

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

**CASE NO: 38386/2022**

In the matter between:

**Mukondeleli Collin Tshisimba**

First Applicant

**Fulufhelo Promise Kharivhe**

Second Applicant

and

**The National Director of Public Prosecutions**

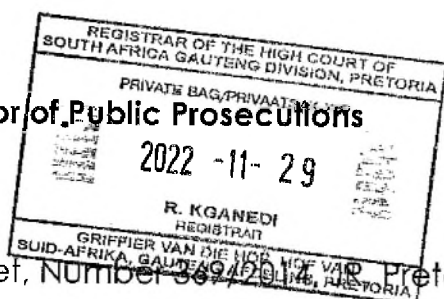
Respondent

In re:

**The National Director of Public Prosecutions**

Applicant

In re:



1. Unit 2, SS Violet, Number 369/2016, Pretoria
2. Unit 1 and Unit 2, SS Celtisdal 612, Scheme Number 772/2016
3. Erf Midstream Estate extension 67, JR, Pretoria
4. Erf 1037 Pecanwood extension 11, JQ, Pretoria
5. Portion 448 of Farm 375 Rietfontein, JR, Pretoria
6. Portion 2 of Erf 1384 Bryanston, IR, Pretoria
7. Remaining extent Portion 29 of Farm 369 Boschkop, JR, Pretoria
8. Portion 1 Erf 524 Bryanston, IR, Pretoria
9. Erf 1194 Peach Tree Ext 2, JR, Pretoria
10. BMW 420i with registration number FD24JBGP

11. Ocean Basket Franchise at Mall at Carnival

12. Ocean Basket Franchise at Carnival City

**NOTICE OF MOTION**

**KINDLY TAKE NOTE** that the applicants (the First and Ninth Respondents and/or on behalf of the First and Ninth property in the main application) Intend making application to the above Honourable Court on the **6<sup>th</sup> December 2022** at **10h00am** or so soon thereafter as the matter may be heard, for an order in the following terms:

1. The applicant is permitted, in accordance with paragraph 23 and/or 24 of the Court Order dated 04 November 2022 ("**the Court Order**") read with Uniform Rule 6(8) and 6(12)(c) of the Honourable Court read in conjunction with section 39(3) read together with section 48(4)(b) of Prevention of Organised Crime Act 121 of 1998.
2. The Court Order is set aside in respect of property 1.1 (Unit 2, SS violet, scheme Number 369/2014, Jr, PRETORIA)
3. The Court Order is set aside in respect of Property 1.9 (Erf 1194 Peach Tree Erf 2, JR, PRETORIA).
4. Declaring that both properties, Unit 2, SS Violet, Scgeme Number 369/2014, Jr, Pretoria and Erf 1194 Peach Tree Erf 2, JR, Pretoria are not instrumentality of criminal activities nor proceeds of unlawful activities.
5. The Respondent (the applicant in the main application) is ordered to pay the costs incurred by the applicant (the First and Ninth respondents in the main application and/or on behalf of the First and Ninth Property in the main application) on the scale as between Attorney and own client

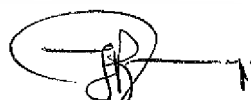
6. Further and/or alternative relief.

**TAKE NOTICE FURTHER** that the Founding Affidavit of **Mukondeleli Collin Tshisimba**, together with its Annexures will be used in support of this Application.

**TAKE FURTHER NOTICE** that the Applicants have appointed **BALOYI NTSAKO ATTORNEYS INC** as their attorneys of record, here set forth is an address where they will accept notice and service of all documents in these proceedings.

**TAKE FURTHER NOTICE** that if you intend opposing this application, you are required to indicate by no later than 28 November 2022 and to deliver by no later than 30 November 2022, any answering affidavit(s).

DATED AND SIGNED AT PRETORIA ON THIS THE 29<sup>th</sup> DAY OF NOVEMBER 2022.



**BALOYI-NTSAKO ATTORNEYS  
APPLICANT'S ATTORNEYS**

No 870 Stanza Bopape Street  
Lisdogan Park

Arcadia, Pretoria

Tel: 012 012 5583

Fax: 086 611 9979

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Email: [info@baloyintsakoattorneys.co.za](mailto:info@baloyintsakoattorneys.co.za)

Cc: [baloyitn@gmail.com](mailto:baloyitn@gmail.com)

**REF: BAL/CIV/FK-MT/22**

To: **THE REGISTRAR OF THE HONOURABLE COURT,  
PRETORIA**

AND TO: **THE STATE ATTORNEY  
APPLICANTS ATTORNEYS  
316 Thabo Sehume Street  
PRETORIA**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA	
PRIVATE BAG/PRIVAATSAK X67	
2022 -11- 29	
R. KGANEDI REGISTRAR	
GRIFPIER VAN DIE HOE HOF VAN SUID-AFRIKA, GAUTENG AFDELING, PRETORIA	

Tel: 012 309 1500  
Email: [Vumulaudzi@justice.gov.za](mailto:Vumulaudzi@justice.gov.za)  
Or [CiSibiya@justice.gov.za](mailto:CiSibiya@justice.gov.za)  
**REF: Mr Mulaudzi/**

STATE ATTORNEY	05-4
FAX	
2022 -11- 30	
PRIVATE BAG X91 PRETORIA 0001	
STAATSPROKUREUR	

*[Handwritten signature]*  
9/11/2022

**IN THE HIGH COURT OF SOUTH AFRICA  
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First Applicant

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In re:

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In re:

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T.M

11. Ocean Basket Franchise at Mall at Carnival

12. Ocean Basket Franchise at Carnival City

**FOUNDING AFFIDAVIT**

I, the undersigned

**Mukondeleli Collin Tshisimba**

Do hereby make an oath and state that:

1. I am an adult male businessman, the director of Ndavha Management CC and living partner of the second applicant herein residing at Unit 2, SS Violet, Monavoni Extention 15, Centurion.
2. I am the First Applicant in this matter. I am duly authorised to depose to this affidavit on behalf of the second applicant.
3. The facts stated herein fall within my personal knowledge, unless indicated otherwise, and are to the best of my knowledge and belief, true and correct.
4. Where I make submissions of legal nature, I do so on the strength of the advice received from my attorneys of record, which advice I accept as both true and correct.

**PARTIES:**

5. I am the First Applicant in these proceedings, my full and further particulars are set out above.

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6. The second applicant is my wife who is described as my "the live-in partner" by the respondent on paragraph 26 of its founding affidavit.
7. The Respondent is the National Director of Public Prosecutions, appointed in terms of section 10 of the NPA Act read with section 179 (1)(a) of the Constitution of the Republic of South Africa, 1996, with its principal place of business located at VGM Building, 2<sup>nd</sup> Floor, 123 Westlake Avenue, Weavind Park, Silverton, Pretoria, C/O of The State Attorney, 316 Thabo Sehume Street, Pretoria.
8. For the sake of clarity, I shall refer to the parties as in the main application, save for paragraph 7 and 8 above. Accordingly, I shall refer to NDPP as "the applicant" and myself as the First Respondent and my wife or the second applicant shall be referred to, as the Second Respondent.
9. I shall further refer to the First property, the property paragraph 1.1 of the court order and the Ninth property, the property referred to in paragraph 1.9 as "the properties".
10. I shall further at some instances refer to "the properties" as the First and Ninth property respectively.
11. Where I state or say "we" and/or "us" shall refer to myself and the second applicant. I shall therefore attach second applicant confirmatory affidavit herein marked as annexure "**MCT-1**".

#### **PURPOSE OF THIS APPLICATION**

12. The purpose of this affidavit is to request an honourable court to reconsider and set aside the order improperly obtained on an *ex parte* basis on the 04 November 2022 by the applicant.

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13. The First and Second Respondents request that the *ex parte* order be reconsidered and set aside in light of the evidence that is to follow hereunder.
14. This application is brought on an urgent basis in terms of Uniform Rule 6(8) and 6(12)(c) read with paragraph 23 and 24 of the Honourable Court Order granted on the 04 November 2022 (**"the Court Order"**).
15. Consequently, I request the Honourable court to declare that the abovementioned properties are not instrumentality of an offence referred to in schedule 1 of the Prevention of Organised Crime Act 121 of 1998 ("the Act" or "the POCA") and that they are not proceeds of unlawful activities as alleged by the applicant.
16. The applicant was not entitled to the relief it sought as the rule of *audi alteram partem* dictates that the other side be heard as well and subsequently be considered, particularly with regard to the fact that, there were no justifiable reasons to bring the matter on urgent *ex parte* basis, as required by section 38 of the Act.
17. We submit and with respect that had the applicant fully disclosed or placed our side of the matter on records and/or place all the relevant facts, the honourable court would not have granted the court order.
18. To this effect, the applicant abused the *ex parte* mechanism and misled the court with unsubstantiated, unfounded, and untruthful facts to obtain the court order. Consequently, and ultimately obtained court order on false basis.

