

**IN THE SUPREME COURT OF APPEAL**

**SCA CASE NO:**

**NGHC CASE NUMBERS:**

**43557/16**

**46024/16**

**46278/16**

**47447/16**

In the application for leave to appeal of:

<b>THE BLACK SASH TRUST</b>	First Applicant
<b>SIPHO LENNOX BANI</b>	Second Applicant
<b>MARIA HENDRICKS</b>	Third Applicant
<b>PATRICIA SAPTOE</b>	Fourth Applicant
<b>EVERNESS VEPI NKOSI</b>	Fifth Applicant
<b>SANNIE SEIPATI NTHITE</b>	Sixth Applicant
<b>ALETTA BEZUIDENHOUT</b>	Seventh Applicant

In the matters of:

**CASE NUMBER: 43557/16**

<b>NET1 APPLIED TECHNOLOGIES SOUTH AFRICA (PTY) LTD</b>	First Applicant
<b>MONEYLINE FINANCIAL SERVICES (PTY) LTD</b>	Second Applicant

**MANJE MOBILE ELECTRONIC PAYMENT SERVICES (PTY) LTD**

Third Applicant

and

**THE CHIEF EXECUTIVE OFFICER OF THE SOUTH AFRICAN SOCIAL SECURITY AGENCY**

First Respondent

**THE SOUTH AFRICAN SOCIAL SECURITY AGENCY**

Second Respondent

**MINISTER OF SOCIAL DEVELOPMENT OF THE REPUBLIC OF SOUTH AFRICA**

Third Respondent

**THE SOUTH AFRICAN RESERVE BANK**

Fourth Respondent

**THE PAYMENT ASSOCIATION OF SOUTH AFRICA**

Fifth Respondent

**GRINDROD BANK LIMITED**

Sixth Respondent

AND

**CASE NO: 46024/16**

**FINBOND MUTUAL BANK**

Applicant

And

**THE CHIEF EXECUTIVE OFFICER OF THE SOUTH AFRICAN SOCIAL SECURITY AGENCY**

First Respondent

**THE SOUTH AFRICAN SOCIAL SECURITY AGENCY**

Second Respondent

**MINISTER OF SOCIAL DEVELOPMENT OF THE REPUBLIC OF SOUTH AFRICA**

Third Respondent

**THE SOUTH AFRICAN RESERVE BANK**

Fourth Respondent

**THE PAYMENT ASSOCIATION OF SOUTH AFRICA**

Fifth Respondent

**GRINDROD BANK LIMITED**

Sixth Respondent

AND

---

**CASE NO: 46278/16**

**THE SMART LIFE INSURANCE COMPANY  
LIMITED**

Applicant

And

**THE CHIEF EXECUTIVE OFFICER OF THE  
SOUTH AFRICAN SOCIAL SECURITY AGENCY**

First Respondent

**THE SOUTH AFRICAN SOCIAL SECURITY  
AGENCY**

Second Respondent

**MINISTER OF SOCIAL DEVELOPMENT OF THE  
REPUBLIC OF SOUTH AFRICA**

Third Respondent

**THE SOUTH AFRICAN RESERVE BANK**

Fourth Respondent

**THE PAYMENT ASSOCIATION OF SOUTH  
AFRICA**

Fifth Respondent

**THE FINANCIAL SERVICES BOARD**

Sixth Respondent

**THE REGISTRAR OF LONG-TERM INSURANCE**

Seventh Respondent

AND

**CASE NO: 47447/16**

**INFORMATION TECHNOLOGY CONSULTANTS  
(PTY) LTD**

Applicant

And

**THE CHIEF EXECUTIVE OFFICER OF THE  
SOUTH AFRICAN SOCIAL SECURITY AGENCY**

First Respondent

<b>THE SOUTH AFRICAN SOCIAL SECURITY AGENCY</b>	Second Respondent
<b>MINISTER OF SOCIAL DEVELOPMENT OF THE REPUBLIC OF SOUTH AFRICA</b>	Third Respondent
<b>THE SOUTH AFRICAN RESERVE BANK</b>	Fourth Respondent
<b>THE PAYMENT ASSOCIATION OF SOUTH AFRICA</b>	Fifth Respondent
<b>GRINDROD BANK LIMITED</b>	Sixth Respondent
