIATION

Third Applicant

THE BALENI COMMUNITY

Fourth Applicant

THE SIGIDI COMMUNITY

Fifth Applicant

THE MDTYA COMMUNITY

Sixth Applicant

and

THE MINISTER OF WATER AND ENVIRONMENTAL  
AFFAIRS

First Respondent

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

Second Respondent

THE SOUTH AFRICAN NATIONAL ROADS AUTHORITY  
LIMITED

Third Respondent

THE MINISTER OF TRANSPORT

Fourth Respondent

N2 WILD COAST CONSORTIUM

Fifth Respondent

---

CONFIRMATORY AFFIDAVIT


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I the undersigned

**MASHONA WETU**

do hereby make oath and state the following:

1. I am a male traditional councillor (induna) and a senior community leader of the Sigidi community. I reside in Sigidi village in the Amadiba Administrative Area Number 24 (Coastal Region).
2. The facts in this affidavit are within my personal knowledge, except where the context indicates otherwise, and are to the best of my belief both true and correct.
3. I have read the affidavit of Mzamo Richman Dlamini and confirm that its contents are true and correct in so far as they concern me and what I told Mzamo Richman Dlamini.

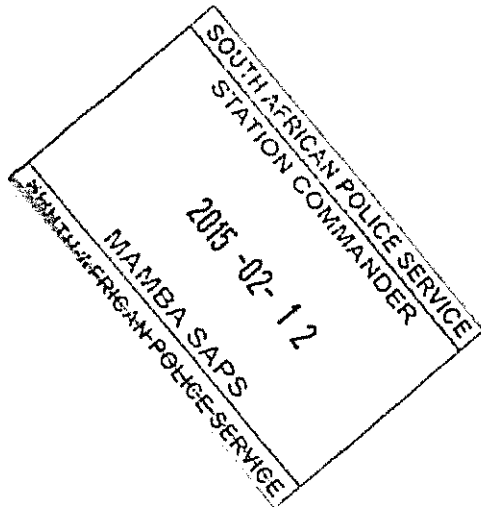
  
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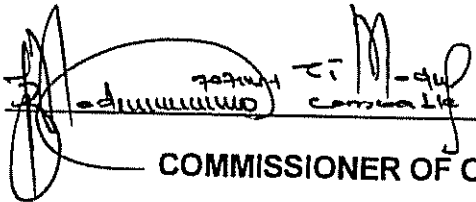
**MASHONA WETU**

I certify that:

1. The deponent acknowledged to me that:
  - 1.1 he knows and understands the contents of this declaration;
  - 1.2 he has no objection to taking the prescribed oath;
  - 1.3 he considers the prescribed oath to be binding on his conscience.

2. The deponent thereafter uttered the words: "I swear that the contents of this declaration are true, so help me God".
3. The deponent signed this declaration in my presence at ..... Mamba Saps .....  
on this the 12 day of February 2015.



  
COMMISSIONER OF OATHS

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**CASE NO: 18553/12**

In the interlocutory application between:

**THE SOUTH AFRICAN NATIONAL ROADS AUTHORITY  
LIMITED**

**Applicant**

and

**REINFORD SINEGUGU ZUKULU**

**1<sup>st</sup> Respondent**

**THE AMADIBA TRIBAL AUTHORITY**

**2<sup>nd</sup> Respondent**

**THE KHIMBILI COMMUNAL PROPERTY ASSOCIATION**

**3<sup>rd</sup> Respondent**

**THE BALENI COMMUNITY**

**4<sup>th</sup> Respondent**

**THE SIGIDI COMMUNITY**

**5<sup>th</sup> Respondent**

**THE MDATYA COMMUNITY**

**6<sup>th</sup> Respondent**

In the matter between:

**REINFORD SINEGUGU ZUKULU**

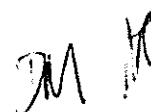
**First Applicant**

**THE AMADIBA TRIBAL AUTHORITY**

**Second Applicant**

**THE KHIMBILI COMMUNAL PROPERTY ASSOCIATION**

**Third Applicant**





THE BALENI COMMUNITY

Fourth Applicant

THE SIGIDI COMMUNITY

Fifth Applicant

THE MDATYA COMMUNITY

Sixth Applicant

and

THE MINISTER OF WATER AND ENVIRONMENTAL  
AFFAIRS

First Respondent

THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

Second Respondent

THE SOUTH AFRICAN NATIONAL ROADS AUTHORITY  
LIMITED

Third Respondent

THE MINISTER OF TRANSPORT

Fourth Respondent

N2 WILD COAST CONSORTIUM

Fifth Respondent

---

**SUPPORTING AFFIDAVIT**

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I the undersigned

**DANJELLE MIDGLEY**

do hereby make oath and state the following:

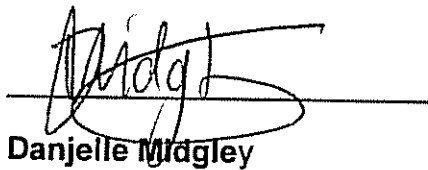
1. I am a candidate attorney in the firm Cullinan and Associates Incorporated.

