

**IN THE HIGH COURT OF NAMIBIA**

**MAIN DIVISION**

**WINDHOEK**

**CASE NUMBER: HC-MD-CIV-ACT-CO N-2021/02204**

**APPLICATION NUMBER: \_\_\_\_\_**

**In the matter between:**

**SALT ESSENTIAL INFORMATION TECHNOLOGY PTY LTD      APPLICANT**

and

**RDW PROPERTIES CC      FIRST RESPONDENT**

**THE CHIEF JUSTICE OF NAMIBIA      SECOND RESPONDENT**

**THEODORUS ADAM BARNARD      THIRD RESPONDENT**

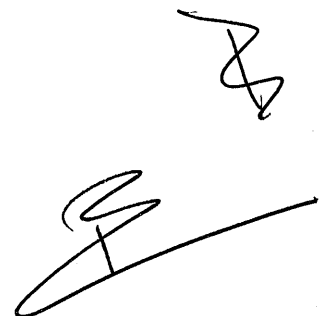
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**AFFIDAVIT**

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I, the undersigned

**THEODORUS ADAM BARNARD**

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do hereby make oath and say:

1. I am a 70 year old adult male advocate, residing at 31 Blackheath Road, Sea Point, Cape Town, South Africa. I conduct my practice as advocate from the above address with the consent of the Cape Bar Council, of which I am a member. I have so practised since 1983.
2. The facts deposed to herein are true and correct, and fall within my personal knowledge, unless it appears otherwise from the context, in which case I verily believe the information conveyed to me to be true and correct.
3. I am cited, as third respondent, in this application in which the applicant seeks to review and set aside the decision of the Chief Justice of the Republic of Namibia, His Lordship Mr Justice Shivute, to grant a certificate to me in terms of section 85(2) of the Legal Practitioners Act ("the Act") authorising my representation of the first respondent. The applicant also seeks costs from me, "*for one instructing and two instructed counsel*", under circumstances where no allegation of any misconduct is made against me, but where the origin of applicant's cause of action purports to be an allegedly irregular and unlawful decision by the Honourable Chief Justice.

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4. One of the issues arising in the application is whether I am a "*non-resident*" of Namibia, as contemplated by section 85(2) of the Act. The applicant contends that my entitlement to permanent residency in Namibia, by virtue of a permanent residence permit issued to me, my wife and 16 year old son, in 2019, automatically categorises me as resident of Namibia, irrespective of the location of my factual residence.
5. I respectfully contend that the applicant's approach is incorrect, and that my place of residence should be determined by reference to the factual components and elements thereof instead of being guided by exclusively the label attaching to my permanent residence permit.
6. The first purpose of my affidavit is therefore to demonstrate that I am currently still a resident of South Africa, and that I can only complete my relocation to become a full "*resident*" of Namibia, once the application that I intend to launch for my admission as legal practitioner in Namibia is successfully completed and granted.
7. The second purpose of my affidavit is to demonstrate that the applicant's application is an abuse of the process of court, employed and orchestrated by the applicant's current legal team, but specifically by its senior counsel, Advocate Raymond Heathcote, for purposes of not only eliminating me from my position of counsel for the first respondent, but also from being

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able to appear in Namibia, at all, in addition to also undermining my reputation as a counsel in Namibia to such an extent that local legal practitioners would no longer wish to instruct me.

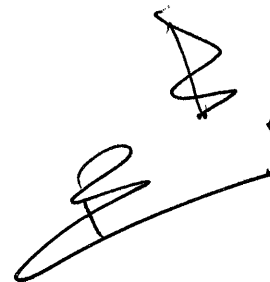
8. As third purpose of my affidavit, I record my support of the dismissal of the application on each of the grounds set out in the answering affidavit of Mr Robert Douglas Wirtz, filed simultaneously with mine.

#### **MY FACTUAL RESIDENCE**

9. The factors set out below demonstrate that Cape Town, South Africa, is currently my "*home*" and "*residence*", both from a factual perspective and from my subjective intention, for the time being and until my application for admission as legal practitioner in Namibia (hereinafter "*my admission application*") is successfully completed:

- 9.1. I reside at 31 Blackheath Road, Sea Point, Cape Town where I have been resident since 1996, prior to which date I had been resident in Cape Town in various other suburbs. I am the owner of such property (in Sea Point).

- 9.2. I am the registered party responsible for the rates and taxes, and municipal account payments, relating to such property, and has

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been so registered since the date of my acquisition of the property in 1996.

- 9.3. I live at the property with my wife, Marlene, to whom I have been married since 6 December 2007, and my 16 year old son, Philippe.
- 9.4. We are a close family and the prospects that I would permanently settle down elsewhere in the world without them are zero.
- 9.5. My wife has fixed employment in Cape Town, and has been so employed since 2011. If my admission application were to be unsuccessful, and my wife had already terminated her employment with her employer in Cape Town, we would not be able to relocate to Namibia, and my wife will be unemployed. She earns a significant salary through her current employment and her contribution to our family's monthly and other expenditure is critical. My family and I can therefore not prematurely, prior to the finalisation of my admission application, fully relocate to Namibia.
- 9.6. My son Philippe is 16 years old a learner at the German International School in Cape Town, in Grade 11. Although my wife and I would be able to relocate to Namibia if my admission application is successful, we would also have to make

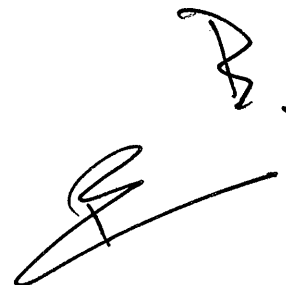


comprehensive and substantial arrangements, with which we can only commence once the outcome of my admission application is known, for our son to complete the final year ("*abitur*") of his education at the German School in Windhoek. Once again, until such time that the outcome of the above future events is known, both I and my family remain, for the time being, resident in Cape Town, South Africa.

- 9.7. My residential property in Cape Town has a value of between R7 million and R8 million. The property was recently upgraded and fitted with its own water supply structure and solar panelling system, making it predominantly independent from the municipal grid. The costs of the upgrading were substantial. The property has 3 bedrooms, and a substantially spacious room serving as my study/office, apart from the other customary spaces and rooms in a residential property, that facilitate its occupation by two adults and one child.
- 9.8. I conduct my banking affairs in Cape Town through Investec Bank, where I have, *inter alia*, a bond facility that is serviced through a monthly payment of just over R50 000,00.

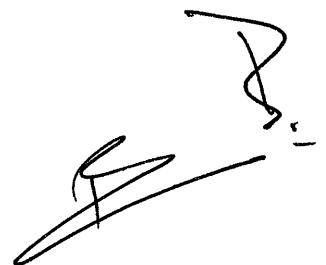
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- 9.9. I have various benefits with Investec Bank that are linked with and dependent upon my residential property serving as security for any obligations that I may have towards the bank.
- 9.10. I therefore would not be able to, on a whim, leave Cape Town to relocate to Namibia unless I have the reassurance that I could practice in Namibia to generate sufficient income to cover my both my monthly expenditure in Windhoek, as well as the payments that I still have to make in Cape Town. Such reassurance I would only have once the outcome of my admission application is known.
- 9.11. I can also not consider selling my property in Sea Point before I know the outcome of my admission application. If I wish to maintain the same standard of living in Namibia as that which I enjoy in Cape Town, I would have to sell my Cape Town property, to purchase a property more or less on par with what I currently own in Cape Town. Such a property (in Namibia) would have to have a market value of substantially the same as my property in Cape Town, and would require a bond of approximately the same extent as that of the one currently over my Sea Point Property.
- 9.12. I can clearly not make a final decision in the above regard, concerning the selling of my home and a purchase of a similar

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property in Namibia, unless I have security of tenure provided by a practice in Namibia, which I would only have once the outcome of my admission application is known.

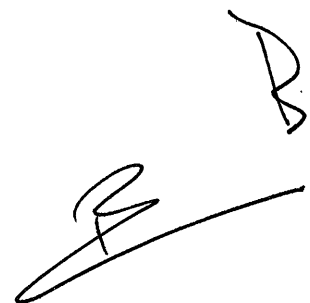
- 9.13. I am a taxpayer in South Africa, where I pay taxes on all my income, also on what I earn in Namibia.
- 9.14. My postal address is, for all purposes, 31 Blackheath Road, Sea Point, where I receive all post and documentary correspondences even from Namibia.
10. I therefore submit that, until I know the outcome of my admission application in Namibia, my "*residence*" is, for the time being, in South Africa.
11. The extent of my "*residence*" in Namibia is set out below:
- 11.1. I own a one bedroomed apartment situate at BOO9 Kunene Court, Eros Park, Windhoek, which has an estimated value of not less than N\$1.3 million.
- 11.2. The apartment has been partially converted to accommodate my office from where I work when I am in Windhoek, with all the usual

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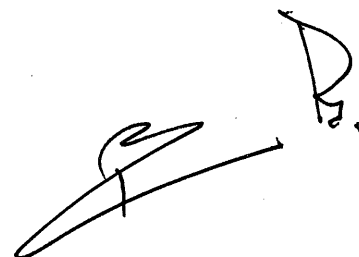
appliances and facilities that one would find in an office, such as a scanner, printer, computer, Wi-Fi connection and other office equipment. The apartment can however not be used for accommodation of three people, comprising two senior adults and one junior adult (i.e. my family and I).

- 11.3. My banking in Namibia is conducted through Bank Windhoek, where I have a "*cheque*" account and bond facility in respect of which I make a monthly payment of approximately N\$8 000,00.
- 11.4. I own a 2014 Nissan X-Trail motor vehicle in Namibia that I use when I am there.
- 11.5. Whenever I travel to Windhoek, I do so **exclusively** for purposes of my work as counsel, and do so **upon an ad hoc basis** for specific cases or clients. I point out that I from time to time take part in mountain biking events in Namibia, but that I however do so during the course of weekends during the time when I have to be in Namibia for matters in which I have to appear, and/or for meetings or consultations with clients. I however do not travel to Windhoek exclusively for the purpose of such mountain biking events (other than possibly for the annual Desert Dash event taking place in early December of each year), given the prohibitive costs of return airfare

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between Cape Town and Windhoek, that are currently between N\$9 000,00 and N\$10 500,00 for an economy class ticket. I point out that, whenever I travel to Windhoek for business purposes, I pay for my airfare myself.

- 11.6. I never "*generally*" reside or stay in Namibia, other than for the periods during which my presence is required for a specific matter or specific client. When I attend to a matter or clients in Windhoek, and the matter has been dealt with or finalised, I immediately fly back to Cape Town, to be back with my family, with whom I have a close and emotional bond.
12. A general comparison of my time spent in Windhoek, Namibia, with my time spent in Cape Town, South Africa, shows the following:
- 12.1. Since 10 December 2023 to date hereof, I have spent 26 days in Namibia for *ad hoc* matters in Windhoek, in cases that required my presence in Namibia:
- 12.1.1. On 22 January 2024 (1 day);
- 12.1.2. From 2 February 2024 to 16 February 2024 (14 days);
- 12.1.3. From 18 March 2024 to 28 March 2024 (11 days).

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- 12.2. Over the period from 10 December 2023 to date hereof (22 April 2024), i.e. approximately 130 days, the above 26 days were the only time that I spent in Namibia.
- 12.3. My residence in Namibia therefore accounts for only approximately 20% of the total time of my overall "residence" in both South Africa and Namibia.
- 12.4. Given the current status of my diary, the next professional commitment that I have in Windhoek is only scheduled for 11 June 2024. Calculated on such basis, the percentage of my total time spent in Namibia / Windhoek for the period of 10 December 2023 to 11 June 2024, would be only approximately 14%.
13. I therefore respectfully submit that the place "*where I hang my hat*", after a proverbial "*day's work*", is in Cape Town which, for the time being, is my place of "*residence*" until the outcome of my admission application will be known. As is clear from what I recorded earlier in my affidavit, there is a host of important and substantive logistical and domestic considerations that my family and I would have to attend to once the outcome of my admission application is known, before we could finally relocate to Namibia.
14. If my admission application is refused, I cannot relocate to Namibia.

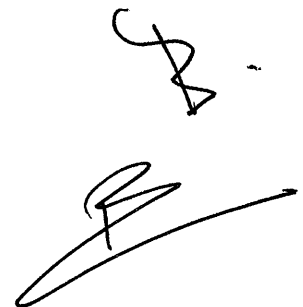
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15. I point out that I also cannot permanently relocate to Namibia pending the finalisation of my re-qualifying exams and admission application, which could conceivably take many months to happen or take place. If I were to permanently relocate to Namibia prematurely, I would become fully "resident" in Namibia, and would not be able to practice or work as a legal practitioner at all, since I would neither be admitted to practice in Namibia, nor be eligible to apply for a section 85 certificate. I do not have any sources of income other than that generated by my practice as advocate.
16. Given the active processes of the undermining of my practice upon which the legal representatives of the applicant have embarked, that I shall deal with under the next rubric in my affidavit, it may even be possible that I may or will no longer receive briefs from legal practitioners in Namibia, even though my application for admission as legal practitioner may be successful. It would therefore also be critically necessary for me, in the event that my application for admission is successful, to assess the prospects of being briefed (which prospects are presently actively being undermined by parties such as the legal representatives of the applicant) in Namibia before I fully relocate to Windhoek. The above consideration is just a further example of the uncertainty surrounding my final relocation to Namibia, and the factual relevance of my continued residence in South Africa until more finality is achieved concerning my admission.

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**MY RESOLVE TO BE ADMITTED IN NAMIBIA AND RELOCATE TO WINDHOEK**

17. The obstacles placed in my way will not deter me from giving effect to a long time aspiration of mine, namely to settle and practice in Namibia.
18. Since my application for a permanent residence permit in Namibia had first been lodged with the Ministry of Home Affairs in 2009, I had to wait for 10 years before the application was granted. I went through many stressful months, years and moments, and substantive sacrifices during such 10 year period during which I awaited the outcome of my application. If my intention to move to and practice in Namibia was not genuine, I would not have gone through all such sacrifices.
19. I made substantial financial investments in Namibia based upon the hope and expectation that I would ultimately be able to achieve my admission as legal practitioner in Namibia. I would not have done so unless I genuinely intended to relocate to Namibia.
20. I do not intend causing my resolve and all my sacrifices and investment to come to naught, by not relocating to Namibia, if at all such move would be within my power.

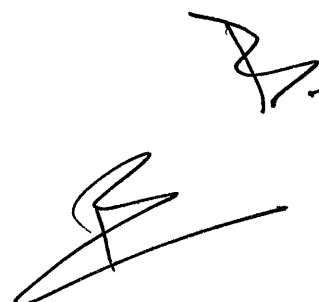
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**THE STATE OF PROGRESS IN MY ADMISSION APPLICATION**

21. I already in 2023 applied for exemption from being a qualified as legal practitioner as contemplated by section 5 of the Act, in terms of the exemption provided for in terms of section 5(1)(d)(i) of the Act, and obtained conditional exemption on 16 October 2023, upon the basis and condition that I pass an examination in 5 specified modules indicated by the Board for Legal Education in Namibia.
22. I obtained the exam material from the legal practitioners who assisted me in the above matter, in March 2024, and await notification from them concerning the dates upon which the exams will be written.
23. Once I have written and passed the exams, I will be able to launch my application for admission in Namibia as a legal practitioner practicing without a trust account.
24. It is self-evident that I would have to know the outcome of the above events before I can finally relocate in Namibia.

**THE APPLICANT'S ABUSE OF THE PROCESSES OF LAW**

25. My contentions and evidence set out under the above rubric should be viewed against the facts and submissions set out below.

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26. I have had an unpleasant relationship with Advocate Heathcote, the lead senior counsel of the applicant, since approximately 2011, when I appeared on behalf of the *DEUTSCHER SCHULVEREIN WINDHOEK (1949)* in Namibia, in a matter in which the plaintiff-client of Mr Heathcote claimed substantial damages from my defendant-client, arising from an incident where a 4 year old girl had allegedly been “*sexually assaulted*” by a 3 year old boy.
27. During the course of such proceedings, and in front of the parties and their respective legal representatives, and also in the presence of expert witnesses that my client called from South Africa to testify in the matter, Advocate Heathcote had a vociferous outburst and in the most unsavoury language told me that I should rather go back to South Africa, and stay out of Namibia.
28. Since such event he continuously proceeded to, on various occasions and on an ongoing basis, make disparaging remarks about my personality and my legal skills and expertise, to other legal practitioners, both “attorneys” and “counsel”, in Namibia, and also to clients on whose behalf I have been acting in Namibia. I do not wish to involve the legal practitioners or clients who would be able to confirm the caustic and vindictive attitude that Advocate Heathcote displayed during the course of such processes, in this matter. What I wish to record is simply that it has been made clear to me

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that Advocate Heathcote, for whatever reason, bears a substantial and deeply rooted grudge against me.

29. I am not aware of the exact date upon which Advocate Heathcote came on board as senior counsel for the applicant, I however know that he already occupied his position as lead counsel when RDW launched an interlocutory application in August 2023, seeking an order that substantial parts of the witness statements of the applicant/plaintiff comprised inadmissible evidence, that felt to be dealt with upfront, before the continuation of the trial, in accordance with case law in Namibia stipulating when objections of such nature should be adjudicated upon.
30. From the outset, both Advocate Heathcote and his instructing legal practitioner Mr Morwe, questioned the validity of my section 85 certificate, suggesting that I had not informed the Chief Justice of the fact that I am the holder of a permanent residence permit, and to that extent, that I had mislead the Chief Justice in what was recorded in my application for the certificate. For such reason, it was contended that the certificate had been granted irregularly and unlawfully.
31. Given the above incorrect assumption on the part of applicant's legal team, it became apparent to me that the accusations against me concerning the validity of the certificate were exclusively based upon speculation and

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surmise. I had fully conveyed to the Chief Justice in my application for the certificate that I was the holder of a permanent residence permit, and the suggestion to the contrary could only have been based upon a fishing expedition of the applicant's lawyers, intended that I should react thereto and provide evidence and documentation that the applicant could scrutinise for further possible grounds upon which to attack my presence in Namibia.

32. From August 2023 to March 2024 (a period of approximately 8 months), the legal team of the applicant, spearheaded by Advocate Heathcote and assisted by Advocate Dicks, attempted relentlessly to introduce the issue of the validity of my section 85 certificate, as one of the disputed issues in the trial between the plaintiff and defendant, that had to be identified as such (i.e. a disputed issue) in the pretrial order to be made in the main trial. I emphasise that the issues in the main trial between the plaintiff and defendant are totally unrelated and have nothing to do with the validity of the section 85 certificate.
33. The malicious and abusive reason why the legal team of the applicant attempted to do this was obvious:
- 33.1. If the validity or regularity of the section 85 certificate would be an issue in dispute in the main action between the plaintiff and the

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defendant, I would be required to testify in the trial, and present oral evidence on such issue.

- 33.2. If I had to do so, I would most likely be required to withdraw as counsel for RDW, since I would not be able to both be a witness giving oral evidence, whilst simultaneously acting as counsel for RDW.
- 33.3. Such result, i.e. my elimination as counsel for RDW, was pursued with vigour for 8 months, until 27 March 2024 when, on the directions of the Court, the issue concerning the validity or regularity of my section 85 certificate was ordered to be dealt with in separate proceedings.
34. I point out that the propensity of Advocate Heathcote and Advocate Dicks to attempt to remove a South African counsel from being their opponent, by allegations concerning the validity of such counsel's section 85 certificate, is not novel.
35. In the matter of *Loubser v De Beers Marine Namibia (Pty) Ltd (I341/2008) [2014] NAHCMD40 (18 October 2013)*, both Advocate Heathcote and Dicks (as legal team for the defendant in such matter) similarly attempted to disqualify Advocate Johannes Jacobus Botha SC, a member of the Cape


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Bar, from appearing against them, upon the basis of an allegation that the Honourable Chief Justice had irregularly and unlawfully granted the section 85 certificate to him (Advocate Botha SC).

36. In paragraph (8) and (9) of the judgement (of his Lordship Mr Justice Geier) that dismissed the urgent interlocutory (review) application launched and orchestrated by Advocate Heathcote and Dicks, purportedly in the name of the defendant in such matter who clearly had no real interest in the section 85 issues, the Court referred to the express and unusual identification and categorisation of each of the members of the plaintiff's South African legal team, as "RSA" lawyers. I contend that the purpose for the Court's reference to this strange phenomenon was to excoriate the use of what could be viewed as xenophobic references to South African counsel, for no apparent or legitimate reason or purpose, other than the disparaging of such counsel or legal representatives.

37. In paragraph (42) of the judgment of His Lordship Mr Justice Geier (in such matter), perfectly encapsulating the truth behind Advocate Heathcote's attempt to attack the validity of the certificate, the court stated the following:

*"The Court also wanted to know from Mr Heathcote what the real purpose of the defendant's belated application was, and, whether the defendant wanted to eliminate the plaintiff's legal representation and whether he*



*would rather have it that the plaintiff should represent himself.”* (my emphasis)

38. The response of Advocate Heathcote was recorded to be (in paragraph 43 of the judgement) that he merely attempted to ensure that the *“plaintiff’s legal practitioners stayed within the law”*, an allegation similar to the one presently made in the current matter, concerning the attack on the validity of my own section 85 certificate.
39. It however appears that Advocate Heathcote’s stated intentions to ensure that South African counsel *“stay within the law”*, are less than frank, and that his motives vacillate and vary, depending on his personal exigencies, likes, dislikes and preferences, concerning the particular legal practitioners involved. I say so for the reasons set out below.
40. In the matter of *The Minister of Home Affairs and Others v Hellens and Another, case number SA64/2021*, in which judgement was given by the Namibian Supreme Court on 1 March 2024, Advocate Heathcote represented two South African senior counsel who attempted to appeal and overturn their convictions arising from indisputably and incontrovertibly illegal acts involving their entry and appearance in Namibia. The attempt of Advocate Heathcote was therefore not to ensure that foreign counsel stay within the law, but rather that they be placed beyond the reach of the law.

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41. In the matter of *Hellens v The Minister of Home Affairs (case 71/2020)*, heard in the High Court, in which judgement was delivered on 23 June 2021, (being the matter that gave rise to the appeal referred to in the foregoing paragraph), Advocate Heathcote represented the same said two South African senior counsel, and procured a review and setting aside of the conviction of the two counsel, which review and setting aside was overturned in an appeal lodged by the Minister of Home Affairs. The endeavours of Advocate Heathcote was yet again pursued with the same motive set out in the last sentence of the foregoing paragraph.
42. In the Supreme Court matter of *Minister of Home Affairs and Others v Hellens and Joubert (case number 64/2021)*, Advocate Heathcote represented the same two above South African senior counsel, in effect seeking the same result (i.e. their acquittal on all the charges against them), that was sought in the matters referred to in the two foregoing paragraphs. In such appeal (in the Supreme Court), Advocate Heathcote did not hesitate, in his written submissions, to disparage the entity that attempted to deal with the two senior counsel within the ambit of Namibian law, namely the Ministry of Home Affairs, in the following manner:

*"For so many years, Home Affairs has interpreted its own legislation disastrously wrong. The policy is quite perfect and is contained in the Act.*

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*It is its wrong implementation – infused by an overdose of vex in this case – which cause this running sore to burst open". (my emphasis)*

43. In the further appeal matter in the High Court of Namibia, of *Joubert and Hellens v The State*, case number 20/2020, Advocate Heathcote represented the same two counsel in an attempt to secure a result similar to that pursued in each of the above cases referred to above.
44. It therefore appears from the above that Advocate Heathcote did not spare any effort, over 4 sets of costly and expensive proceedings, to stretch the resources of the staff and Judges of both the Supreme and High Courts, as well as that of the officials of the Ministry of Home Affairs, to ensure that legal practitioners who were declared to have indubitably acted outside the law of Namibia, remain outside the law and its sanctions, and that they could not be held accountable for their actions.
45. I submit that the above puts paid to the notion that Advocate Heathcote and Dicks acted as custodians of the Namibian law when they orchestrated the attack on the decision of the Honourable Chief Justice to grant my certificate.
46. I submit that their actions in the current proceedings are inspired by pure malice, and by a long-standing grudge that Advocate Heathcote bears

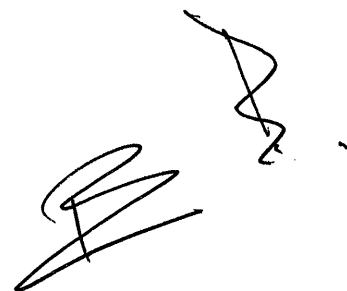
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against me, and by an attempt to eliminate me from acting as counsel on behalf of RDW. To this end, they are abusing what may be the otherwise legitimate procedures of law, to achieve their ulterior motives.

47. The pure malice and vindictiveness of the legal team of the applicant is demonstrated by and appears from a letter dated 8 March 2024, dispatched from the office of my instructing legal practitioners, a copy of which is attached hereto as annexure "RW1". In paragraph 5 and further of the letter, the author of the letter, namely Ms Venter, who attended the Teams meeting through the medium of which the pre-trial meeting was conducted, stated:


"5. *When the discussions eventually proceeded beyond item 11, our counsel was asked by Advocate Heathcote whether he (our counsel) should not rather deal with the question whether he is properly authorised to appear and represent the defendant. Our counsel responded that an issue of such nature does not arise from the pleadings in the matter and therefore cannot be included in a pretrial order purporting to reflect the issues in dispute between the parties.*

6. *After substantial to-ing and fro-ing between the respective counsel on this issue without any progress being made, it was then*

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indicated by our counsel – simply to put an end to the farcical roundabouts that characterised the debate between the parties on this issue – that reference to such issue can be made in the pretrial order, but that the reference should be subject to the condition that our office and our client do not and shall never agree that such aspect can ever be an issue for determination to be included in the pretrial order.

7. When it was pointed out to your counsel that such matter was raised as part of the personal issues that your Advocate Heathcote has with our client's counsel, Advocate Heathcote responded by stating that it makes it easy for him to pursue issues of such nature against our client's counsel, because of the general habit of our counsel to make use, in pleadings and papers of court matters, of his wide range of 'byvoeglike naamwoorde' that includes words like 'bold' and 'brazen', and, as Advocate Heathcote put it, 'en sulke stront'.
  
8. It is quite clear from the above that crusade of Advocate Heathcote against our client's counsel arises from personal dislikes and issues harboured by Advocate Heathcote, and has nothing to do with the issues arising from the disputes between the plaintiff and defendant. It would be totally inappropriate and an abuse of the

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process of court to allow the current proceedings to be a platform from which Advocate Heathcote should be permitted to spew his venom." (my bold print and emphasis)

48. The above contents of the letter, that have never been disputed by any member of the applicant's legal team, that includes Mr Morwe and advocate Dicks, not only showed the distasteful and unethical lengths to which Advocate Heathcote, a senior practitioner of the Namibian Court, is prepared to go to insult me, but also explains why Advocate Heathcote has a personal issue with my appearances in the Namibian Courts, arising from what he perceives as an objectionable style of litigating on my side.

49. I further attach hereto as annexure "RW2", a document styled "*Plaintiff's Status Report*" dated 17 March 2024, in which the applicant's legal team attempted to procure the set down of this application on a date when I was not available to represent either myself, or RDW, in in the current application. When my instructing legal practitioner Mr Naudé pointed out my unavailability on the dates proposed by the applicant's counsel, the startling response was:

"3. Furthermore the issues are not such that the defendant's counsel needs to fly in from Cape Town merely to make submissions. This is an interlocutory application which can be argued by the

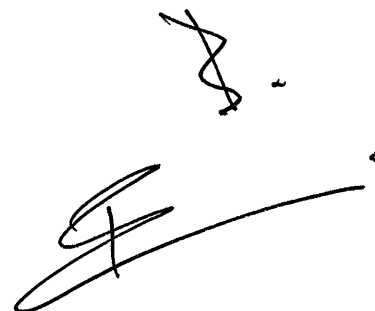
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*defendant's attorney. ... Should the court consider granting postponement as requested by the defendant the parties will have to meet with the Judge in chambers to discuss the diaries of five (5) legal practitioners concerned and also take the available dates of the Managing Judge into consideration. This is an unnecessary and avoidable dilemma." (my emphasis)*

50. The proposal that the current application, with its far reaching effect and consequences, had to be argued without the assistance of any counsel, or me, by "*defendant's attorney*", squarely supports my contention that the actions of the applicant's legal team are *inter alia* aimed at removing and/or eliminating me as counsel for RWD.
  
51. The further evidence of the subterfuge and abusiveness with which the applicant's legal team conducts their campaign against me, is submitted to be staggering. I set out such evidence below:
  - 51.1. On 18 March 2025 Mr Morwe, the applicant's legal practitioner, *inter alia* demanded, in writing addressed to Mr Naude, to be placed in possession of a copy of my 2009 application to the Department of Home Affairs for a permanent residence permit.

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- 51.2. Mr Naudé in writing declined such demand on 20 March 2024, upon the two grounds that, firstly, the required document was totally irrelevant to the intended interlocutory application of which neither I, nor Mr Naudé at such stage had seen any copy, and, secondly, that the application to the Ministry of Home Affairs contained confidential information about myself, my wife and my son, that I did not wish to have disclosed to hostile parties such as the applicant and its legal team.
- 51.3. After the demand was declined Mr Naudé and I did not receive any further communication or correspondence from Mr Morwe, on this aspect.
- 51.4. In the *interim*, a further status hearing had been scheduled for 27 March 2024. Since I was in Windhoek at the time for a trial matter enrolled for 25 to 28 March 2024, I agreed with Mr Naudé, on 25 March 2024, that I would attend to the appearance in the status hearing (in this matter), which was scheduled for 08h30 on 27 March 2024. The hearing was scheduled for the exclusive purpose of determining a date for the hearing of this matter, since the above status report of the plaintiff contained various dates, proposed by each of the parties, for the hearing.

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51.5. Shortly before 27 March 2024 Judge Parker notified the parties that only the instructing legal practitioners of the parties should appear before him in chambers at 08h30 on 27 March 2024, the intention clearly having been to limit the appearance to the subject of the determination of a date for the hearing of the application, and not for any other legal arguments to be presented by the counsel of any of the parties.

51.6. On 26 March 2024 Mr Morwe uploaded a unilateral status report, a copy of which is attached hereto as annexure "RW3", on e-justice, in which certain dates for the hearing were proposed and which report concluded with the following statement in paragraph 3:

*"The matter may be postponed in absentia. The parties waive their right to be heard."*


51.7. The message that such statement was intended to convey to Mr Naudé was clearly that it would not be necessary for him, or for anybody on behalf of RDW, to appear at the status hearing at 08h30 on 27 March 2024.

51.8. In the *interim* however, Mr Morwe caused a *subpoena duces tecum* to be issued and served on 22 March 2024 upon both the executive

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director of the Department of Home Affairs, Mr E Maritz, as well as the acting executive director, Ms Nghilwamo, calling on them to produce *"on the 27<sup>th</sup> day of March 2024 at 08h30 in the morning before Judge Parker", "the complete application of the permanent residence permit of Advocate Theodorus Adam Barnard."* I annex hereto as annexure **"RD4"**, a copy of such subpoena.

- 51.9. Significantly, the subpoena was issued under case number 2204/2021, the case number of the main action between applicant and RDW. There could have been no doubt of any kind in the minds of each member of the applicant's legal team about the fact that the requested document could not have any relevance to any of the issues in such main action. The proceedings (and their case number) in the main action were therefore abused to by subterfuge obtain documents purportedly for use in the current application.
- 51.10. It also demonstrates that the applicant and its legal team were fishing for material upon which to base their intended proceeding involving my section 85 certificate. Such fact also demonstrates that, as at the time when the above subpoena was issued, the applicant did not have any proper evidence upon which to launch whatever its application would turn out to be, and was desperately searching for grounds upon which to base the proceeding referred

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to by advocate Heathcote on 13 March 2024, as “*this type of thing*”, without being able to articulate or identify what “*kind of thing*” he and the applicant had in mind.

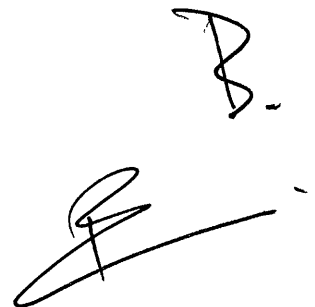
51.11. The intention of Mr Morwe was clearly to, through the status report indicating that no appearance on behalf of RDW on 27 March 2024 was required or necessary, to ensure that Mr Naudé would not make any arrangement for anybody to appear on 27 March, thereby facilitating the subpoena proceedings to proceed without any knowledge on either my part, or that of Mr Naudé, in an uncontested fashion.

51.12. Unfortunately for Mr Morwe, the *subpoena duces tecum* had to be uploaded on e-justice to at least alert the Honourable Judge Parker that the subpoena proceedings were set down for the next day.

51.13. The subpoena was therefore uploaded, as intended by Mr Morwe, at the very latest juncture, i.e. to the best of my knowledge, approximately 17h00 on 26 March 2024 without the legal practitioners of RDW being alerted to its uploading through any prior correspondence from the office of Mr Morwe.



- 51.14. Fortuitously Mr Naudé was still in his office after hours on 26 March 2024, when a notification was sent to his email address to alert him that the *subpoena duces tecum* had been uploaded on e-justice. When he received the notification, he immediately notified me, and requested me to interrupt my preparation for the trial matter that was set to continue at 10h00 on 27 March 2024, and to attend to the proceedings scheduled before Judge Parker the next morning, at 08h30, which I duly did.
- 51.15. The essence of the proceedings was that Judge Parker concluded, as argued by myself, that the *subpoena duces tecum* was an abuse of the process of court, employed to overcome the objection of lack of relevance from Mr Naude, and that it was set aside, as reflected by the court order of 27 March 2024 a copy of which is annexed hereto as annexure "RW5".
- 51.16. Further demonstrating the underhand actions employed by the applicant in this matter, is the fact that, in paragraph 7 of the supporting affidavit of deponent Sonja Coetzer, reference was made to personal information of myself and my family that the deponent could not have gleaned from any document other than my application for my permanent residence permit.

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51.17. The only conclusion is therefore that, after Judge Parker had set aside the *subpoena duces tecum* that contemplated to facilitate the production of such document, the applicant and/or one or more of the members of his legal team proceeded, by stealth and/or some other unlawful means, to obtain a copy of my permanent residence permit. I respectfully contend that such action calls for the most severe excoriation.

52. The most telling example of the malicious and abusive motives and actions of the legal team of the applicant, is the manner in which the current review application was launched. In support of my above contention I refer to the following facts:

52.1. The applicant's application had to be launched on or before 11 April 2024.

52.2. On 10 April 2024 an application was uploaded by Morwe and Associates on behalf of the applicant, a copy of which is attached hereto as annexure "RW6".

52.3. In the "*Notice of Motion*" in such application, in which I had not even been cited as a respondent, the motives of the true manipulators of

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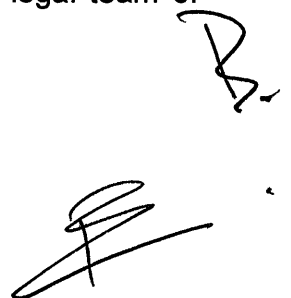


the application were clearly reflected in the relief sought against me in prayer 2:

*“That respondent’s instructed counsel, Advocate Theodorus Adam Barnard, be **interdicted from appearing** in the aforementioned matter **and any other matter in the Republic of Namibia on account of his permanent residency status in Namibia, until such time that he is lawfully admitted and authorised to practice as a legal practitioner of the High and Supreme Courts of Namibia in terms of sections 3, 4 and 5 of the Legal Practitioners Act, 15 of 1995, or until such time as he revokes his permanent residence status in Namibia and is granted a section 85(2) certificate by the Chief Justice.**” (my emphasis and bold print)*

52.4. It is clear that, although it could conceivably be argued that applicant has a remote interest in the validity of my current section 85 certificate, it (the applicant) could never have any interest in a general and far-reaching interdict restraining me from acting in the manner as reflected by the emphasised portion of prayer 2, referred to above.

52.5. The only party(ies) who could have an interest in and motive for the launching of such relief is/are the member(s) of the legal team of

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the applicant, and nobody else. It is clear that the applicant itself, or any of its shareholders, did and could not prepare or draft the notice of motion or could give any input in its contents, that were of a technically legal nature. The notice of motion and the relief formulated therein was incontrovertibly exclusively the handiwork of the applicant's legal representatives.

- 52.6. When applicant's legal representatives realised what their blunder conveyed to the outside world concerning their ulterior motives in having launched the application for such relief, they hastily (on 10 April 2024) filed and uploaded a "*Notice of Withdrawal of Application*", of which a copy marked as annexure "**RW7**" is annexed hereto, and tendered the costs of their abusive and malicious application.
- 52.7. On 11 April 2024 a new application was filed and uploaded, in which prayer 2 reflected a much truncated and scaled down prayer for relief, limited to only a review and setting aside of the certificate granted by the Chief Justice in the current matter.
- 52.8. At such stage the belated attempt to conceal who the real abusers of the applicant's proceedings are, was ineffective. The first notice

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of motion was tellingly instructive in such context, and its contents could not be thought away.

53. I also wish to refer to the following disconcerting features of the proceedings launched by the applicant:

53.1 It appears from annexure "SC1" to the applicant's supporting affidavit that correspondence had been directed by the applicant's legal practitioners to the office of the Chief Justice of Namibia, on 22 March 2024.

53.2 None of the other respondents, including myself and RDW, or the legal practitioners for the latter, was/were copied in such correspondence.

53.3 It also appears from annexure "SC2" to the supporting affidavit that further correspondence had been exchanged between the applicant's legal practitioners, the "*Manager: Regulatory and Compliance*" of the Law Society, Ms Kazohoa, and the Registrar of the Supreme Court between 22 and 23 March 2023, that must have included a purported summary of some kind of the facts and circumstances that the applicant deemed relevant in this matter, and that such summary underpinned a request to "*advise the*

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*applicants on the way forward*". It appears that such request prompted the response of the Registrar of the Supreme Court set out in paragraph 3 of the letter reflected in such annexure:

*"We regret that we cannot give legal advice on the way forward as requested in your email."*

53.4 Again, none of the other respondents, including myself and RDW, or the legal practitioners for the latter, was/were copied in such correspondence. In addition, neither I, nor RDW, nor the legal practitioners for the latter, have to date hereof been favoured by copies of such correspondence.

53.5 I respectfully submit that the above failures to comply with simple and trite constitutional principles underpinning the requirements of a fair trial, further demonstrate the abusive, dismissive and contemptuous manner in which the applicant and its legal practitioners conduct the proceedings against the first and third respondents.

54. In conclusion I refer to the fact that, on each of the 4 occasions thus far when the issues arising from this interlocutory application had to be canvassed during the course of a status hearing before Judge Parker, such

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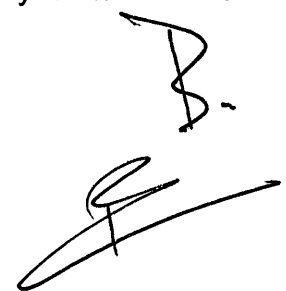
status hearings proceeded in open court, in the presence of a substantial number of legal practitioners in Namibia who awaited their own matters being called. On every such occasion such legal practitioners would hear the contentions of the legal team of the applicant that I appear in Namibia unlawfully and illegally.

55. I respectfully contend that such result is one that was both intended and foreseen by the applicant and its legal representatives, namely to cause that legal practitioners in Namibia would not be keen to brief me as their instructed counsel, given my alleged propensity appear in Namibia unlawfully and illegally.

56. Based upon the above evidence, I respectfully contend that the abuse of the process of law by the applicant and its legal representatives was duly established.

**THE CONTENTS OF THE SUPPORTING AFFIDAVIT OF MS SONJA COETZER**

57. I point out that the affidavit of the deponent contains exclusively hearsay evidence, involving facts and events of which she has no personal knowledge whatsoever, and further contains legal submissions that no legal representative of the applicant confirmed having conveyed to her. It

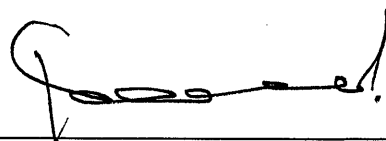
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furthermore contains a number of allegations which are nothing more than her personal views and opinion evidence.

58. For the above reasons I submit it is not necessary for me to *seriatim* deal with such matter in my current affidavit. I however reserve the right to make submissions or cause submissions to be made on the contents of the affidavit during the hearing of this matter.

### CONCLUSION

59. Under the circumstances I contend that a proper case was made out for the dismissal of the applicant's application, on any one, more or all of the grounds set out in both the affidavits deposed to by myself, and by Mr Wirtz.
60. I also contend that a proper case was made out for a punitive costs order against the applicant, who permitted its proceedings to be abused, and took part of such abuse, in the manner as set out in my affidavit.



THEODORUS ADAM BARNARD



The deponent has acknowledged to me that he knows and understands the contents of this affidavit which affidavit was signed and sworn to before me in my office at Cape Town on the 22<sup>nd</sup> day of April 2024 in accordance with Regulation No R1258 dated 21 July 1972 as amended by Government Notice R1648 dated 19 August 1977, as further amended by Government Notice R1428 dated 11 July 1980 and by Government Notice R774 of 23 April 1982.



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**PRACTISING ADVOCATE**  
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**DR WEDER, KAUTA  
& HOVEKA INC.**

LEGAL PRACTITIONERS • NOTARIES • CONVEYANCERS

8 March 2024

**MORWE & ASSOCIATES INC.**

**WINDHOEK**

Our Ref: **A. Naude/MAT68736/cj**

Reply To: [naude.litigation1@wkh-law.com](mailto:naude.litigation1@wkh-law.com)

Enquiries: **Mr. A. Naude / Ms. C. Johr**

Your Ref: **SM23/0000010**

Send via: **E-mail**

**ATT: MR. S. MORWE**

Dear Sir,

**RE: SALT ESSENTIAL INFORMATION TECHNOLOGY (PTY) LTD // RDW  
PROPERTIES CC**

**DIRECTORS**

A Swanepoel, B. Com LLB  
P U Kauta, B.Jur LLB  
A.A.J Naude, B.Jur LLB  
E.H Yssel, B.A LLB  
C.P.J Potgieter, B.Com LLB  
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L.T van den Berg, BLC LLB  
R.B Strauss, B.Com LLB  
B Greyvenstein, B.Proc  
V.M Hanongo-Haikali, LLB  
M.D Erkana, LLB  
P.H.K Botha, B.Com LLB  
R Dreyer, LLB  
C.M Tjithero, B.Jur LLB  
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M.U Kuzeeke, LLB, LLM (Tax)  
N van Schalkwyk, LLB  
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G Louw van Wijk, B.A LLB  
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A.I Dos Santos, B.A LLB, LLM  
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P.M Hango, B.Jur LLB  
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1. The pre-trial conference that the parties conducted yesterday, i.e. Thursday, 7 March 2024, refers.

2. We place on record the following:

2.1 At the very commencement of the meeting, and at the outset, our client's Counsel enquired from the representatives of the plaintiff whether it would be appropriate to work on the basis of the proposed pre-trial order compiled by your client's own legal representatives, and dispatched to our offices under cover of an email dated 6 December 2023. Such proposed pre-trial carried the date of 8 November 2023.

2.2 Your client's counsel confirmed that it would be appropriate to do so, and that there were no other pre-trial order proposals compiled

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subsequent to 6 December 2023, when the above proposal was dispatched to our offices.

2.3 Our client's counsel specifically enquired whether any regard should be had to any other pre-trial order proposals emanating from your offices. He was informed that there were none.

3. Our client's counsel then enquired why the draughtsmen of the proposal prepared by your offices failed to make any reference to the specific plea of the defendant of prescription. The issue of prescription had been raised previously between the parties, and the plaintiff's legal representatives were well aware of such defence. This notwithstanding it was apparently elected not to include same in your proposal. We point out that this could not have been a *bona fide* omission.
4. The parties then commenced discussing the various issues arising from the pre-trial order as proposed by yourselves. Regrettably, unjustifiable and unsustainable points were taken by the plaintiff's legal representatives concerning what may be included in the pre-trial report. As a simple example of the pettiness of some of the objections raised by your client's counsel, an almost 10-minute-long debate ensued about whether the defendant could rely on the wording of item 11 in the format **as presented by your office.**
5. When the discussions eventually proceeded beyond item 11, our Counsel was asked by Adv Heathcote whether he (our counsel) should not rather deal with the question whether he is properly authorised to appear and represent the defendant. Our counsel responded that an issue of such nature does not arise from the pleadings in the matter and therefore cannot be included in a pre-trial order purporting to reflect the issues in dispute between the parties.



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6. After substantial to-ing and fro-ing between the respective counsel on this issue without any progress being made, it was then indicated by our Counsel - simply to put an end to the farcical roundabouts that characterised the debate between the parties on this issue - that reference to such issue can be made in the pre-trial order, but that the reference should be subject to the condition that our office and our client do not and shall never agree that such aspect can ever be an issue for determination to be included in a pre-trial order.
7. When it was pointed out to your counsel that such matter was raised as part of the personal issues that your Adv Heathcote has with our client's counsel, Adv Heathcote responded by stating that it makes it easy for him to pursue issues of such nature against our client's counsel, because of the general habit of our Counsel to make use, in pleadings and papers of court matters, of his wide range of "byvoeglike naamwoorde" that includes words like "bold" and "brazen", and, as Adv Heathcote put it, "en sulke stront".
8. It is quite clear from the above that the crusade of Adv Heathcote against our client's counsel arises from personal dislikes and issues harboured by Adv Heathcote, and has nothing to do with the issues arising from the disputes between the plaintiff and the defendant. It would be totally inappropriate and an abuse of the process of court to allow the current proceedings to be a platform from which Adv Heathcote should be permitted to spew his venom.
9. When our client's counsel wanted to proceed with the other issues in the proposed pre-trial, he was informed that the numbering of the paragraphs in the document from which you yourselves were working, did not correspond with the numbering of the paragraphs in the document that your offices dispatched to ourselves on 6 December 2023, despite the fact that you had specifically confirmed that your

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working document indeed was the one dispatched to our offices on 6 December 2023.

10. Because of your office's unpreparedness we were unable to continue with the pre-trial conference. It was then decided that our counsel would proceed to deal with the document claimed by yourselves to be the proper and appropriate working document, i.e. the one sent to us on 6 December 2023, but later (during the course of yesterday's meeting) admitted not to be same, by effecting the changes proposed by ourselves in tracking format, without any further input from your own offices.
  
11. We accordingly attach hereto the document so completed by our client's counsel in tracking format. If you refuse to sign same, it would just result in yet another delay in this matter brought about by the use by yourselves of a document different to the one that you stated was under discussion. This would perfectly fall in with your client's long-term plan to delay the final conclusion of this matter for as long as possible (given the lack of merits in its claims), whilst in the interim attempts would be made to bear the maximum pressure on the counsel of our client in an attempt to eliminate his presence in this matter.
  
12. Kindly be guided accordingly.

Yours faithfully,



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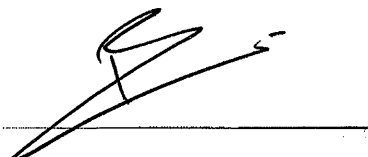
**DR. WEDER, KAUTA & HOVEKA INC.**

**PER: S. VENTER**



Criminal syndicates may attempt to induce clients to make payments due to WKH Inc. into bank accounts that do not belong to WKH Inc. This form of fraud may be perpetrated through e-mails, letters and electronic or other correspondence that may appear to have emanated from WKH Inc. Before making any payment to WKH Inc., clients must ensure that the account into which payment will be made is a legitimate bank account of WKH Inc. If at any time clients are not certain of the correctness of the bank account into which a payment due to WKH Inc., will be made, clients should immediately contact WKH Inc.

WKH Inc. will never send you an email about a change of the WKH Inc. banking details and/or information. This applies to emails and letters received on the company letterhead. Any email mentioning a change of the banking details is false, fraudulent and likely a scam. Kindly contact a director of WKH Inc. immediately should you receive an email requiring you to effect payment to different account details as that is likely false, fraudulent, or an online phishing scam.



"RWZ"

ASSIGNED JUDGE: HON MR. JUSTICE PARKER  
LAST HEARING DATE: 13 MARCH 2024 AT 08H30  
ROLL TYPE: PRE-TRIAL CONFERENCE HEARING

IN THE HIGH COURT OF NAMIBIA  
MAIN DIVISION

CASE NO.: HC-MD-CIV-ACT-CON-2021/02204

In the matter between:

**SALT ESSENTIAL INFORMATION  
TECHNOLOGY (PTY) LTD**

**PLAINTIFF**

and

**RDW PROPERTIES CC**

**DEFENDANT**

---

**PLAINTIFF'S STATUS REPORT**

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**KINDLY TAKE NOTICE** that the Plaintiff herewith report to the Honourable Court in terms of Rule 27(1) as follows:

1. The Plaintiff refers the Honrable Court to the record of 13 March 2024, in which it was agreed that the hearing will take place on **24 April 2024** at **11:30**, alternatively on **02 May 2024** should the Defendant / Respondent's counsel not be available on the first date given by the court.
2. The Plaintiff is further of the view that this matter has a protracted history and had already been delayed for longer than is usual in any circumstances. The Defendant's attorney alluded to this very fact in court on Wednesday 13 March 2024.
3. Furthermore the issues are not such that the Defendant's counsel needs to fly in from Cape Town merely to make submissions. This is an interlocutory application which can be argued by the Defendant's attorney. Moreover the new dates propose are not available in the diaries of the Plaintiff's attorney, it's junior and

B.



senior counsels and the very Rule cited above calls for the managing judge to ‘...make such order as to the just and speedy disposal of the case...’. Should the court consider granting a postponement as requested by the Defendant the parties will have to meet with the judge in chambers to discuss the diaries of the five (5) legal practitioners concerned and also take the available dates of the managing judge into consideration. This is an unnecessary and an avoidable dilemma.

4. The Plaintiff accordingly prays for an order in terms of which the dates agreed to below be endorsed and made an order of court:

4.1 The Plaintiff / Applicant will file its application on – **27 March 2024**;

4.2 The Defendant / Respondent will file their Answering Affidavit on – **10 April 2024**;

4.3 The Plaintiff / Applicant will file their Replying Affidavit on – **17 April 2024**;

4.4 The parties will file their Heads of Argument on – **22 April 2024**;

4.5 The matter is set down for hearing on – **24 April 2024** at **11:30**. Alternately on **02 May 2024**.

5. The Plaintiff filed a draft court order herewith for the convenience of the Honourable Court.

**DATED AND SIGNED AT WINDHOEK ON THIS 17<sup>TH</sup> DAY OF MARCH 2024.**




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**MORWE & ASSOCIATES INCORPORATED**  
LEGAL PRACTITIONERS FOR PLAINTIFF

NO. 11 OMARURU STREET

WINDHOEK

(REF: SM23/0000010)

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**TO: THE REGISTRAR OF THE HIGH COURT**  
HIGH COURT OF NAMIBIA  
MAIN DIVISION  
WINDHOEK

**AND TO: DR. WEDER, KAUTA & HOVEKA INC.**  
LEGAL PRACTITIONERS FOR **DEFENDANT**  
WKH HOUSE, JAN JONKER ROAD  
AUSSPANNPLATZ  
WINDHOEK



"RW3"

ASSIGNED JUDGE: HON MR JUSTICE PARKER

NEXT HEARING DATE: 27 MARCH 2024

ROLL TYPE: STATUS HEARING

**IN THE HIGH COURT OF NAMIBIA  
MAIN DIVISION**

**CASE NO.: HC-MD-CIV-ACT-CON-2021/02204**

In the matter between:

**SALT ESSENTIAL INFORMATION  
TECHNOLOGY (PTY) LTD**

**PLAINTIFF**

and

**RDW PROPERTIES CC**

**DEFENDANT**

---

**JOINT STATUS REPORT**

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**KINDLY TAKE NOTICE** that the parties wish to report as follows:

1. The parties have discussed possibly dates and hereby confirm the matter may be set down for the hearing of the interlocutory application as follows:

- 1.1. 14 May 2024;
- 1.2. 15 May 2024;
- 1.3. 16 May 2024
- 1.4. 17 May 2024

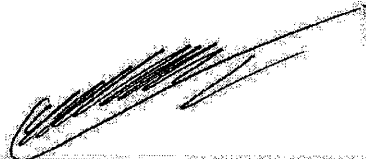
Alternatively

- 1.5. 18 June 2024;
- 1.6. 19 June 2024;

1.7. 20 June 2024 and or 21 June 2024.

2. The Parties therefore pray that the Honourable Managing Judge postpones the hearing of the interlocutory application to one of the above-mentioned dates which the court in its discretion has available for hearing.
3. The matter may be postponed in absentia. The parties waive their right to be heard.

DATED AND SIGNED AT WINDHOEK ON THIS 26<sup>th</sup> DAY OF MARCH 2024.

  
MORWE & ASSOCIATES INCORPORATED  
LEGAL PRACTITIONERS FOR PLAINTIFF  
NO. 11 OMARURU STREET WINDHOEK  
(REF: SM23/0000010)

DATED AND SIGNED AT WINDHOEK ON THIS \_\_\_ DAY OF MARCH 2024.

DR WEDER, KAUTA & HOVEKA INC  
LEGAL PRACTITIONERS FOR DEFENDANT  
WKH HOUSE  
AUSSPANNPLATZ  
WINDHOEK  
REF: A NAUDE/ MAT68736/CJ



**AND TO: THE REGISTRAR OF THE HIGH COURT  
HIGH COURT OF NAMIBIA, MAIN DIVISION  
WINDHOEK**



"RW4"

Received: K. Ekilas

Ministry of Home Affairs, Immigration, Safety and Security	
2024-03-22	
Deputy Executive Director	
Immigration & Refugee Management	

Filed by:  
**Morwe & Associates Inc**  
Per: S. Morwe  
**Legal Practitioners for**  
**Plaintiff**  
11 Omaruru Street Eros  
Windhoek

Managing Judge: **Hon. Justice Parker**  
Date of Hearing: **27 March 2024**  
Time: **08h30**  
Roll type: **Status Hearing**

**SUBPOENA**

IN THE HIGH COURT OF NAMIBIA  
(Main Division – Windhoek)

CASE NO: **HC-MD-CIV-ACT-CON-2021/02204**

In the matter between:

**SALT ESSENTIAL INFORMATION TECHNOLOGY (PTY) LTD**

**PLAINTIFF**

and

**RDW PROPERTIES CC**

**DEFENDANT**

To the Deputy-Sheriff for the district of **WINDHOEK** inform:

- (1) **Mr Etienne Maritz**, a major male Executive Director and Chairperson of the Immigration Selection Board of the Ministry Home Affairs, Immigration, Safety and Security, Windhoek, or in his absence;
- (2) **Mrs Rachel Nghilwamo**, a major female Acting Executive Director of Home Affairs, Immigration, Safety and Security, Windhoek.

That they are hereby required to appear in person before this Court at **WINDHOEK** on the **27<sup>th</sup>** day of **March 2024** at **08h30** in the morning before Judge Parker, and to produce copies of the following documents:

1. The complete application of the permanent residence permit of Advocate Theodorus Adam Barnard and

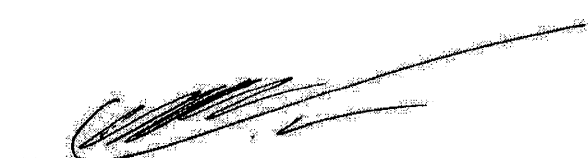
2. The permanent residence permit of Advocate Theodorus Adam Barnard,

in order to hand in the documents to the Court and thereafter to remain in attendance until excused by the said Court;

AND INFORM Etienne Maritz and Rachel Nghilwamo further that they should on no account neglect to comply with this subpoena as they may thereby render themselves liable to a fine of N\$ 4,000.00 or to imprisonment for one year.

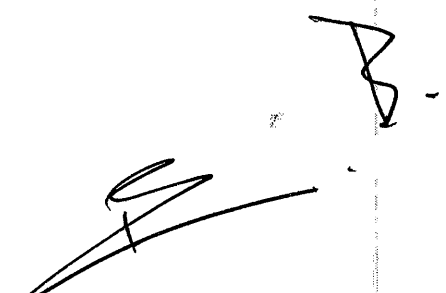
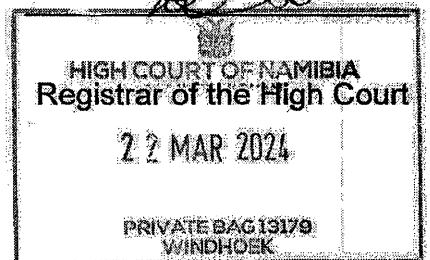
The Plaintiff hereby tenders all reasonable expenses and costs incurred by the ECB and Etienne Maritz and Rachel Nghilwamo in the preparation of the documents as well as their attendance to Court. Should Etienne Maritz and Rachel Nghilwamo so wish, they should provide a bank account number for an Electronic Fund Transfer (EFT) to be made (it is no longer permissible to attach a cheque to the subpoena) or make other suitable arrangements with the Plaintiff's Legal Practitioner for payment of the costs tendered.

Dated at Windhoek this 22<sup>nd</sup> day of March 2023.



**Morwe & Associates Incorporated**

Per: S Morwe



"RWS"



HC-MD-CIV-ACT-CON-2021/02204

IN THE HIGH COURT OF NAMIBIA, MAIN DIVISION,  
HELD AT WINDHOEK  
ON WEDNESDAY, THE 27<sup>th</sup> DAY OF MARCH 2024  
BEFORE THE HONOURABLE JUSTICE PARKER

In the matter between:

**SALT ESSENTIAL INFORMATION TECHNOLOGY (PTY) LTD**

**PLAINTIFF**

and

**RDW PROPERTIES CC**

**DEFENDANT**

---

**COURT ORDER**

---

Having heard **MR MORWE**, on behalf of the Plaintiff and **MR BARNARD**, on behalf of the Defendant and having read the pleadings for HC-MD-CIV-ACT-CON-2021/02204 and other documents filed of record:

**IT IS ORDERED THAT:**

1. The Subpoena Duces Tecum issued by Morwe & Associates (Plaintiff) on 22 March 2024 against Mr. Etienne Maritz and Mrs. Rachel Nghilwamo are hereby set aside and cancelled, and costs of today's proceedings thereanent are held over to be argued in due course.
2. The Plaintiff / Applicant must file its application on or before **11 April 2024**.
3. The Defendant / Respondent must file their Answering Affidavit on or before **26 April 2024**.
4. The Plaintiff / Applicant must file their Replying Affidavit on or before **2 May 2024**.
5. The parties must file their Heads of Argument five (5) days prior [for the Applicant] and three (3) days prior [for the Respondent] to the date of hearing.
6. The matter is postponed to **20 June 2024 at 10h00** for Interlocutory hearing (Reason: Hearing).

**BY ORDER OF THE COURT**

A handwritten signature in black ink, appearing to be "F. S.", written in a cursive style.



**REGISTRAR  
TO:**

SHANE MORWE  
On behalf of Plaintiff  
MORWE & ASSOCIATES INCORPORATED  
11 Omaruru Street Eros  
Windhoek  
Khomas  
Namibia

**AND TO:**

ABRAHAM NAUDE  
On behalf of Defendant  
Dr Weder, Kauta & Hoveka Inc.  
WKH House  
Jan Jonker Road  
Ausspannplatz  
WINDHOEK  
KHOMAS  
Namibia

"RWB"

**IN THE HIGH COURT OF NAMIBIA  
MAIN DIVISION  
WINDHOEK**

**CASE NUMBER: HC-MD-CIV-ACT-CON-2021/02204**

**APPLICATION NUMBER.: \_\_\_\_\_**

In the matter between:

**SALT ESSENTIALS  
INFORMATION TECHNOLOGY (PTY) LTD**

**PLAINTIFF / APPLICANT**

and

**RDW PROPERTIES CC  
THE CHIEF JUSTICE OF NAMIBIA  
PETER SHIVUTE**

**1<sup>st</sup> RESPONDENT**

**2<sup>ND</sup> RESPONDENT**

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**NOTICE OF MOTION**

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Kindly take notice that application will be made by the Applicant, to the managing judge on 20 June 2024 at 10:00 in the forenoon or as soon thereafter as counsel may be heard, for an order in the following terms:

- 1 That the decision by the Chief Justice to issue a certificate dated 17 August 2023 to Adv Theodorus Adam Barnard in terms of section 85(2) of the Legal Practitioners Act, Act 15 of 1995, to act in Namibia in relation to High Court case number HC-MD-CIV-ACT-CON-2021/02204 be reviewed and set aside.
- 2 That Respondent's instructed counsel, Adv Theodorus Adam Barnard, be interdicted from appearing in the aforementioned matter and any other matter in



the Republic of Namibia on account of his permanent residency status in Namibia, until such time as he is lawfully admitted and authorized to practice as a legal practitioner of the High and Supreme Courts of Namibia in terms of sections 3, 4 and 5 of the Legal Practitioners Act, Act 15 of 1995, or until such time as he revokes his permanent residence status in Namibia and is granted a section 85(2) certificate by the Chief Justice.

- 3 Costs of suit, for one instructing and two instructed counsel.
- 4 Further and / or alternative relief.

The founding affidavit of **SONJA BEATRIX COETZER (CELLIERS)** will be used in support thereof.

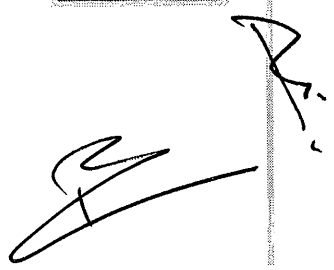
DATED AND SIGNED AT WINDHOEK ON THIS 10<sup>th</sup> DAY OF APRIL 2024.



**MORWE & ASSOCIATES INCORPORATED**  
LEGAL PRACTITIONERS FOR APPLICANT  
NO. 11 OMARURU STREET WINDHOEK  
(REF: SM23/0000010)

**TO: THE REGISTRAR OF THE HIGH COURT**  
HIGH COURT OF NAMIBIA  
MAIN DIVISION  
WINDHOEK

**AND TO: DR. WEDER, KAUTA & HOVEKA INC.**  
LEGAL PRACTITIONERS FOR DEFENDANT  
WKH HOUSE, JAN JONKER ROAD  
AUSSPANNPLATZ  
WINDHOEK



"RW7"

IN THE HIGH COURT OF NAMIBIA  
MAIN DIVISION  
WINDHOEK

**CASE NO: HC-MD-CIV-ACT-CON-2021/02204**

**APPLICATION CASE NO:.....**

In the matter between:

**SALT ESSENTIAL INFORMATION TECHNOLOGY (PTY) LTD      APPLICANT**

and

**RDW PROPERTIES CC      1<sup>ST</sup> RESPONDENT**

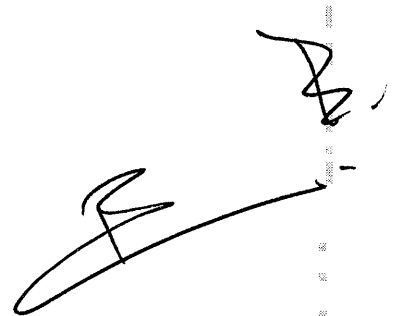
**THE CHIEF JUSTICE OF NAMIBIA PETER SHIVUTE      2<sup>ND</sup> RESPONDENT**

**NOTICE OF WITHDRAWAL OF APPLICATION**

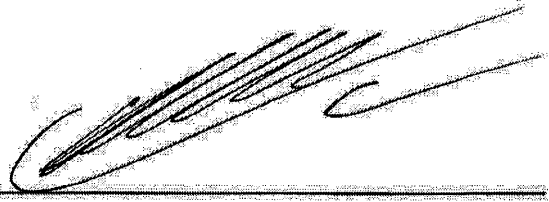
**KINDLY TAKE NOTICE** that **MORWE & ASSOCIATES INCORPORATED** hereby withdraws the application, namely the **FOUNDING AFFIDAVIT** of **SONJA BEATRIX COETZER (CILLIERS)**, Notice of Motion and Annexures filed on e-justice on **10 APRIL 2024**. A new application will be filed on **11 APRIL 2024**.

**KINDLY TAKE NOTICE FURTHER** that the Applicant tenders the costs for the withdrawal.

**DATED AT WINDHOEK ON THIS 10<sup>TH</sup> DAY OF APRIL 2024.**







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**MORWE & ASSOCIATES INCORPORATED**  
**LEGAL PRACTITIONERS FOR THE PLAINTIFF**  
**NO. 11 OMARURU STREET**  
**EROS**  
**WINDHOEK**

**TO: THE REGISTRAR OF THE HIGH COURT**  
**HIGH COURT OF NAMIBIA**  
**MAIN DIVISION**  
**WINDHOEK**

**AND TO: DR. WEDER KAUTA & HOVEKA INC.**  
**LEGAL PRACTITIONERS FOR DEFENDANT**  
**WKH HOUSE, JAN JONKER ROAD**  
**AUSSPANNPLATZ**  
**WINDHOEK**