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19. To make matters worse, it is astonishingly shocking to learn that the applicant is refusing to furnish our attorneys of records with further and all documents in relation to the matter.
20. Our attorneys sent correspondences requesting court documents, but all correspondences remain unanswered. The applicant legal representatives merely read only and then ignore. For ease of reference, I attach herein such correspondences and read receipts marked as **annexure "MCT-2" to "MCT-6"** respectively.
21. Effectively and without doubt, the applicant refuses to be challenged and prefers to proceed on *ex parte* basis. Consequently, our constitutional rights and our rights embedded in the principle of *audi alteram partem* rule is and are denied.
22. Clearly, the applicant acted arbitrarily and in an unfair manner by depriving us opportunity to have the matter properly considered and well ventilated.
23. If the applicant is fair, ought to have brought *ex parte* with clean hands. Even though, applicant is not even supposed to hesitate or refuse to furnish us or our attorneys with all documents in relation to the matter.
24. As a result hereof, we reserve the right to supplement our papers and amplify grounds if any, for the relief as set out above upon receipt of all documents from the applicant.
25. The structure of this affidavit will be as follows:
  - 25.1 Firstly, I will deal with the factual matrix on the matter. I will demonstrate that this application as brought by the applicant

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is premised on untruths, material non-disclosures and mostly on incorrect uncorroborated assumptions.

- 25.2 I will then briefly explain to the honourable court that the entire application is premised on wrong assumptions and total disregard of true facts thus misleading the court and thus complete abuse of court process.
- 25.3 I will in this regard as aforesaid demonstrate that the applicant has been for substantial length of time known that we are aware of the allegation that we are involved in the organised crime. Accordingly, the urgency alleged by the applicant was entirely self-created.
- 25.4 I shall set out the relevant background facts, and contextualise the events which culminated in the purchase of the properties. This will include my personal and business circumstance in which under normal ordinary lifehood I have been able to purchase the properties.
- 25.5 I will then briefly state and explain the grounds in which the applicant failed to take the court to its confidence by disclosing all facts for court to make informed and properly ventilated decisions. Accordingly, the applicant was not entitled to the relief that it obtained on an ex parte basis.
- 25.6 I will also as a matter of principle furnish the honourable court with all material evidence to prove that we are entitled in law to purchase the properties and accordingly the applicant was not entitled to the relief that it obtained on an ex parte basis.

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- 25.7 I reiterate that we were not supposed to be part of these proceedings and any allegations advanced to obtain the order is and was unsubstantiated, untruthful and materially incorrect.
- 25.8 Possibly here and there and to the extent necessary, I shall touch and respond to various paragraph of the applicant founding affidavit.
26. As indicated above, these papers are drafted without being furnished or served will all documents used to obtained the court order and such among others include Notice of Motion and annexures referred thereto.

#### **FACTUAL MATRIX**

27. The applicant in its application state that the Special Investigating Unit (SIU) was directed to investigate maladministration and corruption at the National Lottery Commission (NLC).
28. Further stated therein that, during their investigation they discovered widespread corruption, fraud, theft and contravention of the Lotteries Act.
29. From their findings, it was reported that, the people involved were officials of the NLC and certain NPO's who applied for NLC grants and which grants were not used for its purpose, instead used to buy properties for the benefit of employees of the NLC and members of the NPO;s and/or their family members.
30. In respect of the allegations made by the applicant against me and the second applicant, I wish to state the following:

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- 30.1 We not officials of NLC, and we were never employed at or by NLC;
- 30.2 We are not a member of any of the NPO's nor family members.
- 30.3 It is alleged that the properties, (First and Ninth properties) were purchased from grant monies received from the NLC and which allegations are unfounded, and no proof is produced to this effect whatsoever.
- 30.4 In relation to the First Property, The applicant in its papers refers to a certain organisation called Simba NPO (**Simba**), which received a grant from the NLC in the amount of R25 989 736 and from that amount, then transferred R15 million to Mshandukani Holdings (Pty) Ltd (**Mshandukani**).
- 30.5 The R15 million transferred by Simba to Mshandukani, was for services to reconstruct the Vhafamadi secondary School in Vuwani, which was one of the schools torched during protests against the demarcation of the province.
- 30.6 Mshandukani was a contractor appointed for services to reconstruct the school.
- 30.7 The applicant alleges that the first property was purchased from the grant monies notwithstanding its concession that prior to receiving the R15 million, the credit balance in the account of Mshandukani was R1 722 726.56.
- 30.8 I therefore fail to understand and/or even comprehend how the applicant came up with the conclusion that the

R1 080 000 that Mshandukani transferred to conveyancers and/or to purchase the first property was from the R15 Million that was transferred by Simba for services or intendant for construction of the school.

30.9 I therefore submit with respect that the purchase of the First property was used from the credit amount of R1 722 725.56 and not NLC money. This any case, dictates common sense and on that alone, this property must be excluded instantly. It is clear absolution from the instance.

30.10 The conclusion reached by the applicant on paragraph 28 of the founding affidavit that, the property is not related to the purpose of the grant is true but definitely does not represent the proceed of the unlawful activity. The applicant must get their facts right and cease to mislead the honourable court, otherwise their conclusion must be rejected with contempt it deserves.

31. In any event I shall deal below with everything pertaining to the first property in terms of how it was purchased.
32. On the second property, it seems the applicant has a problem that I received funds into Ndavha banking account from the two organisations, that is, Mushomo Ushavha Zwanda (**Mushomo**) and Matieni Community Centre (**Matieni**).
33. From the onset, I must make it unconditionally clear that I assist and deal with people as they come for assistance. I do not go behind their back to investigate who they are and what they stand for but mainly focus on their needs as presented to me in order for me to uphold credibility and set standard level of professionalism.

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34. Therefore, in this instance, I take and believe what they present to me as far as to who they are and what they stand for. It will be naïve and uncalled for, to even start investigating them. I am no member of law enforcement nor even ever been approached to assist. I do not even know how to start treating people as suspects.
35. The applicant presumptuous conclusion that I am part of unlawful activities and/or the Ninth Property was purchased from NLC monies and thus part of unlawful activities must be rejected, in any case the applicant dismally failed to substantiate and/or corroborated with tangible proofs its conclusion thereon.
36. I shall demonstrate hereunder that I work for my money and as an entrepreneur I respect the law. The money I earn I am free to deal with it in the manner appropriate and necessary.
37. I shall herein give clarity of how the property was purchased and thus, I refuse that is part of the proceeds of unlawful activities.

#### **ABUSE OF COURT PROCESS**

38. Notwithstanding the provisions of the Act, specifically section 38, there is no justifiable reasons for the applicant to have brought this application on an extreme urgent *ex parte* basis, hence the submission that it's an abuse of court process.
39. I shall now turn to deal below with the abuse by the applicant of the *ex parte* mechanism and further point out that urgency relied on by the applicant is self-created.

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40. The applicant is required, in accordance with Rule 6(12) of the Uniform rules, *"to set forth explicitly the circumstances which it avers render the matter urgent and the reasons why it claims it could not be afforded substantial redress at a hearing in due course"*. To this effect, it must be clear in the mind of the applicant that bringing application on urgent basis is not "self-created".
41. The provisions of section 38 of the Act is not for taking as well. Abuse is found where reliance is made in a situation where one would not justify such reliance on or about said situation. As a result hereof, this section was abused. There was no need to invoke same.
42. In this regard, the applicant relied, principally on the aforesaid section yet neglecting the damage the court order likely cause to persons of interest on the properties should it be found that is based on false presumptions. It is important to bring relevant substantiated facts before the honourable court and not mere witch-hunt wishes which when tested bound to fail.
43. From the onset, as indicated above, the applicant neglects and/or refuses to furnish us with entire court documents the honourable court relied upon to grant the court order. This is manifestly clear that the applicant is abusing court processes and misleading the court or else would not refuse to serve documents on us and/or our attorneys of records.
44. The applicant is not handling this matter in a fair manner and prefer not to be challenge and thus not taking the honourable court to its confidence.

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45. This demonstrates that the applicant prefers to proceed disposing our properties arbitrarily. This conduct constitutes material breach of our rights to be heard and thus principle of *audi alteram partem*.
46. Certainly, the urgency is and/or was not justified. As result, the applicant clearly harbour all intentions to perpetually mislead the court to retain the court order.
47. It is, accordingly, my respectful submission that we have been aware of the widely publicised proclamation No. R. 32 of 2020 as referred to in paragraph 19.3 of the applicant founding affidavit ("the proclamation") for almost over two (2) years now and had we carried any intentions to dispose of properties, we would have done so and/or we had sufficient time.
48. The said proclamation was all over Televisions, social media and all other forms used to transmit information of such national interest.
49. One man says "*a thief runs when sees police marked vehicle*". This is to say, if indeed we have been involved in such unlawful criminal activities as alleged, we would have ran as well or at most sold the properties. I am advised selling a property does not take more than three (3) months yet we have been aware of proclamation for almost two (2) years now.
50. I must indicate further that, the applicant through its agents, among others, SIU and Hawks have been on our tail since the proclamation issued in attempts to implicate us. The said proclamation was personally brought to our attention as a tool used in introduction of various law agents approaching us. To date we still stand and unapologetically declare our innocence.

