

## REPLY TO LASA'S ANSWERING AFFIDAVIT

ALL THIS CAN BE ADDRESSED IN ARGUMENT ON 7 OCTOBER.

UNNECESSARY TO MAKE A REPLYING AFFIDAVIT TO RESPOND

7.1.a. Rule 4 Service

(1) (a) Service of any process of the court directed to the sheriff and subject to the provisions of paragraph (aA) any document initiating application proceedings shall be effected by the sheriff in one or other of the following manners: ...

v) in the case of a corporation or company, by delivering a copy to a responsible employee thereof at its registered office or its principal place of business within the court's jurisdiction ...

7.1.b. It's not a labour matter contemplated by the LRA.

7.1.c. The whole point of my case is that the LAC didn't make any order. Phophi's order is not based on any record of any decision by three designated appeal judges – none exists.

7.4.a. The Christo Bothma case contradicts this incorrect assertion, and supports us: a petition to the JP of the LAC does indeed stay the enforcement of an order of the LC.

7.4.b. I'll suffer irreparable harm if my personal goods are seized and sold by the sheriff.

7.4.d. First, the LAC didn't make any order. Second, at common law rescission of a judgment on the grounds of fraud contemplates the fraud of a party not officers of court.

7.5. This is wrong. See Christo Bothma case, which supports us.

10–16. My averment in my paragraph 3 on LASA's principal place of business within the court's jurisdiction is correct. The Legal Aid Act cannot and does not oust/supersede the Uniform Rules regarding competent service on a corporation's principal place of business within the area of jurisdiction of a Division of the High Court.

20. My petition for leave to appeal was not refused. That's the whole point of my case.

21. Since the 'order' is not based on the decision of the three judges named in it, as falsely alleged in it, there's no 'LAC order' to set aside, merely the bogus order of the registrar with the false information it contains.

23. It's not 'a labour dispute'. This is wrong.

24. There is no 'order of the LAC' on which the registrar's order is based, or I wouldn't be applying to the HC to declare the latter a nullity and to set it aside.

26–28. Mention that the Pinetown sheriff has had the papers for service since the date you emailed them to him on ... . An application for a rule nisi anyway need not be served by sheriff to be properly before court. They have notice and have answered; that's enough for now

30. The LAC did not refuse my petition. This is the crux of my case on application.

I first approached the registrar a month ago, on 7 September, asking him to remove the taxation from the roll because it was premature for all the reasons set out in my comprehensive, vouched letter.

I stated that my JSC complaint is dense and took very much longer than expected, and why. You can tell the judge that it will be filed within a fortnight: I'm currently collating and marking the many dozens of annexures.

It was my intention that the JSC would deal with my charges of improper conduct against Waglay JP and the other judge who the manifold evidence indicates authored the memorandum that induced Waglay JP to improperly dispose of my petition, in the middle of an interlocutory condonation application by LASA, and without designating three appeal judges to discuss and decide it in conference in accordance with the rules and convention of the LAC.

33. I've been busy with my JSC complaint for months.

34. I state correctly that I haven't yet read the bill of costs (the envelope remains unopened). I don't oppose it in the sense of wanting to strike off any of LASA's charges. I'm sure it's properly drawn. But LASA's bill isn't due because the litigation has yet to be finally determined.

There's no 'order of the LAC'; there's an ostensible order of the registrar, not based on any record of any judicial decision.

36. To the contrary, I set to the job of drawing my complaint to the JSC.

38. All of this is irrelevant to my application, which is based on the narrowest set of facts: there's no record of the decision of my petition by the three appeal judges named in Phophi's order, and the information in the order is objectively demonstrably false.

39. The registrar wrongly thought I merely wanted the taxation postponed.

40. I sought clarity as to the taxing master's intentions: to hear argument about whether the matter should be removed from the roll, or to proceed to tax the bill.

41. As soon as he indicated his intention to tax the bill, I contacted you and began drawing the application.

43. My personal property will be seized and sold, and I'll be exposed to sequestration. The bill will be massive; there were three successive senior counsel in the case.

44. See the Christo Bothma case supporting us.

46. A pending petition *does* stay all process pending the final determination of the litigation. See Christo Bothma case.

47. It's scant consolation to be refunded some money after all my personal property has been sold off.

48. I don't want a refund.

49. No, I'll be cleaned out.

50. Taxation is premature until such time as my petition has been duly decided.

53. LASA itself admits in its affidavit opposing my petition that the judge misallocated the final onus of proof, a fatal root error. LASA can't sensibly say I have no prospects of success.

54.1. The LAC has no jurisdiction.

54.2. No, the HC has the jurisdiction.

54.3. The taxation on Thursday will be premature and unlawful, for the reasons stated in my letter to the registrar of 7 September, and I'm entitled to apply to court to interdict it accordingly.

54.4–6 The taxation is premature and unlawful, period.

56. Mtati has been advised incorrectly; see the Christo Bothma case.

60.3. It didn't; this is the whole point and basis of my application.

68–72. Not only is there no record of any judicial decision to found the registrar's order, the order contains clearly demonstrably false information.

75. I show they weren't in Durban on 18 February.

77.2. The LAC (three designated appeal judges in conference) didn't refuse my petition.

77.3. It didn't.

77.6. The LAC rolls show that it's the court's convention for designated appeal judges to discuss petitions on allocated days after appeals or at an allocated time. Which means in conference. The order dissembles that the three named judges were at the Durban LAC on 18 February, where they considered and rejected my petition. They didn't because they weren't there.

77.7. The court rolls show that petitions aren't considered and decided during recesses, but during court terms after appeal hearings or at allocated dates and times.

77.8. Indeed the rules are silent about the manner in which petitions are decided, but the rolls aren't; and they tell us that it's conventional in the LAC for designated appeal judges to discuss petitions on allocated days after appeals or at an allocated time.

77.9–10. This is waffling around the point.

78. No, to the contrary I hold Davis and Sutherland JJA clear, and I say so.

78.1.a. To the contrary, I show that the earliest the three named judges sat en blanc, and were in a position to discuss and decide my petition, was on 26 March in Johannesburg.

78.1.e. There was no ruling, just a bogus order that isn't based on any record of any ruling. I elected to refer the matter to the JSC, and my finely detailed complaint will be lodged shortly.

78.2.–79. All this is dealt with in my draft complaint. I show that Waglay JP and Davis and Sutherland JJA did not consider and reject my petition on 18 February at the Durban LAC, as alleged in the order. They weren't there that day. In the first term of 2015, they first met to try an appeal together on 26 March in Johannesburg. The

memorandum that perverted my petition is not material to this application. But it's highly material to my complaint to the JSC.

81. My case is that the order is not founded on any record of any decision to reject my petition, and contains demonstrably false information. I do not expect the High Court to make any findings about judicial misconduct; that's for the JSC to do.

84. The LAC didn't dispose of my petition.

86. I elected to approach the JSC.

88. LASA is not entitled to execute on its costs order until the case has been finally determined on petition, and if allowed, on appeal – with leave to lead further documentary evidence of perjury.

89. The taxation is premature, period.

95.3. To the contrary, my complaint is carefully researched and comprehensively vouched. Likewise my letter to Vilakazi which draws from it.

97. My complaint to the JSC will be definitely be copied to the GCB.