

**IN THE EQUALITY HIGH COURT
(HIGH COURT, CAPE TOWN)**

Case No.: **Equality Court 3/2016**

In the application of:

SOCIAL JUSTICE COALITION	First Applicant
EQUAL EDUCATION	Second Applicant
NYANGA COMMUNITY POLICING FORUM	Third Applicant
and	
MINISTER OF POLICE	First Respondent
NATIONAL COMMISSIONER OF POLICE	Second Respondent
WESTERN CAPE POLICE COMMISSIONER	Third Respondent
MINISTER FOR COMMUNITY SAFETY, WESTERN CAPE	Fourth Respondent
and	
WOMEN'S LEGAL CENTRE TRUST	Amicus Curiae

FILING NOTICE

Documents filed herewith:

- 1. Answering Affidavit of Felix Mlungiseleli Mbeki; and**
- 2. Confirmatory Affidavit of Leon James Manuel.**

DATED AT CAPE TOWN THIS 11th DAY OF AUGUST 2020.

STATE ATTORNEY

Per: 

L MANUEL

Attorney for 1st, 2nd & 3rd
Respondents'
4th Floor
22 Long Street
CAPE TOWN
(Ref: 1128/16/P12)

TO: THE REGISTRAR
Equality Court
CAPE TOWN

AND TO: LEGAL RESOURCES CENTRE
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Ref: Ms M Mudarikwa

Service by e-mail

AND TO: WEBBER WENTZEL
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AND TO: STATE ATTORNEY
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AND TO: WOMEN'S LEGAL CENTRE
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CAPE**

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Amicus Curiae

**AFFIDAVIT ON BEHALF OF
THE FIRST, SECOND AND THIRD RESPONDENTS**

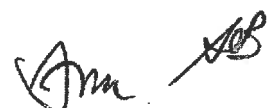
I, the undersigned,

FELIX MLUNGISELELI MBEKI

do hereby make oath and state that:



1. I am an adult male and a member of the South African Police Service (“**the SAPS**”) and the Provincial Head of Legal and Policy Services in the Western Cape Province, of 25 Alfred Street, Cape Town, Western Cape. I hold the rank of Major-General. I am duly authorised to depose to this affidavit on behalf of the first, second and third respondents (“**the respondents**”).
2. The contents of this affidavit are true and correct and unless otherwise indicated or clear from the context, fall within my personal knowledge. Where I rely on information provided to me by others, I indicate the source and verily believe such information to be correct and true. Where I make legal submissions I do so on the basis of advice given to me by my legal representatives, which advice I believe to be reliable and correct.
3. This Court handed down judgment on the merits of this matter on 14 December 2018, which is now reported as **Social Justice Coalition and Others v Minister of Police and Others** 2019 (4) SA 82 (WCC) (“**the judgment**”).
4. Although applications for leave to appeal and leave to cross appeal were filed by both the applicants and the respondents, neither application was proceeded with. The applicants assert in their heads of argument that the respondents “have abandoned their appeal” (heads of argument page 6, paragraph 2). This is not only incorrect but contradicted by their affidavit dated 14 October 2019 which records that in “an agreement reached on or about 14 March 2019, the parties in both applications agreed to withdraw their respective applications for leave to appeal and cross-appeal correct” (page 5, paragraph 15). The

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incorrect reference to an abandonment of the application for leave to appeal is repeated on page 10, paragraph 19 of their heads of argument.

5. On 4 July 2019 this Court issued an order by agreement between the parties in terms whereof the parties were ordered to meet to “agree the process the parties will follow in order to attempt to agree on an appropriate remedy for approval by the Court”. The parties were ordered to report back to the Court on the details of the process by no later than 26 July 2019. It was also ordered that should the parties fail to do so or if agreement between the parties was not possible, the matter would be set down on a suitable date for argument on the appropriate remedy. A copy of this order is attached as AN1 to the affidavit filed by the applicants.
6. A meeting was held between the parties on or about 15 July 2019. At this meeting, the respondents informed the applicants that they were in the process of developing a plan in response to the judgment of this Court and further that this plan would be presented to the National Commissioner for adoption at the end of August 2019 and would be furnished to the applicants on 1 September 2019.
7. Attendant thereon, on 6 August 2019 this Court issued a further order by agreement between the parties, in terms whereof it was ordered:
 - 7.1. That the first respondent would make available to the applicants, the fourth respondent and the Amicus Curiae, the SAPS Plan in relation to the remedy.