<b>MERCANTILE BANK LIMITED</b>	Seventh Respondent
<b>NET1 APPLIED TECHNOLOGIES SOUTH AFRICA (PTY) LTD</b>	Eighth Respondent
<b>MONEYLINE FINANCIAL SERVICES (PTY) LTD</b>	Ninth Respondent
<b>MANJE MOBILE ELECTRONIC PAYMENT SERVICES (PTY) LTD</b>	Tenth Respondent
<b>THE SMART LIFE INSURANCE COMPANY LIMITED</b>	Eleventh Respondent
<b>THE FINANCIAL SERVICES BOARD</b>	Twelfth Respondent
<b>THE REGISTRAR OF LONG-TERM INSURANCE</b>	Thirteenth Respondent

---

**NOTICE OF MOTION**

---

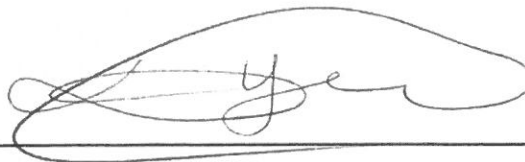
**KINDLY TAKE NOTICE THAT** the Applicants hereby apply to this Court for an order on the following terms:

1. Granting the Applicants leave to appeal to this Court, alternatively to the Full Bench of the Gauteng Division of the High Court, against the order 3 of His Lordship Acting Justice Van der Westhuizen dated 9 May 2017.
2. Ordering that any party which opposes this application is to pay the costs thereof; alternatively, ordering that the costs in this application be costs in the appeal.
3. Further and/or alternative relief.

**TAKE NOTICE FURTHER THAT** the affidavit of **NOMONDE NYEMBE** and the annexures thereto will be used in support of this application.

**TAKE NOTICE FURTHER THAT** the Applicants have appointed the **CENTRE FOR APPLIED LEGAL STUDIES** as set out below as the address at which they will accept notice and service of all process in respect of this application.

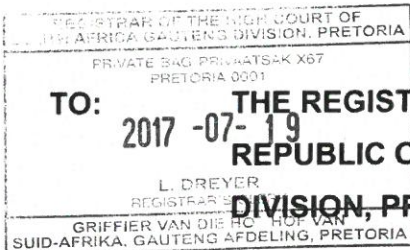
**AND TAKE NOTICE FURTHER THAT** if you intend opposing this application you are required to lodge your affidavit in support of your opposition with the Registrar of this Court within one month after service of this application on you.



**CENTRE FOR APPLIED LEGALSTUDIES**  
**Applicants' Attorney**  
1st floor, DJ du Plessis Building  
West Campus, University of the Witwatersrand  
1 Jan Smuts Avenue

Johannesburg  
Tel: 011 717 8606  
Fax: 011 717 1702  
Email: [Nomonde.Nyembe@wits.ac.za](mailto:Nomonde.Nyembe@wits.ac.za)  
Ref: BHR/0062/NN  
**C/O McIntyre Van Der Post**  
12 Barnes Street  
Westdene  
Bloemfontein  
Tel: 051 505 0200  
Fax: 086 508 6031  
Email: [christiaan@mcintyre.co.za](mailto:christiaan@mcintyre.co.za)  
Ref: Christiaan Gerdener

**TO: REGISTRAR OF THE SUPREME COURT OF  
APPEAL, BLOEMFONTEIN**



**AND TO: SMIT SEWGOOLAM INCORPORATED**  
**First, Second and Third Applicants' Attorney**  
**(case number: 43557/16)**  
**Eight, Ninth and Tenth Respondents Attorney**  
**(case number: 47447/16)**  
12 Avonwold Road, Saxonwold  
Johannesburg  
Tel: 011 646 0006

**SERVICE BY  
HAND**



Email: [Tiaan@smitsew.co.za](mailto:Tiaan@smitsew.co.za);

[Sacha@smitsew.co.za](mailto:Sacha@smitsew.co.za)

Ref: MAT25126/OCJ/SC

**C/O Pretorius Le Roux Incorporated**

Third Floor, 339 Hilda Street

Hatfield, Pretoria

Ref: Mr Theo le Roux

*Becker*  
19/7/17  
11:00

PRETORIUS LE ROUX ING/INC

ONVANG

Sonder Bevoegdheid van Regte

RECEIVED

Without Prejudice

**AND TO: FRIEDLAND HART SOLOMON AND NICOLSON SERVICE BY**

**Applicant's Attorney (case number: 46024/16) HAND**

Suite 301, Block 4

Monument Office Park

79 Steenbok Avenue

Monument Park, Pretoria

Tel: 012 424 0200

Fax: 012 424 0207

Email: [cem@fhsn.co.za](mailto:cem@fhsn.co.za)

Ref: Mr Stolp/Cathy

FRIEDLAND HART SOLOMON & NICOLSON

Received without prejudice

at 11:49 on 19/7/2017  
*Becker*

**AND TO: MOSTERTS INC SERVICE BY**

**Applicant's Attorneys (case number: 46278/16) HAND**

**Eleventh Respondent (case number: 47447/16)**

Email: [mossie@mostertslaw.co.za](mailto:mossie@mostertslaw.co.za)

**C/O Schwarz North Inc**

Hyde Park Law Chambers

Block 7, Albury Park

Cnr Albury Road and Jan Smuts Avenue

Hyde Park, Johannesburg

Ref: Mr M Mostert

**C/O Pretorius Le Roux Incorporated**

Third Floor, 339 Hilda Street

PRETORIUS LE ROUX ING/INC

ONVANG

Sonder Bevoegdheid van Regte

RECEIVED

Without Prejudice

*Becker*  
19/7/17  
11:00

Pretoria  
Ref: Mr T le Roux

**AND TO: LEWIES PROKUREURS | ATTORNEYS SERVICE BY**  
**Applicant's Attorneys (case number: 47447/16) HAND**

4<sup>th</sup> Floor, Landmark Building  
13 Umgazi Street, Menlo Park

Pretoria  
Tel: 012 346 4274  
Mobile: 079 696 2524  
Email: [ronel@lewies.co.za](mailto:ronel@lewies.co.za)  
Ref: Ronel Lewies / RK0297

**LEWIES**  
Prokureurs | Attorneys

19/07/2017 @ 11:15  
*Ronel*

**AND TO: STATE ATTORNEY, PRETORIA SERVICE BY**  
**First, Second and Third Respondents' HAND**

**Attorneys (case numbers: 43557/16; 46024/16;  
46278/16; 47447/16)**

SALU Building  
255 Thabo Sehume  
Private Bag X91  
Pretoria  
0001

Tel: (012) 309-1628  
Fax: (012) 309-1649/50

Email: [szulu@justice.gov.za](mailto:szulu@justice.gov.za)

Ref: Mr S Zulu




*Ref 3924 / 2016 / 276*

*106720*



**AND TO: BOWMAN GILFILLAN INC**  
**Fourth Respondent (case numbers: 43557/16;**  
**46024/16; 46278/16; 47447/16)**  
165 West Street  
Sandton  
Tel: 011 669 9590  
Fax: 011 996 9001  
Email: [m.rusa@bowman.co.za](mailto:m.rusa@bowman.co.za)  
Ref: Mr M Rusa / 6160325

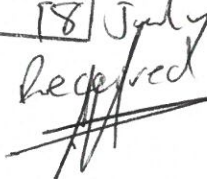
**SERVICE BY**  
**HAND**

<b>BOWMANS</b> Accepted Without Prejudice Bowman Gilfillan	
Signed: .....	
Name: .....	DENSE
Date: 19/07/17	Time: 12:56

**AND TO: PAYMENT ASSOCIATION OF SOUTH AFRICA**  
**Fifth Respondent (case numbers: 43557/16;**  
**46024/16; 46278/16; 47447/16)**  
32 Princess Wales Terrace  
Parktown  
Johannesburg  
Email: [walterv@pasa.org.za](mailto:walterv@pasa.org.za); [pierrec@pasa.org.za](mailto:pierrec@pasa.org.za)