DM 10

2. The facts to which I depose are within my personal knowledge and to the best of my knowledge are both true and correct.
3. In this affidavit I explain how Cullinan and Associates and their correspondent attorneys, Adams & Adams, have not been able to locate the court file for Case No. 18553/12 at the High Court of South Africa, Gauteng Division, Pretoria.
4. On 28 January I requested our correspondent attorneys to uplift the court file in this matter. On 28 January 2015 Adams & Adams confirmed that they had ordered the file and expected to receive it within a few days. On 4 February 2015 I called Adams & Adams to find out whether they had received court file. I was told that they had not been able to locate the file at court and were meeting with the Registrar in order to locate it.
5. On 4 February 2014 I emailed Ms Margo-Ann Palani and Mr Matthew Burnell at Fasken Martineau to enquire whether they had uplifted the court file. Mr Burnell replied on the same day that the file was not in their possession (see email attached as "DM3").
6. I again requested the Adams & Adams to continue looking for the file at court on 5 February 2015 and phoned their offices regularly until 12 February 2015 when we received a letter from Adams & Adams (attached as "DM4") informing us that they have not been able to locate the court file in question despite daily enquiries and searches at court.

DM P

7. At approximately 8:30 am on 16 February 2015 my principal, Mr Cormac Cullinan, telephoned the High Court to enquire about the missing file and spoke to the Deputy Registrar in charge of archives at the Pretoria High Court, Mr Abey Ntombela. Mr Ntombela agreed to immediately search for the file with two of his colleagues and to call Mr Cullinan back. However when Mr. Ntombela called back during the late afternoon he had not found the missing documents and advised that he could not determine who last uplifted the file.
8. I have telephoned the High Court in Pretoria several times since 16 February 2015 to ask whether the file in case number 18553/12 has been located. Each time I have called, the official has not been able to locate it.

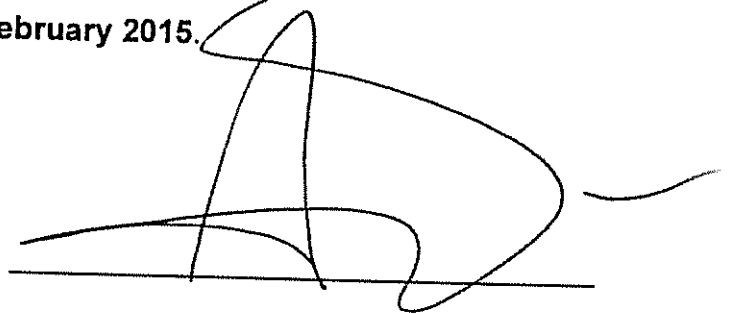


Danjelle Midgley

DM 

I certify that:

1. The deponent acknowledged to me that:
  - 1.1 she knows and understands the contents of this declaration;
  - 1.2 she has no objection to taking the prescribed oath;
  - 1.3 she considers the prescribed oath to be binding on her conscience.
2. The deponent thereafter uttered the words: "I swear that the contents of this declaration are true, so help me God".
3. The deponent signed this declaration in my presence at the address set out hereunder on this the 20<sup>th</sup> day of February 2015.

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

**COMMISSIONER OF OATHS**

---

ADAM PIKE  
Commissioner of Oaths  
Practising Attorney (RSA)  
8 Oxford Street, Wynberg

**Danjelle Midgley**

'DM3'

**From:** Matthew Burnell <mburnell@fasken.com>  
**Sent:** 04 February 2015 09:46 AM  
**To:** Danjelle Midgley; Margo-Ann Palani  
**Cc:** Cormac Cullinan; Wild Coast \_ Environmental Review \_158210\_00080\_ E\_Mails  
**Subject:** RE: SANRAL v Reinford Zukulu et al - Interlocutory Application [FASKEN-BDocs.FID1650B4]

Dear Danjelle

Thank you for your email.

The file is not in our possession and everything should have been in the court file.  
It may be necessary to file a duplicate copy.

Please let us know if you require any assistance.

Please also indicate when you expect to serve your application to file additional affidavits.

Kind regards

Matthew Burnell | Partner

T. +27 11 586 6044 | M. +27 82 903 9733 | F. +27 11 586 6144  
[mburnell@fasken.com](mailto:mburnell@fasken.com) | <http://www.fasken.com/en/matthew-burnell>

Fasken Martineau  
(Incorporated in South Africa as Bell Dewar Inc.)  
Inanda Greens, 54 Wierda Road West, Sandton, Johannesburg, 2196

**FASKEN  
MARTINEAU** 

VANCOUVER CALGARY TORONTO OTTAWA MONTRÉAL QUÉBEC CITY LONDON PARIS JOHANNESBURG

---

**From:** Danjelle Midgley [mailto:[danjelle@greencounsel.co.za](mailto:danjelle@greencounsel.co.za)]  
**Sent:** 04 February 2015 09:36 AM  
**To:** Margo-Ann Palani; Matthew Burnell  
**Cc:** Cormac Cullinan  
**Subject:** SANRAL v Reinford Zukulu et al - Interlocutory Application

Dear Margo-Ann

The Registrar of the Pretoria High Court has not been able to locate the file containing the interlocutory application.  
Please could you confirm that the file is not currently in your possession?

Many thanks,

**Danjelle Midgley**  
Candidate Attorney

Ubuys House  
70 Rosmead Avenue  
Kenilworth  
Cape Town, 7708  
Direct Line: +27 (0)21 673 3888  
t +27 (0)21 671 7002  
f +27 (0)21 671 7003  
[www.cullinans.co.za](http://www.cullinans.co.za)



DM R

"DM 4"

PATENT, TRADEMARK, COPYRIGHT, COMMERCIAL,  
PROPERTY & LITIGATION ATTORNEYS

# Adams & Adams

## FAX

To: Fax No. 021 671 7003  
[danielle@greencounsel.co.za](mailto:danielle@greencounsel.co.za)  
[cormac@greencounsel.co.za](mailto:cormac@greencounsel.co.za)  
[greg@greencounsel.co.za](mailto:greg@greencounsel.co.za)

PRETORIA OFFICE  
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Lynnwood Manor Pretoria  
CORRESPONDENCE  
PO Box 1014 Pretoria 0001 South Africa  
DOCEX 81 Pretoria

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EMAIL [mail@adamsadams.co.za](mailto:mail@adamsadams.co.za)  
WEB [www.adamsadams.com](http://www.adamsadams.com)

From: Fax No. (Nat) (012) 432 6599  
(Int) +27 12 432 6599  
Tel No. (Nat) (012) 432 6000  
(Int) +27 12 432 6000

Our Reference: DBS/RG  
K213

Your Reference:

Date: 11 FEBRUARY 2015

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(including this page)

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CULLINAN & ASSOCIATES  
KENILWORTH WC

Dear Sirs

**RS ZUKULU & OTHERS / MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS & OTHERS**

We refer to the various correspondence and telephone calls exchanged between our respective offices since 28 January 2015 in respect of the upliftment of the original Applicant's Replying Affidavit dated 25 November 2014.

We have to date not been able to trace the court file and/or the original affidavit, despite our daily enquiries and searches at court.

In the circumstances we await your further specific instructions herein.

Regards  
**ADAMS & ADAMS**

**DAVID SCHEEPERS**

Checked and signed by author and sent electronically

*Pretoria, Johannesburg, Cape Town, Durban, Mozambique (ARIPD), Angola, Tanzania, Burundi, Cameroon (DAPI), Botswana, Lesotho, Namibia, Swaziland, Kenya, Ghana & Nigeria*  
*Partners* Gavin Kotze Howard Rogers Dario Tanziari Johan du Preez Colin MacKenzie Nelia Hickman Mariëtte du Plessis Samantha Copeling Gérard du Plessis Phil Pla  
*Associates* Louis van der Walt Charméle Roux Russell Bagnell Simon Brown Suzann Laing Grégor Wolter Joseph Goeuhs Blain de Villiers André Visser Nolwazi Gcaba Eugene Honey  
*Senior Consultants* Esmé du Plessis Martin Rottveel Stephan Ferreira Chris Job Craig Forbes Ilze Dijkstra  
*Associates* Deborah Marsicano Defene Bertasso Undie Serruiter Charl Potgieter Thérèse Davis Claire Bothma Stephen Hollis Alida Kabini Kagiso Manyashi Gerda Bouwer  
*Associates* Natalya Wright Alicia Castroman Udi Pillay Amina Suliman Andrew Phillips Nicole Smalberger Renee Nienaber Tiffany Corley Charl Marais Nondumiso Maimang Paul Muscat  
*Associates* Launka van Deventer Jean-Louis La Grange Wynand Foulis Vuyokazi Ndumiso Jan-Harm Swanepoel Suraya Veerasamy Daka'o Luvhimbi Dionne Mubika Wenzel Britz  
*Associates* Kim Rampersadh Liazal Mosien Thamaray Govender Zundol Olivier Lita Miti-Gemata Kerry Rodgersson Nicola Haworth Catherine Wojtowicz Richard Wiers Ashlin Perumall  
*Associates* Kareema Shaik

*Assisted by* Adre Greeff Jevonne Booyson Farzana Rassool Melissa Dreyer Danielle Oosthuizen Karen Lam Zamokuhle Sokhela Tayyiba Nalla Lisa Nunes Farzanah Manjoo  
*Assisted by* Thando Monentsa Gabi Mailula Nazli Parker Navazmi Pillay John Ndlovu Jeanette Visagie Deirdre Daniel-Naudé Raeesah Gani Francois Landman Megan Dinna Sinal Govender  
*Assisted by* Gillian Griffiths Katherine Haning Alica Nayanah Misha Post Khanyile Khanyile Dineo Modibedi Helgard Janse Van Rensburg David Gauna Ian Leamonth Luzan Dudley

DM 4