Amicus *ACP*³

7.2. That the applicants, the fourth respondent and the Amicus Curiae would respond to the proposed SAPS Plan by 11 October 2019 (subject to additional time being allowed in certain circumstances).

7.3. That where the parties fail to come to an agreement on the remedy, the Court would set the matter down for argument on the earliest suitable date.

(A copy of this Order is attached to the applicants' affidavit as AN2.)

8. The respondents made the plan, which is referred to as the Integrated Resource Strategy ("the IRS") available to the applicants. A copy of the IRS is attached to the applicants' affidavit as AN3.

9. On 14 October 2019 and without any form of engagement, the applicants filed an affidavit in which they contend that the IRS is "manifestly inadequate" and set out what they submit constitutes appropriate relief (at paragraph 5):

9.1. Supervisory relief to ensure the amendments to the THRR address the unfairly discriminatory outcomes of the current system; and

9.2. Immediate relief to ensure that the Western Cape is fairly resourced by the THRR as amended.

10. The applicants further contend in their affidavit that the IRS: (a) does not address the issues of discriminatory allocations which arose from the THRR in this litigation; and (b) makes passing reference to this Court's judgment. The applicants also criticise the respondents for not having filed an affidavit

explaining how the IRS addresses the appropriate remedy. According to the applicants, the respondents' conduct in submitting the IRS is "unhelpful and disrespectful" and warrants the censure of this Court (paragraph 21). I deny these allegations.

11. After the applicants filed the above affidavit Mr Manuel of the State Attorney who is the respondents' attorney of record herein, addressed the following email to the applicants' attorneys on 22 October 2019:


"Our client's view is that it would be prudent and more beneficial to the parties to further engage one another as opposed to litigating on the issue of remedy. In the circumstances, our instructions are to enquire whether your clients would be amenable to meet with our client's Human Resource and Organizational Development personnel to address the issues to ascertain whether the issue of remedy can be resolved without further litigation.

We look forward to hearing from you"

12. On 30 October 2019 the applicants' attorney, Ms Mudarikwa responded to Mr Manuel and advised that she was taking instructions. A further email followed on 6 November 2019 in which Ms Mudarikwa advised Mr Manuel:

"I refer to your email below.

My instructions are that the Applicants would like to proceed with the matter as explained before and in the last papers filed in response to the plan filed by SAPS to avoid any further delays in the matter. Accordingly the applicants will continue with their request for a court date as set out in correspondence to the Judges on 18 September 2019.

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We trust that you will find this in order"

13. This and all other references to Mr Manuel are confirmed by him in his affidavit filed herewith.

14. The applicants did not take up the opportunity to engage. They have repeatedly moved the goal posts with regard to the relief sought. They're even seeking relief on a national basis despite the judgment of the Court (at page 43, paragraph 77) which found that there was no evidence to show how the THRR affected the other parts of the country (the other 7 provinces aside from the Western Cape and Kwa-Zulu Natal). In line with the Court's findings in this regard, the declarators were confined to the Western Cape Province. It is inappropriate and indeed, impermissible for the applicants to seek relief in respect of other provinces.

15. It is against the above background that I address the following issues in turn in the remainder of this affidavit:
 - 15.1. First, I set out the background to the question of remedy which is presently the subject of adjudication.

 - 15.2. Second, I highlight certain key aspects of the judgment.

 - 15.3. Third, I provide an overview of the IRS.

 - 15.4. Fourth, I address the applicants' criticisms of the IRS.