**SERVICE BY**  
**HAND**


<b>PAYMENT ASSOCIATION OF</b> <b>SOUTH AFRICA</b> P.O. Box 61380 Marshalltown 2107	
---	--

10.29  
18 July 2017  
Received PAST  


**AND TO: FALCON AND HUME INC**  
**Sixth Respondent (case numbers: 43557/16;**  
**46024/16; 47447/16)**  
2<sup>nd</sup> Floor, 8 Melville Road  
Illovo Boulevard  
Sandton  
Email: [Pieter@fhinc.co.za](mailto:Pieter@fhinc.co.za)  
Ref: P Smit/ J Cloete/ MAT801  
**C/O Friedland Hart Solomon and Nicolson**  
4-301 Monument Office Park  
79 Steenbok Avenue  
Monument Park, Pretoria  
Ref: Gerhard Painter

**SERVICE BY**  
**HAND**

FRIEDLAND HART SOLOMON & NICOLSON  
Received without prejudice

at 11:49 on 19/7/2017  


AND TO: **MERCANTILE BANK LTD**

**SERVICE BY**

**Seventh Respondent (case number: 47447/16)**

**HAND**

1st Floor, Mercantile

Bank

142 West Street, Sandton

Sandown, Johannesburg

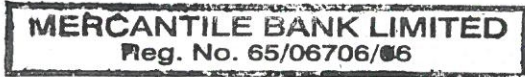
2196

Email: [rlabuschagne@mercantile.co.za](mailto:rlabuschagne@mercantile.co.za)

[kkumbier@mercantile.co.za](mailto:kkumbier@mercantile.co.za)



*Atterbury*  
12/11/17  
19/07/2017



AND TO: **FINANCIAL SERVICES BOARD**

**SERVICE BY**

**REGISTRAR OF LONG TERM INSURANCE**

**HAND**

**Twelfth and Thirteenth Respondent (case number: 47447/16)**

**Six and Seventh Respondent (case number: 46278/16)**

FSB Complex, River Walk Office Park

Block B, 41, Matroosberg Road

Ashlea Gardens, Pretoria

Email: [Stefanus.Rossow@fsb.co.za](mailto:Stefanus.Rossow@fsb.co.za)



*Received without Prejudice.*

IN THE SUPREME COURT OF APPEAL

SCA CASE NO:

NGHC CASE NUMBERS:

43557/16

46024/16

46278/16

47447/16

In the application for leave to appeal of:

**THE BLACK SASH TRUST**

First Applicant

**SIPHO LENNOX BANI**

Second Applicant

**MARIA HENDRICKS**

Third Applicant

**PATRICIA SAPTOE**

Fourth Applicant

**EVERNESS VEPI NKOSI**

Fifth Applicant

**SANNIE SEIPATI NTHITE**

Sixth Applicant

**ALETTA BEZUIDENHOUT**

Seventh Applicant

In the matters of:

**CASE NO: 43557/16**

**NET1 APPLIED TECHNOLOGIES SOUTH  
AFRICA (PTY) LTD**

First Applicant

**MONEYLINE FINANCIAL SERVICES (PTY) LTD**

Second Applicant

**MANJE MOBILE ELECTRONIC PAYMENT  
SERVICES (PTY) LTD**

Third Applicant

NN

D.M

and

**THE CHIEF EXECUTIVE OFFICER OF THE  
SOUTH AFRICAN SOCIAL SECURITY AGENCY**

First Respondent

**THE SOUTH AFRICAN SOCIAL SECURITY  
AGENCY**

Second Respondent

**MINISTER OF SOCIAL DEVELOPMENT OF THE  
REPUBLIC OF SOUTH AFRICA**

Third Respondent

**THE SOUTH AFRICAN RESERVE BANK**

Fourth Respondent

**THE PAYMENT ASSOCIATION OF SOUTH  
AFRICA**

Fifth Respondent

**GRINDROD BANK LIMITED**

Sixth Respondent

AND

**CASE NO: 46024/16**

**FINBOND MUTUAL BANK**

Applicant

And

**THE CHIEF EXECUTIVE OFFICER OF THE  
SOUTH AFRICAN SOCIAL SECURITY AGENCY**

First Respondent

**THE SOUTH AFRICAN SOCIAL SECURITY  
AGENCY**

Second Respondent

**MINISTER OF SOCIAL DEVELOPMENT OF THE  
REPUBLIC OF SOUTH AFRICA**

Third Respondent

**THE SOUTH AFRICAN RESERVE BANK**

Fourth Respondent

**THE PAYMENT ASSOCIATION OF SOUTH  
AFRICA**

Fifth Respondent

**GRINDROD BANK LIMITED**

Sixth Respondent

NN

D.M

AND

**CASE NO: 46278 /16**

**THE SMART LIFE INSURANCE COMPANY  
LIMITED**

Applicant

And

**THE CHIEF EXECUTIVE OFFICER OF THE  
SOUTH AFRICAN SOCIAL SECURITY AGENCY**

First Respondent

**THE SOUTH AFRICAN SOCIAL SECURITY  
AGENCY**

Second Respondent

**MINISTER OF SOCIAL DEVELOPMENT OF THE  
REPUBLIC OF SOUTH AFRICA**

Third Respondent

**THE SOUTH AFRICAN RESERVE BANK**

Fourth Respondent

**THE PAYMENT ASSOCIATION OF SOUTH  
AFRICA**

Fifth Respondent

**THE FINANCIAL SERVICES BOARD**

Sixth Respondent

**THE REGISTRAR OF LONG-TERM INSURANCE**

Seventh Respondent

AND

**CASE NO: 47447/16**

**INFORMATION TECHNOLOGY CONSULTANTS  
(PTY) LTD**

Applicant

And

**THE CHIEF EXECUTIVE OFFICER OF THE  
SOUTH AFRICAN SOCIAL SECURITY AGENCY**

First Respondent

NN D.M

<b>THE SOUTH AFRICAN SOCIAL SECURITY AGENCY</b>	Second Respondent
<b>MINISTER OF SOCIAL DEVELOPMENT OF THE REPUBLIC OF SOUTH AFRICA</b>	Third Respondent
<b>THE SOUTH AFRICAN RESERVE BANK</b>	Fourth Respondent
<b>THE PAYMENT ASSOCIATION OF SOUTH AFRICA</b>	Fifth Respondent
<b>GRINDROD BANK LIMITED</b>	Sixth Respondent
<b>MERCANTILE BANK LIMITED</b>	Seventh Respondent
<b>NET1 APPLIED TECHNOLOGIES SOUTH AFRICA (PTY) LTD</b>	Eighth Respondent
<b>MONEYLINE FINANCIAL SERVICES (PTY) LTD</b>	Ninth Respondent
<b>MANJE MOBILE ELECTRONIC PAYMENT SERVICES (PTY) LTD</b>	Tenth Respondent
<b>THE SMART LIFE INSURANCE COMPANY LIMITED</b>	Eleventh Respondent
<b>FINANCIAL SERVICE BOARD</b>	Twelfth Respondent
<b>REGISTRAR OF LONG-TERM INSURANCE</b>	Thirteenth Respondent

---

**FOUNDING AFFIDAVIT**

---

I, the undersigned,

**NOMONDE NYEMBE**

hereby make oath and state:

NN      D.M



1. I am an admitted and practising attorney, employed at the Centre for Applied Legal Studies ("CALs") at the University of the Witwatersrand, Johannesburg. I am the attorney for the applicants.
2. The facts contained herein are, save where otherwise stated, within my personal knowledge. The facts are to the best of my knowledge and belief both true and correct.
3. I am authorised to bring this application for leave to appeal and make this affidavit on behalf of –
  - 3.1. The Black Sash Trust (the Black Sash).
  - 3.2. The six individual grant beneficiaries who also sought to intervene in the proceedings in the High Court.
4. The Black Sash Trust is a non-governmental organisation. For decades it has campaigned for social assistance for those who are vulnerable, and has assisted beneficiaries of social assistance.
5. The Black Sash acts in its own interest, in the public interest, and on behalf of grant beneficiaries who are unable to seek redress on their own behalf.
6. This is an application for leave to appeal against the judgment and order of Mr Justice Van der Westhuizen (Acting), who dismissed an application by the present applicants for leave to intervene in litigation in the High Court, and for conditional relief. I explain this litigation in the next section of this affidavit.