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51. In any event, all attempts to implicate us fell by way side. We nevertheless, remain unshaken by any threat imposed on us and have each time proven that we are not part of any criminal activities, and still, we deny to have been part of any criminal and unlawful activities.
52. Based on the above, there is no justification for the applicant to bring this application on *ex parte* urgent basis. The applicant would have been afforded substantial redress at a hearing in due course particularly in that they previously approached us several times. Why leave us and run behind our back to court and even failed to disclose this aspect. It does not make sense nor render the matter urgent worse to be heard on *ex parte* basis.
53. Put differently, it does not make sense why suddenly the applicant decide to bring an *ex parte* application held on camera and on extreme urgency. This is serious abuse of court processes, and the honourable court should not condemn but deal with such behaviour with the harshest slap in the face.
54. The urgency relied on by the applicant to justify issuing its urgent *ex parte* application on 04 November 2022 and obtaining an order without affording us any notice, is accordingly entirely self-created. This is even exacerbated by continued refusal to give us court documents that pertains to this application.

#### **MY PERSONAL AND BUSINESS OVERVIEW**

55. I have been advised that, it is appropriate for me to set out a brief synopsis of the facts relevant to the present matter. The intention hereof is to merely assist this Honourable Court in its reconsideration of the matter.

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56. As stated hereinabove, I am a businessman and a sole director of Ndavha Management CC (**Ndavha**). As correctly pointed out in paragraph 86 of the applicant founding affidavit Ndavha was registered as a close corporation on the 15 September 2006 with registration number 2006/161218/23.
57. However, before I give broader overview of what Ndavha is all about, I shall give brief synopsis about my personal circumstances and scope of who I am.

### Personal Circumstances

58. I am the applicant and further details as provided above.
59. I was born and raised in Limpopo, Ndzhelele in Venda.
60. I now pause to mention that I live with the second applicant herein with 5 (Five) children. I am currently residing with 4 (Four) of them in centurion, in the property described as Unit 2, SS Violet, Number 369/2014, JR, Pretoria. This is the property in question, one described as First Property in the Court Order of 4 November 2022.
61. All four (4) children aged 3 being the youngest, 9, 14 and 21. They are currently attending school respectively and elder one, 21years of age being at tertiary level.
62. Nevertheless, from humble beginnings as difficult as it was, I matriculated in the year 1995.
63. I then progressed and so proud to state that, to date I possessed 3 (three) diplomas. One in Office Administration from Damelin Management school. Another in Project Management obtained

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from College Campus – Pretoria and lastly, Diploma in Financial Management from College Campus – Pretoria.

64. Furthermore, I have Certificate in Total Quality Management obtained through Unisa. Certificate in Facilitator, Assessor, NQF Level 5 Sound Technology and N4 Sound Engineering.
65. I am currently pursuing BCompt in Management Accounting at Unisa and Cybersecurity Professional Practice Leadership (NQF Level 8) at Wits University.
66. I was gainfully employed since 1999 with various organisations. My scope of work over the years spread across Administrative Officer to Finance related matters.
67. My job descriptions among others involved coordinating community-based programme, Financial Administrator, bookkeeping through Pastel, personnel administrate, minutes secretary to the Board of directors, preparing organisation's report to the donors and data handling, Facilitating, Monitoring and implementation of various projects, contracts, and agreements.
68. From January 2016 I was a trainee accountant with Magodi Consulting involved in data capturing, trial balance preparation, bookkeeping, prepare and compile financial statements , analysing financial statements for funding purposes, business advisory on sustainability of entities, preparing financial statement for special projects and purpose. Assessing and rendering of advise on internal audit systems for entities.
69. Quiet often, I was highly involved in facilitating trainings and workshops for government departments. Facilitate basic business skills for various organisations, NGO's, NPO's and business entities.

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70. Through the years I have been a business consultant at Vhembe District Colour Stone Mining Cooperative, providing business development system, conducting training on business management, financial management, record keeping, Conduct feasibility study and business development plans.
71. In November 2007 I was among delegates in a two-day conference entitled "Forging Partnerships For Sustainable Poverty Reduction in Limpopo Province, Going beyond Best Practices". This conference was hosted and organised by Premier's Office, Limpopo provincial Government, supported and sponsored by National Development Agency (NDA) and University of Limpopo.
72. I am currently a student member of Chartered Institution of Management Accountant and Business Accountant in practice with South Africa Business Accountant (**SAIBA**).
73. I shall now turn to give brief overview of my business ventures.

**My Business (Ndavha Management CC )**

74. I must state that Ndavha Management CC (Ndavha) is one among most successful businesses I ever pursued.
75. As pointed out above, I registered Ndavha Management in 2006. This has been my brainchild and its main objective has been and always is to assist previously marginalised communities, entities and individuals with business developments, funding and business ideas.
76. Accordingly, Ndavha is a management and financial consulting company providing various financial and business development

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services focusing on among others, Management Accounting, Accounting Services and Business Support Services.

77. Since its formation, it has provided training services to more than three hundred (300) SMME's around Vhembe district and had facilitated funding to more than thirty (30) institution around the country.
78. It is worth mentioning that Ndavha's vision is to be a world-renowned prominent business developer, capacity builder and seeks to empower previously disadvantaged individuals to participate in the mainstream economy.
79. I am of the view that my scope of business and what I do, has just earned me a title of being "*a member of a syndicate*" as alluded to by the applicant. it's so unfortunate, undesirous and unintendant but hopefully after this overview such perception shall cease.
80. I hereof place it on record that I do my business within the confines of the law. I do what's required and expected of a businessman and entrepreneur in my field. Otherwise, I have no control of what happens beyond and around my business space attributes and skills and knowledge I share and/or impart to others.

#### **BACKGROUND AND GROUNDS FOR RELIEF**

81. I am therefore a person affected and of great interest in the matter. it is in terms of this interest that I bring this application for reconsideration and request the honourable court to reconsider and set aside paragraph 1.1 and 1.9 of the order and/or exclude our properties from the order.

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82. I shall hereunder deal with both properties starting with the first property as referred to in paragraph 1.1 of the court order and thereafter second property as referred to 1.9 thereto.

**Unit 2, SS Violet, Scheme Number 369/2014, JR, Pretoria**

83. I reiterate that this property was not purchased with the proceeds of criminal or unlawful activity as alleged by the applicant.
84. I have a long-standing relationship with the director of Mshandukani Holdings, one Mr Shandukani. Our relationship started way back in Limpopo. We grew into business together, sharing and assisting each other with business ideas.
85. I am mostly based in Limpopo and my wife, the second applicant has been most of the time in Gauteng. We have been renting an apartment staying with our children while they are attending school.
86. As one grows in life and one realises that the bank prefers funding those with consistent income or rather salaried persons of which I was not and so is my wife. In any case I would always advise my clients to avoid debts especially mortgage bonds. My punch line is "why paid something for 20 years because its immovable, yet you pay 5years or less for movable but same amount".
87. This when I had a discussion with Mr Shandukani and given the habitable state of my wife and children that I shall secure for ourself a property next to schools and in safe place and strong security.
88. Our discussion developed and bore fruits in that we then entered into a loan agreement. At this time, I had already identified a property serving and suit my purpose.

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89. This transpired on or about July 2016. As stated above, we there and then entered into a written agreement to safeguard each other's interest. For ease of reference I attach herein said agreement marked annexure "**MCT-7**".
90. The terms were as stated on the agreement and among others included salient terms as follows:-
- 90.1 I shall return the money with interest;
  - 90.2 That such money should be paid directly to conveyancers and not directly to me.
  - 90.3 That, it is repayable latest January the following year of 2017;
91. Indeed, Mr Shandukani complied with his part of obligations as indicated in paragraph 90.2 *supra*. I thereon complied with such stated salient terms on my part as per paragraph 90.1 and 90.3
92. In compliance with the said terms, I attach proof herein marked annexure "**MCT-8**".
93. I serviced my debt as required on January 2017 the following year. I had to work very hard at the time to ensure such monies are paid back, for I valued the relationship we have been having. I must further state that the money I used to pay back is also not proceeds of any criminal or unlawful activities or else I know what applicant is capable of, hence I deem it fit to declare such upfront.
94. It is worth noting that, I decided that the property as referred to property 1.1 on the court order should be registered under the second applicant's name.

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95. This is something common to couples. I decided that since she will be residing with our children who are schooling nearby it will be prudent to have the property under her name.
96. As alluded to, at the time I was full time in Limpopo, and it was convenient to have property registered under her name for access purposes, rates and taxes accounts etc. I would not be readily available to be granting gate access while I am always away or dealing with municipality.
97. With much emphasis of the above and further submit to the honourable court that, in any event, for the applicant to have alleged that the money used to purchase the property is proceeds of criminal activities is unfounded, baseless and false.
98. As already stated above, the applicant has conceded on paragraph 24 of its founding affidavit that prior to receiving the R15 million, the credit balance in the account of Mshandukani was R1 722 726.56.
99. Mshandukani only transferred part of the money it had in the account prior to receiving NLC money. Put it differently, Mshandukani would still afford and be able to transfer the said amount even if it did not receive alleged NLC monies.
100. In any case, as a contractor, Mshandukani was entitled to contingencies from the money transferred. To conclude and assume such amount was NLC money is strange and clearly the applicant just want to paint a complete wrong picture in attempt and in perpetuity to implicate us.
101. I submit that, whether NLC R15 million was paid or not, I had already had agreement with Mshandukani and was going to lent me the

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money as envisaged. In any event, this was not even the first time for us to have transaction of this nature between us and therefore, there was and still is, nothing sinister about it. We trusted each other so much that signing was not even necessary as we would do on other instances.

102. In any event, I paid back all the money he lent me and if it was part of criminal proceeds or unlawful activities I would not have done so or it would be regarded or seen in any other manner any person would reasonably deem fit such as the applicant.
103. It is even strange that the applicant describes me as a member of a syndicate consistently defrauding the NLC. An allegation I do not take light. The allegation is demeaning and defaming to my character as an ordinary being and as a businessman. I therefore, reserve the right to seek further advise on this aspect and would want to fight to clear my name in due course. The way I am described is devoid of the truth and seriously offensive.
104. The applicant must be advised to bring substantiated facts before the honourable court and not wish list and/or ill-conclusive ideas to mislead the court into granting an order.
105. At no point did we ever harbour any intention to sell the property. It actually never crossed our mind simply because our children are still at school and any inconvenience cannot be tolerated. We protect our children in so much that we seek to avoid any unnecessary inconvenience to them and we shall appreciate that they are not affected psychologically through the conduct of the applicant.
106. The applicant seemingly desirous to send people to harass us and the children in total and direct infringement of our constitutional rights to dignity, privacy, access to housing and freedom. At least

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respect for children is of paramount importance and applicant should abide.

107. I already indicated that we reside in this property with minor children and for them to be exposed to any form of harassment or for them to see people coming to the house masquerading as or being law enforcement agents is psychologically damaging to their well being.
108. I plead with the honourable court to protect our children from such abuse of court process. The children are as per Constitution of paramount importance as far as their rights are concerned.
109. I now turn to deal and explain how the second property (property 1.9 of the order) was purchased.

**Erf 1194 Peach Tree Ext 2, JR, Pretoria**

110. I reiterate that the property, Erf 1194 Peach Tree Ext 2, JR, Pretoria is also not purchased through proceeds of any unlawful activity.
111. As I stated above, I have been almost my entire life embroiled as an entrepreneur assisting businesses with business developments and acquisition of funds.
112. Accordingly, I was approached during early or beginning of the year 2017 to assist with developments and application of funding for various organisations and among others, are the two referred to on paragraph 81 to 96 of the applicant founding affidavit.
113. They both and respectively approached me for my services. I remember at the time our target and focus for funding identified

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was NLC and Social Development. Nevertheless, I duly and legally assisted them. Everything was done within the ambits of the law, I must emphasise this aspect. They had approached me for assistance early or in the first quarter of the year, 2017 and it was not an easy journey to get to a point of them obtaining funds.

114. I had entered into an agreement with both of them and was very clear that my fee is and shall be 15% of total amount they get or funded with. I was again very clear that I even charge more for such services especially at the time that we did not expect nor bear much hope especially from NLC. My experience at the time had been that NLC requirements were too strict and tend to exercise own discretion based on analysis and reasons for funding.
115. I attach herein agreements and/or letter of engagement mark as annexure "MCT-9" and "MCT-10" respectively. Also attached are invoices in respect of both annexed herein as "MCT-11" and "MCT-12" respectively.
116. Indeed, NLC paid as per application and as per our engagement I was paid for my services. My fee was due immediately they receive funding. I remember I was not happy when they took their time to pay me and we almost fought but eventually they paid my fees. Our agreement was to pay immediately and upon receipt of funds.
117. As a result, the allegation that I was involved in any unlawful activity is baseless and I refute same with contempt it deserves.
118. This is how I manage to utilise some of the fees I charged for work done to purchase the property referred to 1.9 in the court order.
119. I was not aware that rendering service does not entitle me to my fees. Such submission I do not comprehend. I am sure everyone

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works and earn their monies to purchase or do as they wish, whether to purchase properties or otherwise.

120. As stated hereinabove, I do not go behind peoples back or my clients to investigate them. I do my job as requested and as I said within the confines of the law. I make sure I get paid for my services.
121. In any case I only used R830 000-00 and honestly I do not understand on what basis would such be regarded as unlawful activity. Is it a crime to purchase land in South Africa. I do not see any abuse and exorbitant lifestyle in the purchase of R830 000.00, and thus the applicant submission is quiet shocking.
122. I was not in any way involved in both NPO's. I am not a member nor had any shares. I just assisted them through my business developments ideas for them to be awarded funding.
123. The money they paid me was due immediately and upon receipt of funding.
124. As to the rest or management and/or administration or purpose in which those organisations were formed I am no party thereon. And as to whether the project is completed or not, I do not get involved unless otherwise my services are roped in, which I will still charge for.
125. In consequence hereof, I request the honourable court to exclude my property from the order.

**AD GOOD CAUSE**

126. It is my humble submission that the applicant have not demonstrated in their application for the preservation order that the money used to purchase the properties was taken from the NLC, No

evidence has been placed in relation hereto. In this regard, I deny that the properties were purchased with proceeds of criminal and unlawful activities.

127. In any event, he who alleges must prove.
128. The applicant is depending on speculations, and uncorroborated evidence. Accordingly, the order could not have been granted if the court was informed of the relationship that I have with Mashandukani company and of the services I render.
129. To this extent I am advised that given that the applicant sought relief on an ex parte basis, had a heightened duty to disclose the full factual matrix to the court, particularly where the facts related directly to the nature of the relief sought and allegation thrown thereon and link same to the applicant's entitlement to such relief.
130. Basically, in 'flagrant breach of the aforestated duty, the applicant misled the court as to the true facts and failed to disclose pertinent information.
131. It is a fundamental tenet of our procedural law, and a facet of the *audi alteram partem* principle, that a party seeking an order against the respondents should give the latter notice of its intention to do so. The only exception is where there is some compelling basis why notice might defeat the purpose of seeking relief, same which I have proven there wasn't and is none.
132. Unfortunately, the applicant sought to justify ex parte procedure on the basis of section 38(1) of POCA, notwithstanding exception contained in sub-paragraph (2). Reasonable grounds must be proven and not just mere assumptions, witch-hunt, or wish list.

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133. There was accordingly no basis for the applicant to dispense with the usual principle or rules of court that notice of an application must be given to the respondents.
134. It is well established principle that in cases of this nature, utmost good faith must be observed and the withholding or suppression of material facts, by itself, entitles a court to set aside an order even if the non-disclosure or suppression was not wilful or *mala fide*.
135. In consequence herein, I am advised that the failure by the applicant to make full disclosure or at least afford us opportunity to be heard in order to bring forth relevant and material facts constitutes sufficient basis for this honourable court to reconsider and set aside the court order.

### CONCLUSION

136. In light of the above, I humbly request the above honourable court to grant my application for reconsideration and set aside the order in respect of the two properties.
137. In the circumstances of the matter, I respectfully submit that I have made out a case for the relief I seek in the present application.
138. For the reasons set out above, it is submitted that the court order ought to be reconsidered and set aside.

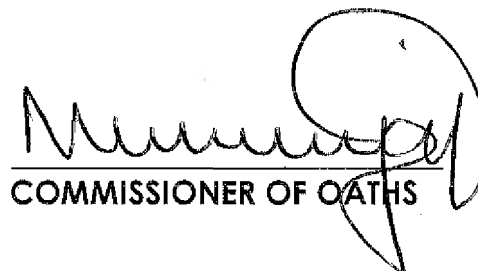
M.C  
T.M

139. I also seek an Order for costs against the applicant on a punitive scale of attorney and own client.



MUKONDELELI COLLIN TSHISIMBA

I HEREBY CERTIFY THAT THE DEPONENT HAS DECLARED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND THAT TO THE BEST OF HIS KNOWLEDGE AND BELIEF IT IS THE TRUTH, WHICH AFFIDAVIT HAS BEEN SIGNED AND SWORN TO BEFORE ME AT PRETORIA ON THIS THE 29 DAY OF NOVEMBER 2022, AND THAT THE PROVISIONS OF THE REGULATIONS AS CONTAINED IN GOVERNMENT NOTICE NO. R1258 OF 21 JULY 1972, AS AMENDED HAVE BEEN COMPLIED WITH.



COMMISSIONER OF OATHS

NAME:

CAPACITY:

ADDRESS:

**T. MUNYAI**  
PRACTISING ATTORNEY  
COMMISSIONER OF OATHS  
867 Stanza Bopape (Church Str)  
Arcadia, Pretoria  
TEL: 012 430 2315  
FAX: 012 430 2310

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 38386/2022

In the matter between:

**Collin Mukondeleli Tshisimba**

First Applicant

**Fulufhelo Promise Kharivhe**

Second Applicant

and

**The National Director Of Public Prosecutions**

Respondent

In re:

**The National Director of Public Prosecutions**

Applicant

In re:

1. Unit 2, SS Violet, Number 369/2014, JR, Pretoria
2. Unit 1 and Unit 2, SS Cellisdal 612, Scheme Number 772/2016
3. Erf Midstream Estate Extension 67, JR, Pretoria
4. Erf 1037 Pecanwood Extension 11, JQ, Pretoria
5. Portion 448 of Farm 375 Rietfontein, JR, Pretoria
6. Portion 2 of Erf 1384 Bryanston, IR, Pretoria
7. Remaining extent Portion 29 of Farm 369 Boschkop, JR, Pretoria
8. Portion 1 Erf 524 Brynston, IR, Pretoria
9. Erf 1194 Peach Tree Ext 2, JR, Pretoria
10. BMW 420i with registration number FD24JBGP



11. Ocean Basket Franchise at Mall at Carnival

12. Ocean Basket Franchise at Carnival City

**CONFIRMATORY AFFIDAVIT**

I, the undersigned,

**FULUFHELO PROMISE KHARIVHE**

Do hereby state under oath and say that:

- 1.1 I am a major female person of full legal capacity residing at **Unit 2, SS Violet, Number 369/2014, JR, Pretoria, Gauteng Province.**
- 1.2 The contents of this deposition, unless otherwise stated or in the contrary clearly from the context appear, fall within my personal knowledge and are both true and correct
- 1.3 I have read the founding affidavit of **Collin Mukondeleli Tshisimba** and confirm its correctness in so far as it relates to me.

  
DEPONENT

THIS SIGNED AND SWORN ON THIS 29 DAY OF NOVEMBER 2022,  
BEFORE ME, COMMISSIONER OF OATH, THE DEPONENT HAVING ACKNOWLEDGE  
THAT SHE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, AND THAT SHE HAS  
NO OBJECTION TO TAKING THE PRESCRIBED OATH AND THAT SHE CONSIDERS THE  
PRESCRIBED OATH AS BINDING ON HER CONSCIENCE.

  
COMMISSIONER OF OATHS

Full names :

Capacity :

Address :

**T. MUNYAI**  
PRACTISING ATTORNEY  
COMMISSIONER OF OATHS  
867 Stanza Bopape (Church Str)  
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0083

No 1830 Seretsekhama str,  
Klipfontein view,  
Midrand, 1685

PO Box 6, Halfway House,  
Midrand, 1685

OUR REF: BAL/CIV/FP-SIU/22

YOUR REF: Mr Mulaudzi/

DATE: 17<sup>th</sup> November 2022

**MR MULAUDZI**  
**THE STATE ATTORNEY**  
**316 Thabo Sehume Street**  
**Pretoria**

PER EMAIL: [VuMulaudzi@justice.gov.za](mailto:VuMulaudzi@justice.gov.za)  
CC: [CSibiya@npa.gov.za](mailto:CSibiya@npa.gov.za)

Sirs,

**The National Director of Public Prosecutions // In re Unit SS Violet Scheme Number  
JR Pretoria and Others – Case No: 2022-038386**

1. The above matter refers.
2. We confirm to act on behalf and on the instructions of **Ms Fulifhelo Promise Kharivhe (Kharivhe)** and **Mukondeleli Collin Tshisimba (Tshisimba)**.
3. It is our instructions that there was an *ex parte* application on the 4 November 2022 for preservation order in terms of section 38(1) of the prevention of Organised Crime Act, No 121 of 1998.
4. We hold instructions to oppose the matter and apply for reconsideration to have the order varied.
5. We therefore kindly request copies of all documentation in relation thereto and that any other further processing and servicing on the matter be sent through our offices on the address stated hereunder below signature.

Director: Mr. Terrance Ntsako Baloyi Attorney (LLB) – Assisted by Attorney Deluka Mashaba (LLB), Candidate Attorney Thebe Langa (LLB), Secretary and Office Manager Katlego Matabane and receptionist Nsovo Mashimbye.



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Pretoria,  
0083

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Klipfontein view,  
Midrand, 1685

PO Box 6, Halfway House,  
Midrand, 1685

6. We confident that you will appreciate that this matter needs to be dealt with necessary urgency it deserves.
7. We shall await to hear from you.

Yours Faithfully,

**BALOYI-NTSAKO ATTORNEYS INC.**

No 870 Stanza Bopape Street  
Lisdogan Park  
Arcadia, Pretoria  
Tel: 012 012 5583  
Fax: 086 611 9979  
Mobile: 082 580 4627  
Email: [info@baloyintsakoattorneys.co.za](mailto:info@baloyintsakoattorneys.co.za)  
Cc: [baloyitn@gmail.com](mailto:baloyitn@gmail.com)

REF: **BAL/CIV/FK-SJU/22**

Let Justice be done...

Director: Mr. Terrance Ntsako Baloyi Attorney (LLB) – Assisted by Attorney Deluka Mashaba (LLB), Candidate Attorney Thebe Langa (LLB), Secretary and Office Manager Katlego Matabane and receptionist Nsovo Mashimbye.

**info@baloyintsakoattorneys.co.za**

---

**From:** Mulaudzi Vuledzani <VuMulaudzi@justice.gov.za>  
**To:** info@baloyintsakoattorneys.co.za  
**Sent:** Thursday, 17 November 2022 20:57  
**Subject:** Read: The National Director of Public Prosecutions // In re Unit SS Violet Scheme Number JR Pretoria and Others - Case No: 2022-038386

Your message

To: Mulaudzi Vuledzani  
Subject: The National Director of Public Prosecutions // In re Unit SS Violet Scheme Number JR Pretoria and Others - Case No: 2022-038386  
Sent: Thursday, November 17, 2022 3:01:44 PM (UTC+02:00) Harare, Pretoria

was read on Thursday, November 17, 2022 8:56:47 PM (UTC+02:00) Harare, Pretoria.

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**info@baloyintsakoattorneys.co.za**

---

**From:** info@baloyintsakoattorneys.co.za  
**Sent:** Tuesday, 22 November 2022 17:00  
**To:** 'VuMulaudzi@justice.gov.za'; 'CISibiya@npa.gov.za'  
**Cc:** 'baloyitn@gmail.com'  
**Subject:** RE: The National Director of Public Prosecutions // In re Unit SS Violet Scheme Number JR Pretoria and Others – Case No: 2022-038386

Good day Sir/Madam,

The above matter and our email dated the 17<sup>th</sup> instant bears reference.

We astound in the manner you are handling the matter. We do not comprehend your failure to tender respond nor to furnish us with all documents requested.

At the same token you in communication with one allegedly appointed to be the curator to be harassing our clients. It is uncalled for. We were clear on our letter that we need all documents to bring application for reconsideration.

We reiterate the same stance, therefore would you kindly provide us with the response and furnish us with all documents.

Trust the above is in order.

Kind regards,

Mr TN Baloyi  
Legal Practitioner/Attorney  
**Baloyi Ntsako Attorneys Inc**  
No 870 Stanza Bopape  
Lisdogan Park  
Arcadia, Pretoria



Cell: 082 580 4627  
Tel: 012 012 5583  
Fax: 086 611 9976

info@baloyintsakoattorneys.co.za  
Cc: baloyitn@gmail.com

---

**From:** info@baloyintsakoattorneys.co.za <info@baloyintsakoattorneys.co.za>

**Sent:** Thursday, 17 November 2022 15:02

**To:** 'VuMulaudzi@justice.gov.za' <VuMulaudzi@justice.gov.za>; 'CISibiya@npa.gov.za' <CISibiya@npa.gov.za>

**Cc:** 'baloyitn@gmail.com' <baloyitn@gmail.com>

**Subject:** The National Director of Public Prosecutions // In re Unit SS Violet Scheme Number JR Pretoria and Others – Case No: 2022-038386

Good day Sirs,

The above matter bears reference.

Attached please find our correspondence for your attention.

In anticipation the above is in order.

Kind regards,

Katlego Matabane  
Legal Secretary  
**Baloyi Ntsako Attorneys Inc**  
No 870 Stanza Bopape  
Lisdogan Park  
Arcadia, Pretoria



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Fax: 086 611 9976

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Cc: baloyitn@gmail.com



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---

**From:** Mulaudzi Vuledzani <VuMulaudzi@justice.gov.za>  
**To:** info@baloyintsakoattorneys.co.za  
**Sent:** Wednesday, 23 November 2022 10:26  
**Subject:** Read: The National Director of Public Prosecutions // In re Unit SS Violet Scheme Number JR Pretoria and Others - Case No: 2022-038386

Your message

To: Mulaudzi Vuledzani  
Subject: RE: The National Director of Public Prosecutions // In re Unit SS Violet Scheme Number JR Pretoria and Others - Case No: 2022-038386  
Sent: Tuesday, November 22, 2022 5:00:03 PM (UTC+02:00) Harare, Pretoria

was read on Wednesday, November 23, 2022 10:26:09 AM (UTC+02:00) Harare, Pretoria.

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PO Box 6, Halfway House,  
Midrand, 1685

**OUR REF:** BAL/ CIV/NY-SIU/02/22

**YOUR REF:**

**DATE:** 28<sup>TH</sup> NOVEMBER 2022

**MR MULAUDZI  
THE STATE ATTORNEY  
316 Thabo Sehume Street  
Pretoria**

**BY EMAIL: [VuMulaudzi@justice.gov.za](mailto:VuMulaudzi@justice.gov.za)  
Cc: [CSibiya@npa.gov.za](mailto:CSibiya@npa.gov.za)**

Dear Sirs,

**RE: The National Director of Public Prosecutions // In re Unit SS Violet Scheme  
Number JR Pretoria and Others – Case No: 2022-038386**

1. The above-motioed matter and our trailing emails dated the 17<sup>th</sup> and 25<sup>th</sup> instant bears' reference.
2. In light of the above-mentioned, we deem your silence and the fact that you choose to ignore our correspondences to constitute refusal to serve and/or furnish our clients with the entire copies of your application.
3. As a result hereof, we are left with no choice but to proceed to Court and apply for reconsideration of the Court Order obtained by yourselves on the 04<sup>th</sup> of November 2022.
4. It is unfortunate we have to rely on social media Court order which you have cause to spread and also your Founding Affidavit we found on your website, We shall inform the Honorable Court accordingly and thereon reserve our right to supplement our papers upon receipt of all documents whether from court or yourself.
5. We shall at this juncture afford yourself 24hrs in which we expect service on us with entire copies of your application, failing which we shall approach the court accordingly.
6. Trust the above is in order and anticipate your co-operation herein.

Yours Faithfully,

**BALOYI-NTSAKO ATTORNEYS INC.  
PER T.N BALOYI**

Director: Mr. Terrance Ntsako Baloyi Attorney (LLB) – Assisted by Attorney Deituka Mashaba (LLB), Legal Assistant Thebe Langa (LLB), Office Manager and Administrator Katlego Matabane, Office Support Nsovo Mashimbye



**LOAN AGREEMENT**

- between -

**MSHANDUKANI HOLDINGS (PTY) LTD**

(as Lender)

and

**MUKONDELELI COLLIN TSHISIMBA**

(as Borrower)

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**THIS AGREEMENT IS MADE BETWEEN:**

## 1. PARTIES

- 1.1 **MSHANDUKANI HOLDINGS (PTY) LTD** (Registration Number 2010/016975/07), a company incorporated and registered in accordance with the company laws of the Republic (as "Lender" or the "Company");
- 1.2 **MUKONDELELI COLLIN TSHISIMBA** an adult male with identity number: 780515 5531 08 5, currently residing in Pretoria; (as "Borrower"); and

## 2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them, and cognate expressions bear corresponding meanings –

- (a) "Advance Date" means 3 Business Days after the Signature Date or such other date as the Lender may determine and notify the Borrower;
- (b) "Agreed Rate" means a sum of R120 000.00 (one hundred and twenty rands);
- (c) "Agreement" means the agreement recorded in this document and any schedules and appendices hereto, as may be amended by written agreement between the Parties from time to time;
- (d) "Business Day" means any calendar day, excluding Saturdays, Sundays or an officially recognised public holiday in the RSA;
- (e) "Discharge Date" means the date on which all the obligations of the Borrower under this Agreement have been discharged finally and in full;
- (f) "Dispose" or "Sell" means to dispose of, sell, alienate, donate, exchange, distribute, transfer, or in any manner whatsoever dispose of or enter into any arrangement or transaction whatsoever which may have the same or a similar effect as any of the aforementioned sale, alienation, donation, exchange, distribution, transfer or disposal (including any transaction, or series of arrangements or transactions, or the cession of any rights or the granting of any option, derivative or any similar transaction/s which would have the same or substantially similar economic effect, whether in whole or in part), or realise any value in respect of;
- (g) "Event of Default" means the occurrence of any one or more of the events or circumstances specified as such in Clause 10 (*Events of Default*);
- (h) "Finance Documents" means this Agreement and every other document designated as such by the Lender and the Borrower;
- (i) "Indebtedness" means any obligation to pay or repay the money, whether present or future, actual or contingent, sole or joint, indemnity or other obligation (whether incurred as principal or as surety) for the payment or repayment of money;

- (j) "**Interest Period**" means a variable interest rate linked to the Prime Interest Rate by a margin of 2% above the Prime Interest Rate accumulated daily;
- (k) "**Judgment**" means any judgment or similar award by a recognised court or any award by an arbitrator;
- (l) "**Loan**" means the amount that the Lender lends to the Borrower, being a total of **R1080 000 (one million and eighty thousand rands)** ;
- (m) "**Loan Outstandings**" means, as at any point in time, that portion of the Loan which has been lent and advanced by the Lender to the Borrower and which has not yet been repaid at such point in time, together with all capitalised interest thereon;
- (n) "**Loan Period**" means the period commencing on the Advance Date and terminating on the Repayment Date;
- (o) "**Material Adverse Effect**" means an effect which is or, in the opinion of the Lender, is likely to be materially adverse to:
- (i) the Borrower's ability to perform or otherwise comply with all or any of its obligations under the Agreement;
  - (ii) any right or remedy of the Lender in respect of the Agreement; or
  - (iii) the legality, validity, enforceability or effectiveness of the Agreement;
- (p) "**Outstanding Balance**" means at any time:
- (i) the Loan; plus
  - (ii) any accrued but unpaid Interest on the Loan as well as capitalised Interest; and
  - (iii) all other amounts including, but not limited to, legal fees and any costs of enforcement by the Lender of the obligations of the Borrower from time to time;
- (q) "**Parties**" means the Lender and the Borrower, and "**Party**" means, as the context requires, any of them;
- (r) "**Potential Event of Default**" means any event or circumstance specified in Clause 11 (*Events of Default*) which would, on the giving of notice, expiry of any grace period, the making of any determination under the Agreement or satisfaction or non-satisfaction of any requirement or condition (or any combination thereof), become an Event of Default;
- (s) "**Prime Rate**" means the South African publicly quoted basic rate of interest per annum charged from time to time determined by the Minister of Justice in a government gazette, which interest shall be calculated daily and compounded monthly in arrears on a 365 (three hundred and sixty five) day year;
- (t) "**R**" or "**Rand**" means the lawful currency of RSA from time to time;
- (u) "**Repayment Date**" means **28 February 2017**;

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- (v) “**Signature Date**” means the date on which this Agreement is signed by the last Party signing it;
- (w) “**Unpaid Amount**” means any sum or amount which is not paid on its due date by the Borrower under this Agreement; and
- (x) “**Warranties**” means the warranties and representations in Clause 8 (*Warranties and Representations*).

2.2 In this Agreement -

- (a) clause headings and the heading of the Agreement are for convenience only and are not to be used in its interpretation;
- (b) an expression which denotes -
  - (i) any gender includes the other genders;
  - (ii) a natural person includes a juristic person and vice versa;
  - (iii) the singular includes the plural and vice versa.

2.3 Any reference in this Agreement to –

- (a) the “**Lender**”, the “**Borrower**”, or any “**Party**” shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (b) “**assets**” includes present and future properties, revenues and rights of every description;
- (c) “**business hours**” shall be construed as being the hours between 08h30 and 17h00 on any Business Day. Any reference to time shall be based upon South African Standard Time;
- (d) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (e) the words “**including**” and “**in particular**” shall be deemed to be followed by the expression “**(but not limited to)**”;
- (f) “**laws**” means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by, any governmental body; and the common law, and “**law**” shall have a similar meaning; and
- (g) “**person**” means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.

2.4 Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

or any part thereof, nor to obtain deferment of execution of any Judgment, whether by reason of any set-off or counterclaim of whatsoever nature and howsoever arising, or otherwise.