 - 15.5. Fifth, I address the remedial powers of this Court.

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15.6. Finally, I address the question of the appropriate order and costs of suit.

THE BACKGROUND

16. It will be recalled that the complainants instituted this application on 31 March 2016 in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act No 4 of 2000 (**"the Equality Act"**).

17. In their notice of motion, the applicants seek wide ranging substantive relief:

17.1. In the first instance, they seek three declaratory orders, *viz*:

17.1.1. That the allocation of police human resources in the Western Cape unfairly discriminates against black and poor people on the basis of race and poverty.¹

17.1.2. That the system employed by the SAPS to determine the allocation of police resources unfairly discriminates against black and poor people on the basis of race and poverty.²

17.1.3. That section 12(3) of the South African Police Service Act, No. 68 of 1998 (**"the SAPS Act"**) grants Provincial Commissioners the power to determine the distribution of police resources between stations within their province, including the distribution of

¹-NM; page 8; par 1.

²-NM; page 8; par 2.

permanent posts under the fixed establishment and not merely on a temporary basis.³

17.2. In the second instance, compelling the Provincial Commissioner to prepare a plan (Provincial Plan) for the reallocation of resources within the Western Cape to address the most serious disparities in the allocation of police human resources in the province within a period of three months from the date of any order issued by this Court. Specific provision is made for a consultative process and for the exercise of this Court's supervisory jurisdiction in respect thereof.⁴

17.3. In the third instance, compelling the National Minister of Police ("**the National Minister**") to re-evaluate the system that the SAPS uses to allocate and distribute its human resources, coupled with a reporting and consultative process.⁵

17.4. In the fourth instance an ongoing supervisory jurisdiction.⁶

18. According to the order of this Court as granted (at paragraph 94 of the judgment):

"(1) It is declared that the allocation of police human resources in the Western Cape unfairly discriminates against black and poor people on the basis of race and poverty.

³ NM; page 8; par 3.

⁴ NM; page 8; par 4 to 8.

⁵ NM; page 9; par 9 to 10.

⁶ NM; page 10; par 11.

- (2) It is declared that the system employed by the South African Police Service to determine the allocation of police human resources, insofar as it has been shown to be the case in the Western Cape Province, unfairly discriminates against black and poor people on the basis of race and poverty.
 - (3) The hearing on remedy is postponed to a date which shall be arranged with the parties.
 - (4) Costs shall stand over for later determination."
19. It is immediately apparent that the Court granted (in part) the declaratory orders sought in respect of the Western Cape but refused the national relief sought. Save for the declaratory orders, all other aspects of the relief sought in respect of the Western Cape were deferred for later determination.

THE JUDGMENT OF THIS COURT AND THE APPROPRIATE RELIEF

20. According to the judgment:

20.1. The respondents have not been able to discharge their evidentiary burden of showing that no discrimination exists (at paragraph 87).

20.2. The analytical evidence of Redpath and the data presented show that police stations that serve poor, black areas have the lowest police-to-population ratios, relatively speaking, as compared to wealthier/rich areas which are predominantly white. This is not, according to the Court, an adoption of a technical numbers game (at paragraph 87).

Ann *AB*⁹

- 20.3. Context shows that the poor, black areas also have the highest rates of contact and violent crime. Whilst one cannot ignore other crimes, such as theft, which appear to occur in greater numbers in commercial areas such as the CBD, it cannot be disputed that contact crime is more prevalent in poor and black areas (at paragraph 87).
- 20.4. A higher allocation of police officers may not necessarily by itself translate into reduction of crime, but it is a factor that contributes. More resources and better policing may result in less actual crime (at paragraph 88).
- 20.5. The fact that there are socio-economic and infrastructural challenges which present difficulties to police efficiency and effectiveness in poor, black areas, cannot be a justification for inferior police services (at paragraph 88).
- 20.6. Whilst Redpath is not an expert in policing, the studies she presented show the impact that policing has on crime. Rabie, on behalf of the respondents, had testified before the Khayelitsha Commission that weakening of visible policing might lead to an increase in crime levels. In his words, 'you can expect an increase in crime immediately' (at paragraph 88).
- 20.7. While Redpath has succeeded in pointing out the most obvious shortcomings with the THRR by using statistics, she has not, according to the Court, shown that more policing in underdeveloped areas will result in the eradication of crime (at paragraph 89).



20.8. Poverty, for example, cannot be solved by more police in Khayelitsha without addressing the socio-economic factors associated with underdeveloped informal areas which continue to generate more crime (at paragraph 89).

20.9. More than just statistical evidence would be required to solve the problem associated with policing in poor, black areas. Such interventions, of necessity, would have to be by policing experts. For the police to improve on their policing duties there needs to be an improvement in socio-economic conditions (at paragraph 89).

21. Importantly, the respondents were not ordered to take any measures attendant on the declaratory orders made by the Court. This notwithstanding, the respondents have adopted the IRS which I address in the section that follows.

THE IRS

22. At the outset, the following aspects of the IRS warrant highlighting:

22.1. First, it was compiled by the Deputy National Commissioners for Human Resource Management, Asset and Legal Management and Management Advisory Services. It was approved by the National Commissioner: SAPS.

22.2. Second, it is intended for the period 1 April 2019 to 31 March 2024.

23. The following aspects of the IRS warrant highlighting:

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- 23.1. It aims to provide a source of information and support on the common elements of resource planning for SAPS (page 8).
- 23.2. Its overall aim is to support the department in ensuring appropriate resource planning and allocation criteria that support SAPS (page 8).
- 23.3. It requires that the outcomes should be continuously monitored and evaluated to determine the progress in addressing the identified gaps (page 8).
- 23.4. It recognises that the police service that is provided to communities emanates from police stations, which necessitates the proper resourcing of stations and in particular, historically disadvantaged and rural stations. This, according to the IRS, will include the building of new police stations and the ensuring of adequate human resources, appropriate vehicles and equipment (page 9).
- 23.5. It recognises that macro-economic factors may impact on expenditure over the medium term (page 9).
- 23.6. It recognises that broad consultation and consideration of the strategic objectives of the SAPS is necessary to determine the demand for physical resources and infrastructure requirement and further that resource requirements should be acquired to satisfy and improve the investigation of crime, the prevention of crime and awareness campaigns in areas which are vulnerable to crime (page 10).

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23.7. It explains that a range of stakeholders were engaged and consulted in the development of the IRS, "in order to ensure an integrated approach towards resource planning, to identify and encapsulate key goals in support of determining operation and support demands, to enhance resources" (page 18). The details in this regard are set out in the IRS.

24. The following principles are the building blocks that form the foundation of the IRS:

24.1. There must be a strategic approach to resource planning, which will be used to identify priorities and strategies that will shape the activities and operational plans of all resource components (page 53).

24.2. Through the Integrated Resource Planning process, the support function in a department is able to define what and how it needs to contribute to the department in order to enable successful performance. A key aspect of the resource planning process is to gather and analyse qualitative and quantitative data and information in order to determine gaps between supply and demand. The gap is identified as being in terms of the profile of personnel (including skills and competencies), physical resources and organisational arrangements to support these (page 56).

24.3. It recognises the vital role of consultation and engagement (page 58).

24.4. It recognises the value of data in the integrated resource planning process. In this regard, the IRS recognises that historically planning processes have relied heavily on gathering quantitative data in order to



establish a basis for planning, with limited attention given to gathering additional qualitative data, which has sometimes led to a superficial interpretation and analysis of the data gathered. To this end, it requires that Resource Divisions use both quantitative and qualitative data (page 60).

24.5. The need for ongoing monitoring and evaluation is emphasised (page 67).

25. The IRS recognises that strategic resource planning is a key priority and core management practice for optimising human and other resources capability of meeting current and future challenges for service delivery, in respect of which an integrated approach is required. To this end, the IRS is founded on four pillars, viz (page 12):

25.1. Pillar 1: Resource Demand Plan.

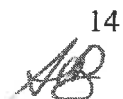
25.2. Pillar 2: Resource allocation and distribution criteria.

25.3. Pillar 3: Resource matrix and implementation.

25.4. Pillar 4: Building a professional and capable SAPS.

26. The IRS recognises that the prominent types of resources that the SAPS use to implement strategies are financial, human, physical and technological in nature. In this regard, it notes that resources are limited and the use of them requires making decisions between competing alternatives (page 12).



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27. Focus areas under each of the four pillars are identified and timeframes are provided for the deliverable in each instance.

28. The key focus areas for Pillar 1 (the Integrated Resource Demand Plan) notes *inter alia*, as follows:

28.1. One of the identified outcomes is to confirm the outcome of the court ruling that the impact on the Integrated Resource Management Strategy. In this regard, it requires that an analysis of the court ruling be undertaken that impacts on the resource determination, allocation and management. The timeline for this was 31 March 2020 and beyond (page 26).

28.2. Another identified outcome is the improvement of integrated resource planning criteria by determining and defining a demand plan in support of the effective implementation of the department's legislative and policy framework. This requires the development of a plan with specific reference to, *inter alia*, the resource allocation criteria, including (page 27):

28.2.1. Human resource allocation and distribution criteria.

28.2.2. Physical resource allocation and distribution criteria.

28.2.3. Infrastructure resource allocation and distribution.

28.2.4. IS / ICT resource allocation and distribution criteria.



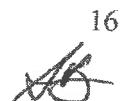
28.2.5. Budget planning and allocation criteria.

29. The key focus areas for Pillar 2 (the Integrated Resource Allocation and Distribution criteria) notes *inter alia*, as follows:

29.1. One of the deliverables is to enhance and improve calculation of the THRR to ensure the equitable allocation and distribution of human resources at police stations, contact points, satellite stations, clusters / districts. According to the IRS, this requires a review and enhancement of the THRR criteria, station input sheet, time standard norms and the internal and external variables (at page 30). A range of specific measures in respect of crime detection activities and support activities are identified (page 31).

29.2. A second identified deliverable is to incorporate scientific methods for the calculation of the Granted Allocation for districts, clusters, and police stations proposals to the Provincial Commissioner to promote compliance with section 12(3) of the SAPS Act. The deliverable in this regard expressly refers to the equitable allocation and distribution of human and other resources to the following priorities: (a) capacitation of police stations that does not confine to the minimum allocation requirement of 5 operational members per shift; and (b) high crime JCPS Economic Stimulus hot spot stations. It also notes that the priorities should also seek to address the current inconsistencies between the ideal resource requirements, granted resources and actual resources



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and requires that norms should be defined to inform the minimum granted level required or high crime stations (page 34).

29.3. A third deliverable is to improve on the criteria to enhance the equitable distribution of human resources (specialized units at provincial level, province, division components (page 35).

29.4. A fourth deliverable is to develop a theoretical physical (capital and non-capital resource requirement criteria) to ensure the equitable allocation and distribution of physical resources at police stations, contact points, satellite stations, clusters and districts. This deliverable specifically requires that an environmental scan and analysis of police stations, contact points satellite stations, clusters and districts in order to supplement the revision of physical resources criteria allocation requirements (page 36).

29.5. A fifth deliverable is to develop a theoretical physical (capital and non-capital resource requirement criteria) to ensure the equitable allocation and distribution of physical resources to specialised units, provinces, divisions and components (page 37).

29.6. A sixth deliverable is to align the current allocation and distribution of physical resources with the granted human resource allocation and distribution to prioritised business units. In this regard the IRS expressly provides that capacitation of police stations that do not confine to the minimum allocation requirement of 5 operational members per shift (page 37).



29.7. A seventh deliverable is to improve policing infrastructure in rural and urban police stations. In this regard, the IRS expressly provides that this process is to include, *inter alia*, the following:

29.7.1. Construction of police stations, including victim friendly facilities.

29.7.2. Repair and upgrading of devolved police stations.

29.7.3. Installation of burglar proofing.

29.7.4. Installation of cell grids.

29.8. An eighth deliverable is the review and development of an IS / ICT resource requirement criteria to ensure the equitable allocation and distribution of IS / ICT resources at police stations, contact points, satellite stations, clusters and districts, specialized units, provinces divisions and components (page 40).

30. The key focus area for Pillar 4 (Professionalise the SAPS) include:

30.1. Ensuring 100% capacitation of the following prioritised environments: (a) specialised interventions; (b) crime detectors; and (c) police stations (page 48).

30.2. Implementing a medium term Capital Infrastructure and Asset Plan that includes rural policing infrastructure requirements, including the following prioritised environments: (a) police stations and OCCs; (b) specialised interventions; and (c) crime detection (page 50).



31. I emphasize that I have not provided a detailed or exhaustive overview of the IRS but have referred only to key aspects that bear on the relief sought by the applicants.

THE APPLICANTS' CRITICISMS OF THE IRS

Ad paragraphs 24 to 26

32. First, the applicants contend that the amendments made in the IRS to the system of allocating resources is "so vague that it is impossible to know where or not they will have any impact on remedying the ongoing discrimination." In this regard, the applicants raise two complaints: (a) that the IRS was provided to the applicants without explanation; and (b) that it only cryptically identified certain issues and establishing further process for making amendments to the THRR. Save for admitting that no explanation was provided to the applicants, I deny these and the remaining allegations made in these paragraphs. I say the following in response:

32.1. The respondents are willing and amenable to further engagement with the applicants in order to further explain and discuss the content of the IRS; the applicants are however not amenable to this.

32.2. The IRS is no more than a plan. It is not intended to represent the respondents' full response to the judgment.

Ad paragraph 27



33. It is correct that the IRS does not speak specifically to the reallocation of resources to poor black communities in the Western Cape. It does however speak (as I have shown) to the need to ensure an equitable distribution of resources. To this end, I respectfully say that it is an appropriate response to the order of this Court.

Ad paragraph 28

34. At paragraphs 75 and 76 of this Court's judgment, it found that:

34.1. Redpath's analysis showed that the demographics such as environmental, social and economic factors present in informal areas, which were taken into account when allocations were made in terms of the THRR and which were ostensibly intended to benefit these areas, actually resulted in allocations which were skewed and in favour of privileged and historically white areas.

34.2. Although the THRR is geared at allocating resources on a racially neutral basis, it is evident from the analysis by Redpath that predominantly black areas receive inferior policing services as compared to the so-called white areas.

35. It is in direct response to this that the IRS provides (repeatedly) for the equitable allocation and distribution of resources. I refer to paragraph 29 above.

Ad paragraph 30



36. The affidavit filed by Ms Redpath, dated 13 October 2019, is addressed separately. For present purposes, I do not accept the correctness of the allegations made by Ms Redpath.

Ad paragraphs 37 and 38

37. It is correct that the reference to the judgment of the Equality Court is a reference to this Court's judgment. The applicants were at liberty to engage on these issues and did not have to rely on inferences and supposition.

38. The issues raised in these paragraphs are precisely why it is incumbent on the parties to engage and to find a mutually acceptable solution. As was appointed out when the main application was argued, the THRR is constantly being reviewed and adapted as when necessary. Legal proceedings should be resorted to where the engagement process fails or is exhausted. In the present instance, this has not occurred. Moreover, and for the reasons expressed below, it is premature for this matter to be considered at this stage.

Ad paragraph 39

39. The applicants have conflated the Court's judgment with the recommendations of the Commission. I respectfully submit that the latter has no bearing on the measures taken by the respondents pursuant to the judgment of this Court.