NN

D.M

7. The judgment and order dismissing the applicants' relief were made on 9 May 2017.
8. This application is brought in terms of the Superior Courts Act 10 of 2013, read with Rule 6 of this Court's rules. I attach the following:
  - 8.1. A copy of the order appealed against (Annexure "NN1").
  - 8.2. A copy of the judgment appealed against (Annexure "NN2").
  - 8.3. A copy of the order dismissing leave to appeal (Annexure "NN3").
9. The judgment dismissing the application for leave to appeal has been requested from the High Court, and will be lodged with this Court as soon as it is available.

#### **THIS LITIGATION**

10. The background to this litigation is that complaints are endemic across South Africa that various corporations have engaged in exploitative practices that have unjustifiably depleted the social grants of beneficiaries under the Social Assistance Act (the Act). Through its work and that of its partner organisations, the Black Sash has received thousands of complaints of such practices. The six individual grant beneficiaries allege that they have been victim of such practices.
11. On 6 May 2016 the Minister of Social Development made regulations (Govt Notice R511 of 2016) regulating deductions from social grants and certain other matters. This led to various corporations launching four separate urgent

NN

D.M

applications in the High Court (the main applications). The main applications were set down to be heard together. The relief sought was not identical in each case, but included:

11.1. an order that the regulations made by the Minister do not operate to restrict beneficiaries in the operation of their SASSA bank accounts;  
and

11.2. an order that regulations 21 and/or 26A and/or section 20 of the Social Assistance Act are invalid.

12. The present applicants applied for leave to intervene in the main applications. They made a conditional counter-application. If in the main applications the Court made either of the orders referred to in the previous paragraph, the present applicants sought orders that:

12.1. It is declared that the State is under a constitutional and legal obligation to protect the beneficiaries of social grants from exploitation in a manner that prevents grant beneficiaries receiving full benefit from them;

12.2. The Minister of Social Development is directed to make regulations under the Social Assistance Act that adequately protects social grants from exploitation in a manner that prevents grant beneficiaries from receiving full benefit from them.

13. None of the applicants and none of the respondents in the main applications opposed either the application for leave to intervene or the conditional counter-application.

NN

D.M

14. The High Court heard the four main applications, the application for leave to intervene, and the conditional counter-application in October 2016. On 9 May 2017 the Court handed down its judgment:

14.1. The Court granted an order in accordance with the relief which I have described in paragraph 11.1 above. That triggered the conditional counter-application.

14.2. The Court dismissed the application for leave to intervene and the conditional counter-application. It did so in two paragraphs (NN2 paragraphs 3 and 32).

15. For the reasons set out below, I respectfully submit that the High Court erred in dismissing the application for leave to intervene, the conditional counter-application, and the present applicants' application for leave to appeal. As in the High Court, the present applicants do not traverse the merits of the main applications.

#### **THE PROCEEDINGS IN THE HIGH COURT**

16. The relief sought by the applicants in the main applications was in effect directed at ensuring that the regulations made by the Minister do not impede what they contend is their legitimate business activity. That activity has the result that when social grant beneficiaries receive payment of their grant in the sense that the money is actually under their control and at their disposal, the amount they receive has been reduced by payments which have made to various entities to which they are alleged to be indebted.

NN

D.M

17. Black Sash and the individual interveners sought to intervene in the main applications because of their direct and substantial interest in ensuring that the rights of grant beneficiaries are effectively protected.
18. None of the parties to the main applications disputed that the Black Sash and the individual grant recipients had such an interest. And as I have noted, the application to intervene was not opposed by any of the parties, and neither was the conditional counterclaim.
19. The Interveners made three core submissions:
  - 19.1. The State has a duty under domestic and international law to provide social assistance, and a corollary obligation to protect the beneficiaries from exploitation and abuse.
  - 19.2. The State has a duty under domestic and international law to ensure that the system of social assistance is effective, by protecting grants from exploitation and depletion.
  - 19.3. Corporate entities have a duty under domestic and international law not to interfere with the state's compliance with its obligation to fulfil the right to social assistance.
20. The applicants contended that the effect of the main applications, if successful, would be to remove or reduce control and restriction by the Minister of the depletion of the grants paid to beneficiaries.

NN

D.M

21. The present applicants contended that a lack of effective control and restriction has resulted in the depletion of social grants and the exploitation of the social grant system. They presented evidence in that regard. They conditionally sought orders declaring that the State is under a constitutional and legal obligation to protect the beneficiaries of social grants from exploitation in a manner that prevents grant beneficiaries receiving full benefit from them, and directing the Minister to make regulations under the Act that adequately protect the beneficiaries of social grants in that regards.

22. As appears from the judgment of the High Court, the Court dismissed the present applicants' application in two paragraphs, and in terse terms. It did so on the basis that –

22.1. the relief sought by the present applicants was not relevant.

22.2. the relief sought by the present applicants went further than that sought by the applicants in the main application, and dealt with constitutional issues.

## **GROUNDS OF APPEAL**

23. The present applicants contend that the learned judge erred in dismissing the applicants' application to intervene, notwithstanding that it was not opposed by any of the parties.

24. The applicants contend that the Court erred in finding that the relief sought by the applicants was not relevant. I submit that the court erred in this regard because the applicants' counterclaim was conditional upon the court making the finding which it ultimately arrived at, namely preferring the interpretation of

NN

20 D.M



the regulations which had been contended for by the applicants in the main applications.

25. The relief sought by the applicants was thus directly relevant to the outcome of the main applications.
26. The applicants contend that the Court also erred and misdirected itself in refusing them leave to intervene on the basis that they sought relief which went further than that sought by the applicants in the main applications. The relief sought by the present applicants flowed directly from the order which was made in the main applications. To this extent it did go further than the relief sought by the applicants in the main applications, I submit that this was no basis for dismissing the application for leave to intervene.
27. The judgment does not explain why the fact that the present applicants raised constitutional issues, was a basis for dismissing the application for leave to intervene. I respectfully submit that it does not provide any basis for that decision.
28. I submit that the Court misdirected itself in apparently failing to have regard or give any weight to the fact that the relief sought by the applicants was conditional and consequential on the order which was ultimately made by the Court.
29. I submit further that the Court erred and misdirected itself in failing to consider the merits of the applicants' counterclaim.
30. Section 27(2) of the Constitution enjoins the State to take reasonable legislative and other measures, within its available resources, to achieve the

NN D.M

progressive realisation of the rights enshrined in section 27 of the Constitution.

I submit that this places an obligation on the State to protect social grants against exploitation by private parties as part of its obligation to ensure the progressive realisation of the rights enshrined in section 27, including the right to social assistance.

31. International law similarly places an obligation on the state to protect social grants against exploitation.

32. I respectfully submit that the present applicants have reasonable prospects of success on appeal.

33. The interpretation of the Act and the Regulations, and whether (if the High Court's interpretation is correct) the nature of the obligations on the State, impacts directly upon the lives of literally millions of social grant beneficiaries. I respectfully submit that it is appropriate that leave be granted to appeal to this Court.

**WHEREFORE** I pray that the court grant the relief sought in the notice of motion to which this affidavit is attached.

A handwritten signature in black ink, appearing to be 'Nyembe', written over a horizontal line.

**NOMONDE NYEMBE**

I **HEREBY CERTIFY** that the deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn before me at Brixton on the 18 day of July 2017, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



*2017-07-18*  
*[Signature]*  
Commissioner of Oaths

**COMMISSIONER OF OATHS**

Full Names: *Daniel Sisona*

Office: *CST*

Business Address: *Cnr Hitch and  
Meyrick Street  
Brixton*

*NN*