- 6.5 Suppose the Lender receives insufficient payment to discharge all the amounts due and payable by the Borrower under this agreement. In that case, the Lender shall apply for that payment in settlement of the Borrower's obligations in the order determined by the Lender in its absolute discretion. The provisions of this Clause 6.5 shall override any appropriation made by the Borrower.

## 7. ADDITIONAL PAYMENT OBLIGATIONS

### 7.1 Indemnities

- (a) The Borrower shall indemnify the Lender within three Business Days of demand against any loss, costs and expenses or liability directly sustained or incurred by the Lender as a result of the occurrence of an Event of Default or Potential Event of Default, and not as a direct result of the Lender's gross negligence or wilful misconduct.
- (b) Each indemnity in this Agreement:
- (i) is a separate and independent obligation from the other obligations in this Agreement;
  - (ii) gives rise to a separate and independent cause of action;
  - (iii) applies whether or not the Lender grants any indulgence; and
  - (iv) shall continue in full force and effect despite any judgment, order, claim, or proof for a liquidated amount in respect of any sum due under this Agreement or any other judgment or order.

### 7.2 Penalty Interest

The Borrower shall, without prejudice to the Lender's other rights in terms of this Agreement or at law, pay to the Lender penalty interest on any Unpaid Amount from the date such Unpaid Amount became due and payable to the date of payment thereof (both dates inclusive), calculated at Prime Rate plus 2%.

## 8. WARRANTIES AND REPRESENTATIONS

The Borrower makes the Warranties set out in this Clause 8 (*Warranties and Representations*) on the Signature Date and repeats the Warranties on each day thereafter until the Discharge Date. The Borrower hereby represents and warrants that:-

### 8.1 *Litigation*

No litigation, arbitration, administrative or other proceedings which shall have, or are reasonably likely (either by itself or together with any other proceedings) to have, a Material Adverse Effect, are current or pending or threatened against the Borrower or his assets;

### 8.2 *Information*

All information furnished by the Borrower to the Lender in connection with this Agreement and the transactions contemplated hereby and thereby was, and remains, true and correct in all

respects, and there are no other facts or circumstances the omission of which would render any such information misleading;

8.3 **No Material Adverse Effect**

There has been no Material Adverse Effect;

8.4 **No Breach of Law**

he has not breached any law or regulation, which breach has or is likely to have an Adverse Material Effect.

9. **UNDERTAKINGS AND CONSENTS**

The undertakings in this Clause 9 (*Undertakings and consents*) are given by the Borrower (in relation to itself) to the Lender and shall remain in force from the Signature Date until the Discharge Date. The Borrower undertakes that:

9.1 **Negative pledge**

The Borrower shall not:

- (a) create, or permit to subsist, any security on or over any of its assets; or
- (b) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
- (c) enter into any other preferential arrangement having a similar effect in circumstances where the arrangement or transaction is entered into primarily as a method of raising borrowed money or financing the acquisition of an asset.

9.2 **Borrowings**

The Borrower shall not incur, or allow to remain outstanding, any Indebtedness other than Indebtedness incurred:

- (a) before the Signature Date and disclosed to the Lender in writing;
- (b) under the Finance Documents; or
- (c) with the prior written consent of the Lender.

9.3 **Notification of default**

The Borrower shall promptly notify the Lender of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) on becoming aware of its occurrence.

9.4 **Compliance with law**

The Borrower shall comply, in all respects, with all applicable laws within the RSA.

**9.5 Reporting**

The Borrower shall deliver to the Lender promptly upon becoming aware of same details of any litigation, arbitration, mediation or similar proceedings either commenced, threatened or pending against him.

**10. EVENTS OF DEFAULT**

Each of the events or circumstances set out in Clauses 10.1 (*Non-payment*) to Clause 10.8 (*Material Adverse Change*) is an Event of Default.

**10.1 Non-payment**

The Borrower fails to pay any sum payable by it under this Agreement when due unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three Business Days of its due date.

**10.2 Non-compliance**

The Borrower fails (other than a failure to pay) to comply with any provision of the Agreement and (if the Lender considers, acting reasonably, that the default is capable of remedy) such default is not remedied within fourteen days of the earlier of:

- (a) the Lender notifying the Borrower of the default and the remedy required; or
- (b) the Borrower becoming aware of the default.

**10.3 Misrepresentation**

Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, the Finance Documents is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made.

**10.4 Sequestration**

Any action, proceedings, procedure or step, is taken in relation to the Borrower's sequestration, other than those actions, proceedings, procedures or steps which are frivolous or vexatious and are discharged, stayed or dismissed, as applicable, within 14 (fourteen) days of commencement.

**10.5 Repudiation**

A Borrower repudiates or evidences an intention to repudiate the Agreement.

**10.6 Material adverse change**

Any event occurs (or circumstances exist) which, in the Lender's opinion, has or is reasonably likely to have a Material Adverse Effect.

**10.7 Subscription Agreement**

The Borrower fails to comply with any provision of the Subscription Agreement and fails to remedy such breach after receipt of written notice by the Lender to do so within the time period prescribed in such Subscription Agreement.

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## 10.8 Action pursuant to the occurrence of an Event of Default

At any time after an Event of Default has occurred which is continuing, the Lender may without prejudice to any other rights which may be available to it in terms of this Agreement or at law, by notice to the Borrower:

- (a) declare that the Outstanding Balance and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or

## 11. CONFIDENTIALITY

11.1 Each Party hereto agrees to keep all information relating to the other Party (the "**Protected Party**") and the Finance Documents of which it becomes aware in the course of negotiating and/or implementing the transactions contemplated in the Finance Documents confidential and not disclose it to anyone other than (in the case of the Lender only) in accordance with Clause 11.2. This obligation does not apply to information:

- (a) that is or becomes public information other than as a direct or indirect result of any breach by a Party of this Clause 11;
- (b) is identified by a Party (or any of its advisers) at the time of delivery as non-confidential; or
- (c) is known to a Party before it is disclosed to that Party by the Protected Party (or any of its advisers) or is lawfully obtained by that Party from another source, in either case, through no breach of confidentiality of which a Party is or becomes aware.

11.2 Either Party may disclose to its professional advisers, any governmental, banking, taxation or regulatory authority or similar body, or any other person to the extent that it is required to do so by any applicable law, regulation, court order or the rules of any relevant stock exchange, any information about the Finance Documents and the other Parties.

## 12. TRANSFER OF RIGHTS AND OBLIGATIONS

12.1 The Lender shall be entitled to cede, assign or transfer any of its rights and/or benefits under this Agreement to any person without the prior written consent of the Borrower.

12.2 The Borrower shall be entitled to cede, assign or transfer any of its/his rights, benefits or obligations under this Agreement to any person without the Lender's prior written consent.

## 13. LIQUID DOCUMENT

A certificate signed by the Lender setting out the amount of any indebtedness of the Borrower to the Lender in terms hereof shall -

13.1 in the absence of manifest error, be *prima facie* proof of the amount owed by the Borrower;

13.2 together herewith, be valid as a liquid document in any court of competent jurisdiction for any purpose, including the obtaining of a provisional sentence or summary Judgment against the Borrower.

14. NOTICES AND *DOMICILIA*

14.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following e-mail addresses-

(a) In the case of the Lender:

Physical address: 241 Stoneridge, Manassas, VA 20107

E-mail: mashudu@mandukani.com

Attention: MASHUDU SHAWDUKANI

(b) In the case of the Borrower:

Physical address: No. 1180B, RABALI SECTION B, TIZHELELE

E-mail: [tshelele@gmail.com](mailto:tshelele@gmail.com)

Attention: MASHUDU SHAWDUKANI (COLL)

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or e-mail address by written notice to the other Party to that effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.

14.2 All notices to be given in terms of this Agreement will be given in writing, in English, and will -

- (a) if sent by courier in a correctly addressed envelope to it at its chosen address, be presumed to have been received on the 3rd (third) Business Day after sending (unless the contrary is proved);
- (b) if delivered by hand during business hours, it is presumed to have been received on the delivery date. Any notice delivered after business hours or on a day which is not a Business Day, will be presumed to have been received on the following Business Day;
- (c) if sent by e-mail during business hours, be presumed to have been received on the date of successful transmission of the e-mail. Any e-mail sent after business hours or on a day which is not a Business Day, will be presumed to have been received on the following Business Day.

14.3 The Parties record that whilst they may correspond via e-mail during the currency of this Agreement for operational reasons, no formal notice is required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via e-mail.

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**15. GOVERNING LAW AND JURISDICTION**

15.1 This Agreement and any dispute or claim arising out of, or in connection with, it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of the RSA.

15.2 The Parties to this Agreement irrevocably agree that subject as provided below, the Gauteng Local Division, Johannesburg of the High Court of the RSA shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claims). Nothing in this Clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

15.3 Each Borrower irrevocably and unconditionally -

- (a) agrees that if the Lender brings legal proceedings against him/it or his/its assets in relation to this Agreement no immunity (including, without limitation, sovereign immunity) from such legal proceedings (which will be deemed to include without limitation, suit, attachment prior to Judgment, other attachment, the obtaining of Judgment, execution or other enforcement) will be claimed by or on behalf of him/herself/itself or with respect to his/its assets;
- (b) waives any such right of immunity (including, without limitation, sovereign immunity) from suit which he/it or his/its assets now has or may in the future acquire in connection with any action against him/it based on this Agreement; and
- (c) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or Judgment which may be made or given in such proceedings.

**16. GENERAL****16.1 Whole Agreement**

- (a) This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- (b) This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

**16.2 Variations to be in Writing**

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

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**16.3 No Indulgences**

No latitude, extension of time or other indulgences which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**16.4 No Waiver or Suspension of Rights**

No waiver, suspension, or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

**16.5 Cumulative Remedies**

Rights and remedies under each Finance Document are cumulative and do not exclude any rights or remedies provided by law or otherwise.

**16.6 Provisions Severable**

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement, which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

**16.7 Continuing Effectiveness of Certain Provisions**

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

**16.8 Counterparts**

This Agreement may be signed in counterparts and all counterparts taken together constitute one document.

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- 2.5 A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been waived.
- 2.6 Any reference to an enactment, regulation, rule or by-law is to that enactment, regulation, rule or by-law as at the Signature Date and as amended or replaced from time to time.
- 2.7 Recordals shall be binding on the Parties and are not merely for information purposes.
- 2.8 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement shall not apply.
3. **ADVANCE OF LOAN**
- 3.1 The Lender shall advance the Loan to the Borrower on the Advance Date, which shall be accepted by the Borrower subject to the terms and conditions of this Agreement.
- 3.2 The Loan shall be advanced to the Borrower, on the Advance Date, on the basis that:
- (a) Interest shall accrue on the Loan; and
  - (b) The Borrower shall be entitled to repay portions of the Loan Outstandings from time to time at the Borrower’s discretion, provided that the full balance of the Loan Outstandings shall be payable in full on the Repayment Date.
- 3.3 The Loan shall be paid into the bank account nominated by the Borrower:
4. **INTEREST**
- 4.1 Interest at the Agreed Rate shall accrue on the Loan Outstandings from the commencement of the Loan Period to the date of final payment of the Loan.
5. **REPAYMENT AND PREPAYMENT**
- 5.1 The Loan Outstandings shall be repaid by the Borrower to the Lender by no later than 28 February 2017;
- 5.2 The Borrower may not re-borrow any amount which has been repaid under this Agreement.
6. **PAYMENT MECHANICS**
- 6.1 All payments made by the Borrower to the Lender in terms of the provisions of this Agreement shall be made in cash, without the cost of the transfer of funds and deduction, withholding or set-off whatsoever, by way of direct bank deposit into the bank account nominated in writing by the Lender from time to time.
- 6.2 Where in terms of this Agreement the due date for payment of any amount is not a Business Day, the due date for payment shall, unless otherwise provided, be deemed to be the Business Day preceding the day on which such amount would otherwise be due for payment.
- 6.3 The Lender shall appropriate each payment received by the Lender from the Borrower in its sole discretion.
- 6.4 The Borrower shall have no right to defer, withhold or adjust any payment due to the Lender arising out of this Agreement, to obtain the deferment of any Judgment for any such payment

17. COSTS


The Borrower will bear and pay the legal costs and expenses of both the Lender and the Borrower arising out of and incidental to the negotiation, drafting, preparation and implementation of the Finance Documents and any other documents required to give effect to the intent and import of this Agreement.

SIGNED at CERTURIONI on this 22 day of July 2016

For:

  
Signature  
Duly authorised Tupondelaki Goko  
TSHISIMBA

SIGNED at CERTURIONI on this 22 day of July 2016

  
Signature MASHUWA SHANDUKANE



**NDAVHA MANAGEMENT**

Reg No. 2006/161218/23

Stand No 0081B, Section B  
Rabali, Posaito  
Dzanani 0955  
Cell: 0822158582  
Email: ctshisimba@gmail.com

**Engagement Letters**

10 February 2017

**Mushumo U Shavha Zwanda**  
64 Underson Street  
LTT, 0920

Re: Appointment of **NDAVHA MANAGEMENT** by **MUSHUMO U VHASHA ZWANDA**

Thank you for selecting **NDAVHA MANAGEMENT** to facilitate the old age concept with regarding;

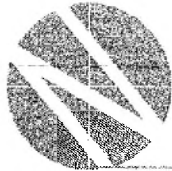
Land Facilitation  
Stakeholder Engagement  
Community Liaison and Feasibility of the area  
Data Collection  
Business Plan Proposal  
Application for Funding Assistance

This letter will confirm our recent discussion regarding the scope and terms of our engagement.

On behalf of Ndavha Management, I Mukondeleli Collin Tshisimba agreed to represent Mushumo U Shavha Zwanda in Facilitation of Old Age Project. While I will be personally responsible for supervising this process.

Mushumo U Shavha Zwanda have agreed to pay for all services to be rendered by Ndavha Management based on the completion of work agreed upon on this engagement letter. The cost schedule will appear as follows fifteen percent (15%) of the total funding received. Other cost will be billed as incurred according to the agreed scope of work.

The invoice will be forwarded once the cost incurred and the scope of work is completed. The invoice will contain a description of services rendered and a description of the task accomplished.

**NDAVHA MANAGEMENT**

Reg No. 2006/161218/23

Stand No 0081B, Section B  
Rabali, Posaito  
Dzanani 0955  
Cell: 0822158582  
Email: ctshisimba@gmail.com

**Engagement Letters**

05 May 2017

**Matieni Community Development**  
64 Underson Street  
LTT, 0920

Re: Appointment of **NDAVHA MANAGEMENT** by **MATIENI COMMUNITY CENTRE**

Thank you for selecting **NDAVHA MANAGEMENT** to facilitate the old age concept with regarding;

Land Facilitation  
Stakeholder Engagement  
Community Liaison and Feasibility of the area  
Data Collection  
Business Plan Proposal  
Funding Application Assistance

This letter will confirm our recent discussion regarding the scope and terms of our engagement.

On behalf of Ndavha Management, I Mukondeleli Collin Tshisimba agreed to development business concept about an Old Age Home. While I will be personally responsible for supervising the process.

Matieni Community Centre have agreed to pay for all services to be rendered by Ndavha Management based on the completion of work agreed upon on this engagement letter. The cost schedule will appear as follows Fifteen percent (15%) of the total funding received. Other cost will be incurred according to the agreed scope of work.

The invoice will be forwarded once the cost incurred and the scope of work is completed. The invoice will contain a description of services rendered and a description of the task accomplished.

This estimate must be viewed as imprecise, since at this time my knowledge of the facts is limited. We will advise you if it appears fees will be significantly higher than this estimate. At such



This estimate must be viewed as imprecise, since at this time my knowledge of the facts is limited. We will advise you if it appears fees will be significantly higher than this estimate. At such time, you may decide to restrict the scope of our efforts, or we may make other adjustments. This estimate does not include cost items.

If any portion of the advance is unexpended at the conclusion of the case, it will be refunded to you.

You will appreciate we can make no guarantee of a successful conclusion in any case. However, Ndavha Management will use their best efforts on your behalf.

If this letter fairly states our agreement, please so indicate by signing and returning the enclosed copy in the enclosed business reply envelope. As is always true, if you have any questions or concerns, please call me to discuss them.

We greatly appreciate the opportunity to represent you on this project and look forward to working with you.

Sincerely,

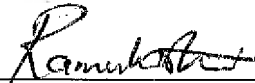
Ndavha Management (Consultant):



By: Colin Tsetseimbe

Date: 05/may/2017

Matieni Community Centre (Clients)



Name: Ramukashi P

Date: 2017-05-05





# NDAVHA MANAGEMENT

Reg No. 2006/161218/23

**TO: Matieni Community Centre**
**FROM: NDAVHA MANAGEMENT CC**

Stand No 0081B, Section B

Rabali, Posaito

Dzanani 0955

Cell: 0822158582

Email: ctshisimba@gmail.com

Description			Discount	Amount
Business Consulting (Old Age Concept)				500 000.00
Stakeholder Engagements				250 000.00
Community Liaison Consultant				100 000.00
Land reservation (Consulting & Facilitation)				600 000.00
Data Collection				200 000.00
Proposal Consulting and Writing				1 350 000.00
Make payment into the following account: Ndavha Management FNB: Acc No: 62118916933			Sub-total	R3 000 000.00
				R 0.00
			<b>Total</b>	<b>R3 000 000.00</b>
<b>TOTAL DUE</b>				<b>R3 000 000.00</b>

Invoice

 SIGNED BY : 