Ad paragraph 40

40. The content of this paragraph underscores the difficulties of what the applicants are seeking to achieve by way of the remedy before this Court. Indeed, on the applicants' own version:

"Even if SAPS is trying in good faith to remedy the unfair discrimination, it will only be possible to know whether the steps they are taking are likely to have that result when it completes its work. Only then would this Court be able to assess the new system. If it still results in unfairly discriminatory allocation, the matter will be back at square one." (underlining added)

41. I am in full agreement with the above statement and for that reason alone respectfully say that it is premature for this Court to arrive at a finding on the appropriateness or otherwise of the measures that are underway.

Ad paragraph 41

42. I respectfully submit that the measures that need to be taken pre-eminently fall within the domain of the respondents. To this end, I say with respect that government must be allowed to govern. As regards public engagement, I respectfully say that this issue is adequately catered for in the IRA. I refer to page 58 of the IRA in this regard.

43. I deny that Court supervision is warranted in this matter.

THE REMEDIAL POWERS OF THIS COURT

44. This Court has made the declaratory orders referred to above.

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45. The sole remaining question is whether this Court ought to grant any further relief attendant on the declaratory orders. The respondents deny that there is any basis for any further orders to be granted by this Court. There is a process that is underway, which I respectfully say, demonstrates the commitment of the respondents to addressing the shortcomings identified by the Court. Alternatively, in the event that the Court is of the view that a mandatory order must be granted, then I submit that that nothing more is warranted than an order directing that the THRR be revised to take account of the Court's judgment.
46. For reasons addressed in the respondents' main Heads of Argument, I maintain that a supervisory interdict is not warranted.
47. I note from the affidavit filed by the applicants (paragraph 53) that they seek further relief that was not foreshadowed in the notice of motion, viz:
- 47.1. An order directing SAPS, in reviewing its allocation of resources to take into account the factors reflected in this Court's judgment, which caused the discriminatory outcomes; and
- 47.2. The appointment of a panel of experts to assist the Court in performing supervisory functions.
48. As regards the first of the two above-mentioned orders, I respectfully say that the respondents are in receipt of the Court order, which they have taken into account in the measures taken thus far and will take into account going forward. There is therefore no need for a specific order to this effect.

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49. As regards the second of the abovementioned orders, I respectfully say that the order underscores the inappropriateness of this Court exercising its supervisory jurisdiction in a matter such as it. A Court is, I respectfully submit, inherently ill equipped to make an assessment of the nature that the applicants seek. Furthermore, insofar as the applicants seek to ground this aspect of the relief in the judgment of the Constitutional Court in **Mwelase and Others v Director-General for the Department of Rural Development and Land Reform and Another (CCT 232/18) [2019] ZACC 30; 2019 (11) BCLR 1358 (CC) ; 2019 (6) SA 597 (CC)**, I say that that matter is vastly different and distinguishable from the present. In the latter case, the Constitutional Court held:

49.1. That while the applicants sought to downplay the significance of appointing a special master, "it must be accepted that no court order has done anything quite like this before" (paragraph 38)

49.2. The order was warranted by virtue of "the sustained, large-scale systemic dysfunctionality and obduracy" (paragraph 39). According to the Court:

[40] This is because here, over nearly two decades, and indisputably since 2006, the Department has manifested and sustained what has seemed to be obstinate misapprehension of its statutory duties. It has shown unresponsiveness plus a refusal to account to those dependent on its cooperation for the realisation of their land claims and associated constitutional rights. And, despite repeated promises, plans and undertakings, it has displayed a patent incapacity or inability to get the job done."



49.3. The remedy of appointing a master to assist the Court "was designed to fix persistent institutional failings that repeatedly resulted in non-compliance with court orders. It was directed to systemic functioning – rather than to any individuals' attitudes or defaults." (at paragraph 70)

50. I respectfully say that the present matter is by all accounts very different. In particular, it does not evidence "the sustained, large-scale systemic dysfunctionality and obduracy" of the respondents.

AN APPROPRIATE ORDER

51. I reiterate, given that this Court has made the declaratory orders that it has, I submit that no further orders are required. This is particularly so in light of the IRS and the respondents' plan going forward (as appears from the IRS).

52. Alternatively and in the event that the Court is of the view that a mandatory order is warranted (which I deny to be the case), I say that such an order ought to be limited to directing that the THRR be revised to take account of the Court's judgment. The Court should also consider directing the applicants to engage with the respondents.


53. I deny that any further order in respect of supervisory relief and other aspects of the relief sought by the applicants is warranted for reasons addressed.

54. In light of the reasonable tender made by the respondents in October 2019 which the applicants simply rejected for unsound and unconvincing reasons, there is no basis upon which the respondents should be ordered to pay costs.

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FELIX MLUNGISELELI MBEKI

I hereby certify that on the 10th day of AUGUST 2020 and in my presence at CAPE TOWN the deponent signed this affidavit and declared that he: -

- (a) knew and understood the contents hereof;
- (b) has no objection to taking this oath;
- (c) considered this oath to be binding on his conscience and uttered the words:-

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



STANLEY CHRISTOPHER O'BRIEN
COMMISSIONER OF OATHS

PRACTISING ADVOCATE
56 KEEROM STREET
CAPE TOWN

**IN THE EQUALITY HIGH COURT
(HIGH COURT, CAPE TOWN)**

Case No.: **Equality Court 3/2016**

In the application of:

SOCIAL JUSTICE COALITION

First Applicant

EQUAL EDUCATION

Second Applicant

NYANGA COMMUNITY POLICING FORUM

Third Applicant

and

MINISTER OF POLICE

First Respondent

NATIONAL COMMISSIONER OF POLICE

Second Respondent

WESTERN CAPE POLICE COMMISSIONER

Third Respondent

**MINISTER FOR COMMUNITY SAFETY, WESTERN
CAPE**

Fourth Respondent

and

WOMEN'S LEGAL CENTRE TRUST

Amicus Curiae

CONFIRMATORY AFFIDAVIT

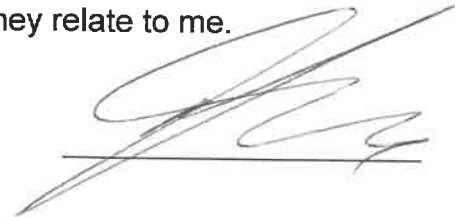
I, the undersigned,

LEON JAMES MANUEL

do hereby make oath and state that:



1. I am an adult male attorney of this court in the office of the State Attorney at 5th Floor, 22 Long Street. Cape Town, Western Cape. I am the attorney of record for the first, second and third respondents (“**the respondents**”) in these proceedings.
2. The contents of this affidavit are true and correct and unless otherwise indicated or clear from the context, fall within my personal knowledge and belief.
3. I have read the affidavit deposed to by Major-General **FELIX MLUNGISELELI MBEKI** on behalf of the respondents in these proceedings and confirm that the contents thereof are true and correct in so far as they relate to me.

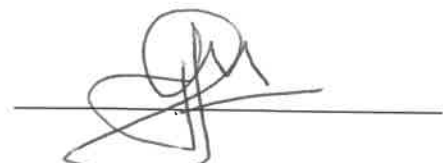


LEON JAMES MANUEL

I hereby certify that on the 11th day of AUGUST 2020 and in my presence at CAPE TOWN the deponent signed this affidavit and declared that he: -

- (a) knew and understood the contents hereof;
- (b) has no objection to taking this oath;
- (c) considered this oath to be binding on his conscience and uttered the words:-

“I swear that the contents of this affidavit are true, so help me God.”



COMMISSIONER OF OATHS

JOHANNES WILLEM HARMSE
KOMMISSARIS VAN EDE
COMMISSIONER OF OATHS
PRAKTISERENDE PROKUREUR (R.S.A.)
LANGSTRAAT 22 LONG STREET
KAAPSTAD / CAPE TOWN 8001