

THE SUPREME COURT OF APPEAL OF
SOUTH AFRICA

SCA CASE NO:083/2024

COURT A QUO CASE NO: 010700/2023

In the matter between:

THE MINISTER OF PUBLIC
ENTERPRICES

First Applicant

THE DEPARTMENT OF PUBLIC
ENTERPRISES

Second Applicant

MINISTER OF PUBLIC ENTERPRISES

Third Applicant

DEPARTMENT OF PUBLIC ENTERPRISES

Fourth Applicant

and

MANGO AIRLINE SOC LIMITED
(IN BUSINESS RESCUE)

First Respondent

SIPHO ERICSONO N.O

Second Respondent

NATIONAL UNION OF METALWORKERS
OF SOUTH AFRICA

Third Respondent

SOUTH AFRICAN AIRWAYS SOC LTD

Fourth Respondent

THE INTERNATIONAL AIR
SERVICE COUNCIL

Fifth Respondent

**THE AIR SERVICE LICENSING
COUNCIL**

Sixth Respondent

**THE AFFECTED PERSONS OF
MANGO AIRLINES SOC LIMITED
(IN BUSINESS RESCUE)**

Seventh Respondent

FILING NOTICE

DOCUMENT: 3RD & 4TH APPLICANTS'REPLYING AFFIDAVIT TO THE 3RD
RESPONDENTS'OPPOSING AFFIDAVIT : CONDONATION

ON ROLL: NOT YET ENROLLED

FILED BY:

DATED AND SIGNED ON 29 FEBRUARY 2024, AT PRETORIA


STATE ATTORNEY PRETORIA

Attorneys for the 3^{rs} & 4th Applicants

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Enq: Nelise Cronje

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PRETORIA**

AND TO: BOQWANA BURNS INC

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Enq: Nelise Cronje

**IN THE SUPREME COURT
OF APPEAL SOUTH AFRICA**

**SCA CASE NO:083/2024
COURT A QUO CASE NO:010700/2023**

In the matter between:

THE MINISTER OF FINANCE

First Applicant

NATIONAL TREASURY

Second Applicant

**THE MINISTER OF PUBLIC
ENTERPRISES**

Third Applicant

**THE DEPARTMENT OF PUBLIC
ENTERPRISE**

Fourth Applicant

And

**MANGO AIRLINE SOC LIMITED
(IN BUSINESS RESCUE)**

First Respondent

SIPHO ERICSONO N.O

Second Respondent

**NATIONAL UNION OF MINEWORKES
OF SA**

Third Respondent

THE MINISTER OF FINANCE

Fourth Respondent

NATIONAL TREASURY

Fifth Respondent

**THE INTERNATIONAL AIR
SERVICE COUNCIL**

Sixth Respondent

**THE AIR SERVICE LICENSING
COUNCIL**

Seventh Respondent

SOUTH AFRICAN AIRWAYS

Eighth Respondent

**THIRD & FOURTH RESPONDENT'S REPLYING AFFIDAVIT TO
THIRD RESPONDENTS OPPOSING AFFIDAVIT: CONDONATION**

I, the undersigned

MAXWELL MATUBATUBA

Do hereby state as follows:

1. I am an adult male practicing Attorney, practising as such at the offices of the State Attorney, Pretoria, situated at SALU Building, 255 Schoeman Street, Pretoria.
2. Save where specifically stated or where the context indicates otherwise, I have personal knowledge of the facts herein stated; or, I have ascertained and determined them from documents in the possession of and/or under the control of the Applicant. I confirm that the facts referred to herein are true and correct.
3. Where I make submissions of a legal nature, I do so on the advice of the applicant's legal representatives.
4. I have read the Answering affidavit filed on behalf of the Third Respondents in opposition to the application for condonation.



5. At the outset the Third Respondent admits that the delay in filing the application for leave to appeal is not excessive, however disputes that the explanation is satisfactory and not adequate for the court to condone the late filing of the affidavit.
6. This matter engages the Minister of PE's ability as government shareholder representative and as the executive authority under the PFMA to discharge his duties in accordance with the Constitution, the PFMA and in ensuring that governmental policy and priorities are not infringed.
7. The Applicants have the prospects of success in the appeal, particularly having regard to the facts that:
 - 7.1. The parties that initiated the section 54(2) application and pursued the challenge against the Minister of PE are not legislatively authorised to be parties to the section 54 application process (on a proper interpretation of the broader aims and objectives of the PFMA).
 - 7.2. The powers conferred on the BRP under the Companies Act were not properly construed by the court *a quo*, to avoid a conflict with the provisions in the PFMA.
 - 7.3. The matter was not ripe for hearing having regard to the fact that the accounting authority responsible for the section 54(2) application undertook to provide the Minister of PE with additional information requested.

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- 7.4. The *court a quo* held that the matter raised novel and material issues of public importance.
- 7.5. The Respondents have initially approached the court a quo, seeking a relief in terms of section 18(3) of the Superior Court Act 10 OF 2013, for the implementation of the order pending appeal. Clearly, the Respondents have a material interest in the finality of this matter.
8. The judgment in the application for leave to appeal was issued on 13 December 2023. The Applicants were enjoined to file the application for leave to appeal within a month, being 13 January 2024 (Saturday). I received the complete application from counsel on 18 January 2024, and same was immediately transmitted to our correspondent attorneys in Bloemfontein for issuing and service by courier.
9. The application was received by the state attorney in Bloemfontein on 22 January 2024. On 24 January 2024 our correspondent attorney attended to the issuing of the documents with the SCA, the application was again rejected. I was then advised around 27 January 2024 that the original condonation application was not incorporated in the documents submitted.
10. The internet systems in the office of the State Attorney were not consistently operational for the week of 29 January 2024, as a result I struggled to access our emails and use our printing facilities. The systems became fully operational on 01 February 2024. I only managed to transmit the original condonation application on 02 February 2024, the documents reached the correspondent attorney on 05

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February 2024, however the application was rejected by the court on the basis that the parties were not correctly cited. The application was eventually accepted on 06 February 2024.

11. I submit that the finalised application for leave to appeal was served on the Respondents on 18 January 2024.
12. The Applicants have good prospect of success on the appeal which compensates the explanation for the delay.
13. In the circumstances, whilst I sincerely apologise for the delay, I humbly submit that the delay in filling the application for leave to appeal should be condoned:

13.1. As the explanations submitted thereof are reasonable and the non-compliance was not in flagrant disregard of the Rules of the Honourable Court;

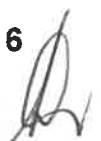
13.2. The Applicants have at least reasonable prospects of success; and

13.3. Where condonation is to be refused, the Applicants would suffer significant and disproportionate prejudice.

CONCLUSION

14. Wherefore I pray that it will be in the interest of justice that condonation be granted.

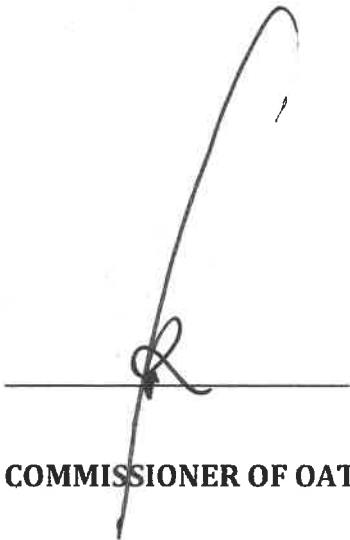
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DEPONENT

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at PRETORIA on this 29TH day of **FEBRUARY 2024** and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.



COMMISSIONER OF OATHS

FULL NAMES:

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CAPACITY:

AREA: