IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG DIVISION)

CASE NO: 5786/13

In the matter between:

SPIES, WILLIE DURAND	Applicant
and	
HIGHER EDUCATIUON TRANSFORMATION NETWORK	First Respondent
THEKISO, LUCKY LEMPIDITSE	Second Respondent
LEGOABE, REGINALD	Third Respondent
MAKANETA, YINGWANE HENDRICK	Fourth Respondent

RESPONDENTS' ANSWERING AFFIDAVIT

I the undersigned,

LUCKY LEMPIDITSE THEKISO

do hereby make oath and state as follows; that:

1 I am the chairperson of the first respondent who principal place of business is situate at 141 The Ridge Gate, Silver Lakes, Pretoria, Tshwane. I am admitted

Attorney and hold a Master of Laws Degree amongst others. A copy of my Curriculum Vitae is attached hereto and marked same as annexure "**WDS 26**".

2 I am duly authorised to depose to this affidavit and to institute these proceedings on behalf of all the respondents as evinced by a resolution of the applicant attached hereto and marked annexure "**WDS 27**".

3 The facts I state herein, unless the context indicates to the contrary, are within my personal knowledge and to the best of my knowledge both true and correct. The legal submissions I make herein, unless the context indicates to the contrary are make on the strength of the legal advice I have obtained from the applicant's legal representatives, in the course of preparing for this application.

CONDONATION FOR THE LATE FILING OF THIS AFFIDAVIT

4 I have hastily studied and considered the notice of motion, affidavit and annexure constituting the basis for this application; regard being had to the shortened timeframes dictated by the applicant in this matter.

5 Despite only being served on Wednesday 30 January 2013. The applicant demanded that we enter appearance the following day on 31 January 2013 and to file our answering affidavit on Wednesday 06 February 2013. In effect, we were only afforded five (5) working days to file our answering affidavit.

6 We respectfully submit that regard being had to the time as labour required; the novelty and the difficulty of the questions involved; the nature of the controversy;

the constitutional issues arising therefrom and the language barrier, the time periods dictated by the applicant in this matter are not adequate for us to have properly consulted with our legal representatives, obtain relevant information and witnesses in preparation to depose to this affidavit.

7 Due the fact that the founding papers and most of the annexure thereto are in Afrikaans, a language that we and our legal representatives are not aufait with much time and resources was expended in translation and interpreting same into English in order to meaningfully respond thereto.

8 The timeframes dictated by the applicant are not only not commensurate to the purported urgency (which we deny) but amount not only to an abuse of this Honourable Court's processes but also unreasonably and jusfiably trammels on our rights to have this dispute decided fairly as contemplated by sections 34 and 36 of the Constitution.

9 It must be borne in mind that section 36 of the Constitution clearly stipulates that the fundamental rights entrenched in the Bill of Rights may only be limited in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic based on human dignity, equality and freedom, taking into account all relevant factors, including the (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relationship between the limitation and its purpose; and (e) less restrictive means to achieve the purpose.

10 It must also be borne in mind that this Honourable Court is enjoined, when interpreting the Bill Rights (a) to promote the values that underlie an open and democratic society based on human dignity, equality and freedom and when interpreting any legislation, and when developing the common law or customary law to promote the spirit, purport and objects of the Bill of Rights without denying the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that that they are consistent with the Bill. This much is said by section 39 of the Constitution.

11 In other words, this court's discretion must be exercised in a way that promotes the spirit, purport and object of section 34 since section 39 (2) obligates it when exercising a discretion that may have implications for litigants access to court, to bear the provisions of section 34 in mind.

12 Thus, as much as the applicant is entitled, in urgent applications to shorten the time periods contemplated by the Rules, it is respectfully submitted that such a privilege cannot be exercised in a manner that is careless of the respondents' right to a fair hearing which is contemplated and entrenched in section 34 of the Constitution. Section 34 of the Constitution expressly entitles everyone to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court of law or, where appropriate, another independent and impartial tribunal or forum.

13 Regard being had to the shortened times dictated by the applicant in this matter with regard to the forms and service within which we are constrained to answer, the complexity of the matter and extensive consultation and copious and tedious

translation exercise that had to be embarked upon to translate the founding documents into English, we could not file this answering affidavit within the time stipulated by the applicant.

14 In the premise, we submit that in the light of the fact that the applicant is not prejudiced by the said failure it is in the interest of justice and equity that this Honourable Court condone the late filing of this affidavit; especially regard being had to the respondents' fundamental rights entrenched in section 34 of the Constitution which entitles us to have this dispute resolved by application of law decided in a fair public hearing before this Honourable Court.

THE RELIEF SOUGHT BY THE APPLICANT

15 According to the notice of motion the applicant seeks a final relief; *inter alia*:

15.1 a declaration that the application is urgent within the contemplation of Rule 6 (12) of the Uniform Rules of Court;

15.2 an order condoning his non-compliance with the forms and service provided for in the Uniform Rules of Court and dispensation with same to the extent necessary;

15.3 a declaration that the statements published by the first respondent on 16 October 2012 and later pertaining to the activities of the applicant during 1990 to 1994, are defamatory;

15.4 an order restraining the respondents from making any further publication of the alleged defamatory statement alluded in paragraph 3 of the notice of motion and/or paragraph 5.3 above;

16 The applicant also seeks, in terms of paragraph 5 of its notice of motion, that the respondents be ordered and/or directed to:

16.1 immediately withdraw all media statements essentially similar to the statements being impugned or statements of similar effect from the first respondent's website; *to wit*: www.hetn.or.co.za;

16.2 issue a media statement to all the media to which the impugned media statement has been transmitted, withdrawing the impugned media statement; and

16.3 the respondents pay the costs of this application jointly and severally on a attorney and own client scale.[1]

17 In the alternative, the applicant seeks an interim relief in terms of paragraphs 1, 2, 3, 4 and 5.1 of its notice of motion, pending a final determination of Part A of his notice of motion; regard being had to Part B of his notice of motion.

THE RESPONDENTS' OPPOSITION TO THE RELIEF SOUGHT BY THE APPLICANT

[1] The applicant also seeks further and/or alternative relief, regard being had to paragraph 6 of his motion of notice.

18 The respondents are opposed to the relief sought by the applicant being granted on both procedural and substantive grounds; *to wit*:

LACK OF URGENCY

19 I am advised as follows that:

19.1 Rule 6 (1) of the Uniform Rules of Court, peremptorily require every relief sought to be supported with the facts upon which the Applicant relies for relief;

19.2 in terms of Rule 6(12) (b) of the Uniform Rules of Court, in every Affidavit or petition filed in support of any Application under Rule 6(12) (a) the Applicant is obliged to set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course;

19.3 in this regard, it is important to point out that the North Gauteng Practice Manual (paragraph 13.24.3.4) emphasizes that while an application may be urgent, it may not be sufficiently urgent to be heard at the time selected by the Applicant.

20 The applicant's purported grounds for brining this matter urgently and the purported reasons why he claims that he could not be afforded a substantial redress at the

hearing in due course are resident at paragraphs 52, 83, 84, 85 and 86 of his founding affidavit.[2] I propose to deal immediately with the said paragraphs seriatim to demonstrate why the respondents contend that this application is not urgent, alternatively why the respondents contend that any urgency is self created.

Ad paragraphs 83, 84, 85 and 86

21 The respondents admit the allegations contained in this paragraph and maintain that to the extent that the applicant is a public figure and the publication complained of is substantially true and for the public benefit, same cannot be impugned by the applicant solely on the basis of his personal sense of self worth or self esteem.

22 In terms of the Constitution, the respondents have the right to freedom of expression which includes freedom to receive or impart information or ideas, regard being had to section 16 (b) of the Constitution.

23 It will accordingly be argued on behalf of the respondents at the hearing of this application that at the nub of this application is two fundamental values, both protected by the Constitution, namely the right to freedom of expression including freedom of the press and other media and the protection of the applicant's purported reputation or good name.

24 Whilst there is no external proof other than the bare allegation of the applicant that his application to the English and Wales Bar is pending, it is significant to point out

[2] See pp 32 – 34, FA.

that the applicant cannot seriously contend without cogent proof that he did not lodge the said application fully aware of the alleged defamatory application. In the premise it will be argued in the hearing of this application on behalf of the respondents that the applicant's alleged pending application for admission in England and Wales Bar cannot be used to render this matter urgent. On this basis alone, this applicant ought to be dismissed/ struck from the roll with costs for non urgency or self created urgency.

25 The real reason why this urgency has been contrived is the fact that the applicant is aware that it is now facing the Equality Court action instituted by the respondents and according to his own version *"my verwagting is dat elke mylpal in die Gelykheidshof proses – soos die liassering van my en ander se antwoorde op die klagte deur die respondent as mediageleenthede gebruik gaan word om hulle veldtog teen my persoonlik voort te sit"*

26 It will accordingly be argued at the hearing of this application that the remedy sought by the applicant in this matter is solely designed not to protect his self-proclaimed reputation or good name but actually to curtail and suppress the respondents' freedom of expression including the freedom of the press and the media.

Ad paragraph 52

27 The respondents deny the allegations contained in this paragraph in that the applicant did not seek compliance from the respondents before deciding to take legal steps in this matter. In fact the applicant had decided to take legal steps against us as early as 20 October 2012, (4 days after the publication). This is evinced by Annexure WDS 6 to the founding affidavit being a report of the Rapport newspaper stating that "*Willie Spies, nuutverkose raadlid van die Universiteit van Pretoria (UP), beplan regstappe teen lede van 'n organisasie wat hom vir transformasie by universiteite beywer....*"

28 The applicant repeated his intention to institute these proceedings in The Star newspaper dated 24 October 2012 as such:

29 "Willie Spies, a lawyer for Afrikaner rights group Afriforum, has confirmed he is taking legal action against the Higher Education Transformation Network (HETN), an independent alumni body that has accused him of being involved in rightwing activities during his early years as a student in the university...."- see Annexure WDS 12.

30 In the premise, it will be argued at the hearing on behalf of the respondents, regard being had to the facts and circumstances of this case, this application ought to be dismissed with costs for lack of urgency since that applicant has been dilatory in bringing the application or that urgency is self created.

MATERIAL DISPUTES OF FACT

31 There is yet another ground, I am advised that this court ought to dismiss this application with costs for. It is because regard being had to the facts and circumstances of this case and the relief sought, the applicant ought not to have employed motion proceedings.

32 It is so since regard being had to what the applicant alleges in his founding affidavit *vis-a-viz* what the respondents allege in the press statement dated 16 October 2012 (i.e. annexure WDS 5) it is clear and foreseeable that there are material disputes of fact arising from this matter, such that is equally clear that it was foolhardy for the applicant to institute these proceedings via motion proceedings on an urgent basis.

33 I am advised that it is inherently unfair on the respondents to be brought to court in an application where there are disputes of fact, when they have the prospect of a final judgement being granted against them without having had an opportunity *viva voce* evidence before a judge who is trained in the art or science of evaluating that evidence and observing that demeanour and countenance of witnesses.

34 It is so especially in the light of section 34 of the Constitution which expressly grants everyone the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or where appropriate another independent and impartial tribunal or forum. This application flies in the face of Section 34 of the Constitution.

35 In the premise it will be argued in the hearing of this application that same ought to be dismissed with costs on these bases alone.

ISSUES FOR DETERMINATION

36 I am advised that the other bases which should render the application for a final interdict unsuccessful is the fact that on the face of it, the applicant has not demonstrated in his founding affidavit that he has: (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the absence of a similar protection by any ordinary remedy.

37 I am also advised that the relief for an interim interdict must also fail simply because the applicant has also not been able on the face of his affidavit to demonstrate that he has (a) a *prima facie* right; (b) a well grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; (c) the balance of convenience favours the granting of an interim interdict; and (d) that the applicant has no other satisfactory remedy.

38 I now turn to deal with the issues arising from the foregoing contentions hereunder albeit briefly.

FINAL INTERDICT

Whether the applicant has a clear right

39 As alluded above whilst we do not deny that the applicant has a fundamental right to dignity as entrenched in the Bill of Rights, we contend that his right to dignity regard being had to the facts and circumstances of this case cannot trounce our right to freedom of expression because the publication about the applicant and the allegations made about him by us in the press statements in question are factually true and in the public benefit.

40 In the result regard being had to the facts and circumstances of this case, what is clear is not the applicant's right but the fact that the two rights of the parties intersect.

41 I am advised that, no discretion vests in a court to grant an interdict for the protection of an alleged right which is found does not exist. This assertion will be demonstrated in due course in this affidavit when we deal with the factual disputes.

Whether an injury has actually been committed or reasonably apprehended

42 Regard being had to the subject matter of the statement being complained of and the time it was made, the manner and the occasion of the publication, it will be argued on our behalf at the hearing of this application that such a statement was made for the public benefit as the public is entitled to know the truth about the character and conduct of individuals who occupy or pretend to public office.

43 I am advised that since where there is no right there can be no remedy, our courts cannot give a party what he does not have. In the premise, there is no injury

committed by the respondents in having published the truth nor can same be reasonably apprehended.

Whether the applicant has any similar protection by any ordinary remedy

44 I am advised that the applicant, if he is correct in his assertions can obtain other court redress through an award of damages at a hearing in due course. It is so since the action for damages provides ample compensation and the alleged injury is one which is capable of being estimated in money.

INTERIM INTERDICT

Whether the applicant has a *prima facie* right

45 I am advised that to the extent that the germane issue in this matter is whether the applicant has a clear right or not this honourable court is obliged to decide that issue and either to grant or refuse the final interdict sought by the applicant in Part A of its notice of motion and not to postpone its decision by granting an interim interdict as sought by the applicant in Part B of its notice of motion.

46 It will be argued at the hearing of this application that regard being had to the facts as set out by the applicant together with the facts set out in this answering affidavit which the applicant cannot dispute, regard being had to the inherent probabilities and the ultimate onus in defamation cases, the facts set up in contradiction by us in this affidavit throw serious doubt on the applicant's alleged prima *facie* right. In the premise this application should not succeed.

Whether the applicant has a well grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted

47 The statement being impugned by the applicant in this matter (i.e. annexure WDS 5) and subsequent statements (i.e. annexure WDS 7, 8, 9, 10, 11, etc) have already been published. By definition interdicts indicate that they are not for the past invasion of rights, but are concerned with the present or the future. It will therefore be argued at the hearing of this application that the relief sought by the applicant in this matter, regard being had to the facts and circumstances of this case is of little practical value since whatever the applicant purport to have suffered as a result of our publication can only be vindicated by way of compensation as a *solatium* for the alleged damage done to his name in the form of general and/or specific damages.

48 In the premise, it is clear that the applicant will not suffer any irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted.

Whether the balance of convenience favours the granting of an interim interdict

49 As alluded above since crux of this matter lies at the very intersection of two fundamental values, which are both protected by the constitution i.e. the right of our freedom of expression and the applicant's protection of his dignity, it will be argued on our behalf at the hearing of this application that the balance of convenience does not favour the granting of an interim interdict, regard being had to the facts and circumstances of this case.

50 It will be so argued on our behalf because the crux of the relief sought by the applicant in this matter involves an attempt to restrain the exercise of our

constitutional right to freedom of speech which should not be interfered with likely in an open and democratic society since the applicant has a right to damages and the facts that this purported interim order may be final in effect.

Whether the applicant has no other satisfactory remedy.

51 As alluded above, the applicant does have an alternative remedy by way of compensation as *solatium* for damages.

THE REASONS WHY WE ARE OPPOSED TO THE RELIEF SOUGHT BEING GRANTED

52 I am advised that regard being had to the facts and circumstances of this case, the difference between Part A and Part B of the notice of motion is superficial in that both parts are final in effect.

53 We in the main contend that the statement being impugned by the applicant is not only substantially true in every material part but that its publication was to the benefit of the public, regard being had to the fact that the Constitution itself recognises the injustices of our past and seeks to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights *vide* its preamble.

54 The fulcrum of this application is paragraph 3 of the notice of motion which is couched in the form of a declarator that in essence that our various press releases

made with regard to activities of the applicant between the period of 1990 to 1994 are defamatory of the applicant.

55 The foregoing is confirmed by the applicant *vide* annexure WDS 1 and 2 wherein it is asserted on behalf of the applicant by his attorneys on 09 January 2013 (i.e. almost 3 months after the original publication of the impugned press statement) that the false and defamatory remarks and innuendos include, amongst other the following:

> *"1 That our client "presided over the systematic abuse, victimisation and exclusion of countless black students at the Sonop Mens Hostel".*
>
> *2. That our client was <u>involved</u> with the disruption of a meeting by, amongst others, the former President Nelson Mandela in 1990.*
>
> *3. That our client contributed to the suffering and humiliation of black students at the University of Pretoria."* (our emphasis)

56 In that letter the applicant's attorneys invited us to furnish the applicant, in writing by not later than 15 January 2013 with an apology and undertaking to stop the alleged unlawful conduct failing which the applicant threatened to approach this court for appropriate relief.

57 It is significant to point out here that the statement being complained of nowhere states that the applicant was "involved" with the disruption of a meeting by, amongst others, the former President Nelson Mandela but that he was:

"…. a leader and member of the Konserwatieve Party-Tuks, a student wig of the Conservative Party at the university, a far right radical grouping which managed amongst others to disrupt through sheer violence the Honourable President Mandela's visit to the UP…."

58 The following day i.e. 10 January 2013 our attorneys expressly informed the applicant that we decline the abovementioned invitation and that we challenged the applicant to approach the court for relief and that such application would be resisted by us vigorously. I refer this Honourable Court in this regard to annexure WDS 18.

59 The following day i.e. 11 January 2013, we released a press statement to the effect that we stand by all our statements and will not tender any apologies to the applicant or Afriforum in this regard. I refer this Honourable Court in this regard to annexure WDS 19.

60 In our press statement dated 18 January 2013, we did not only reiterated that we still stand by our words and will not tender any apologies to the applicant or Afriforum but that we remain confident that we possessed the necessary evidence to substantiate our assertion within relevant legal forum and challenged the applicant's legal team to proceed with civil action in this regard. I refer this Honourable Court in this regard to annexure WDS 2.

61 It was therefore clear before the applicant filed this application on 30 January 2013 that there are potential disputes of facts arising from this matter. I am advised that if a dispute of facts is foreseeable the declaration of right should be sought by way of action. In the premises it will be argued at the hearing of this application on our

behalf that the relief sought by the applicant in paragraph of its notice of motion is both substantively and procedurally incompetent and accordingly the whole application ought to be dismissed with costs.

62 I am also advised that to the extent that paragraph 3 of the notice of motion amounts to a declaration regarding a fact and not a right, it will be incompetent for this Honourable Court to grant same since in our law a court cannot a grant a declaration regarding a fact. Authoritative legal argument will be advanced on our behalf in this regard at the hearing of this application in due course.

63 I am further advised that the real question is whether having made the statement was reasonable and therefore justifiable regard being had to the constitutional values incumbent in our democracy and/or whether the press statements were true and in the public interest.

64 I am further more advised that for the foregoing to hold it is not necessary for the truth of every used in the said statements to be proved literally and that it is sufficient for the said statements to be substantially true in every material part.

65 It is against this backdrop that I now turn the material parts of the statements dated 16 October 2012. In the said statement we state as follows that:

" .... Beyond being a spokesman and legal representative of Afriforum, Mr Spies has as Chairperson of Sonol Mens Hostel, presided over the systematic abuse, victimization and exclusion of countless black students at the Sonol Mens Hostel. Between 1990 and 1992, Mr Spies was a leader and member of the

Konserwatieve Party-Tuks, a student wing of the Conservative Party at the university, a far right radical grouping which managed amongst others to disrupt through sheer violence the Honourable President Nelson Mandela's visit to the UP in 1990 as well as then-Minister Roelf Meyer's address to students in 1993.

Black students lived in mortal fear of the armed KP-Tuks members who were marauding, bullying, assaulting and intimidating black students. Of all the residences at UP, Sonop Mens Hostel was singled out by the Human Rights Commission as play a lead role as far as racism is concerned...."

66 It can be deduced from the foregoing that the following issues are critical in determining whether the aforegoing statement is substantially true in every material respect:

66.1 Whether the applicant presided over the systematic abuse, victimisation and exclusion of countless black students at the Sonop Mens Hostel;

66.2 Whether between 1990 and 1994 the applicant was a leader and member of the Konserwatieve Party-Tuks;

66.3 Whether KP-Tuks was a student wing of the Conservative Party at the university and a far right radical grouping;

66.4 Whether KP-Tuks managed amongst others to disrupt through sheer violence the Honourable President Nelson Mandela's visit to the UP in 1990 as well as then-Minister Roelf Meyer's address to students in 1993;

66.5 Whether Black students lived in mortal fear of the armed KP-Tuks members who were marauding, bullying, assaulting and intimidating black students; and

66.6 Whether of all the residences at UP, Sonop Mens Hostel was singled out by the Human Rights Commission as play a lead role as far as racism is concerned.

67 I now turn to demonstrate the substantial truth of the foregoing material parts of our statement.

Whether the applicant presided over the systematic abuse, victimisation and exclusion of countless black students at the Sonop Mens Hostel

57. It is common cause that throughout its 95 years of existence Sonop has been and remains a racially discriminatory and exclusionary hostel and that at all material times hereto when the applicant presided as the Chairperson or President of Sonop (i.e. between 1993 and 1994) racism and discrimination the "hardened tradition" at the said residence. Also at all material times hereto and specifically during the applicants tenure, there never were black residents in Sonop;

58. As a result, as late as 19 September 1999 the South African Human Rights Commission Special Report of Racism and Racial Discrimination *inter alia* found as follows:

58.1 that Sonop was still exclusively for white and the House Committee was wholly and many of the white students were not comfortable with Black students' presence at first;

58.2 that Sonop residence are selected on strict merits and is open to all but unfortunately it was exclusively for white students and that relatively few black students qualified for admission;

58.3 as a result, out of 148 students in this the first years numbered 37, of whom only one was black;

58.4 complaints lodged by black students regarding racism in all UP residences are either not investigated at all or are investigated after a long time; and

58.5 that the management of Sonop though not aware of allegation of high incidence of human rights violation at the residence, there was at least one admitted case of violation rights which resulted in strict action by management.

59. A typical example of abuse and victimisation during the applicant's tenure as the chairperson of Sonop is involves an assault on one Herman Mahlaba. I attach a copy of Mahlaba's affidavit hereto in regard to this incident and mark same annexure "**WDS 28**".

60. Further systematic abuse, victimisation and exclusion of countless black students at the Sonop Mens Hostel can be confirmed by Professor Chris de Beer, the Senior Vice Principal of the University who was a Registrar of Vice Rector at the time the applicant was the chairperson of Sonop.

61. In the premise, I respectfully submit that the statement that the applicant presided over the systematic abuse, victimisation and exclusion of countless black students at the Sonop Mens Hostel id substantially true in every material respect and in the public interest.

Whether between 1990 and 1994 the applicant was a leader and member of the Konserwatieve Party-Tuks

62. It is common cause that the applicant was at least member of the KP-Tuks until August 1992.[3] That he was a prominent member can be gleaned Die Burger dated 05 August 1992. I attach a copy of an article to this effect hereto and mark same annexure "**WDS 29**".

63. In the premise, even though it cannot literally be proved that the applicant was an executive member of KP-Tuks, it is substantially true in every material part that between 1990 and 1994 the applicant was a leader and member of the Konserwatieve Party-Tuks.

[3] See paragraph 11, FA.

Whether KP-Tuks was a student wing of the Conservative Party at the university and a far right radical grouping

64 The fact that KP-Tuks was a student wing of the Conservative Party at the university and a far right radical grouping is trite in South African history. I attach a copy of the Beeld dated 05 March 1994 as annexure "**WDS 30**" which demonstrates that this statement is substantially true in every material part.

Whether KP-Tuks managed amongst others to disrupt through sheer violence the Honourable President Nelson Mandela's visit to the UP in 1990 as well as then-Minister Roelf Meyer's address to students in 1993

64. It is clear from the newspaper's report of Die Beeld dated 01 May 1991 annexed hereto as annexure "**WDS 31**" that the disruption of Nelson Mandela's visit to UP did not take place in 1990 but in 1991.

65. Likewise the disruption of Roelf Meyer's address by KP-Tuks did not take place in 1993 but in 1994 as evinced by annexure WDS 30.

66. In the premise, the statement that KP-Tuks managed amongst others to disrupt through sheer violence the Honourable President Nelson Mandela's visit to the UP in 1990 as well as then-Minister Roelf Meyer's address to students in 1993 is substantially true in any material part.

Whether Black students lived in mortal fear of the armed KP-Tuks members who were marauding, bullying, assaulting and intimidating black students

67. Whilst as alluded above there is a dearth of complaints lodged by Black students at all material times hereto namely because either same was never investigated at all or are investigated after long time, as confirmed by the Human Rights Commissions Report alluded to above.

68. A further an illustrations of the fact that condition under which Black students lived in mortal fear of the armed KP-Tuks members who were marauding, bullying, assaulting and intimidating Black students can be gleamed from the affidavit of Reginald Sethole Legoabe which I attach hereto and mark same annexure "**WDS 32**" and back the above Honourable Court to incorporate same herein as if expressly traversed verbatim.

69. In the premise, I respectfully submit that the statement that Black students lived in mortal fear of the armed KP-Tuks members who were marauding, bullying, assaulting and intimidating Black students is substantially true in every material respect.

Whether of all the residence at UP, Sonop Mens Hostel was singled out by the Human Rights Commission as playing a lead role as far as racism is concerned

65 This statement is substantially true in every material respect, regard being had to the Human Rights Special Report attached hereto as annexure "**WDS 33**"

66 It is also clear from the foregoing that the alleged defamatory statements was not wrongful but reasonable and therefore justifiable, regard being had to the constitutional values at stake in this matter.

67 I now turn to deal with each every paragraph contained in the founding affidavit.

AD PARAGRAPH 1

68 The respondents admit the allegations contained in this paragraph. it is significant to point out that annexure WDSO conveniently omits to mention that the applicant during his students years at the University of Pretoria was a member of KP-Tuks and executive member of the Studentewag. I attach hereto an article from Die Perdeby dated 30 August 1991 and mark same annexure "**WDS 34**".

69 It is also significant to point out that despite averments to the contrary, the applicant was at least until 09 March 1995, still a member of the Studentewag. I attach hereto an excerpt from the Second Report of the Volkstaat Council in this regard and mark same as annexure "**WDS 35**".

AD PARAGRAPH 2

70 The respondents deny each and allegation contained in this paragraph.

AD PARAGRAPHS 3, 4, 5 AND 6

71 The respondents admit the allegations contained in this paragraph. It is however significant to add that the first respondent is a non-profit organisation with *inter alia* the following objectives:

73.1 to lobby and provide policy advocacy for the transformation of higher education through the promotion of open learning principles in different educational sectors;

73.2 to promote quality research output and learning programmes for the transformation of higher education; and

73.3 to promote knowledge on transformative and innovative methods of opening learning through research.

74.1 To achieve the above objectives the first respondent is guided by the following principles and policies to guide its campaigns operations and processes *to wit*: (a) democratic cooperation and consultation; (b) lifelong learning; (c) An inclusive educational system; (d) non- racialism; (e) non-sexism; and (f) academic research excellence.

72 The first respondent envisions a society in which all people value, have access to, and succeed in lifelong education and training of good quality that meets national human resource development needs and skills priorities of the global knowledge economy.

73 To attain its objectives, the first respondent does so through policy advocacy, research and acting as catalyst and facilitator to facilitate higher education transformation through networks and strategic advice as well as empirical data output.

74 The first respondent is also committed to the process of transformation of education and training to increase equitable and meaningful access to higher education, knowledge, skills and learning to ensure:

76.1 an education system that is more accessible especially by the marginalised and the poor;

76.2 an education system that is underpinned by progressive values of democracy, non-racialism, redress and broad participation;

76.3 an education system whose value system identifies with the aspirations of the people to embrace the rich diversity of South African society;

76.4 an education system that narrows the divide between intellectual and manual labour;

76.5 an education system that serves the present and future social and economic needs of a peaceful stable South African society; and

76.6 the elimination of socio-economic disparities through education.

AD PARAGRAPH 7

75 The note the allegations contained in this paragraph and maintain that for the reasons alluded above this application falls to be dismissed with costs simply because the impugned statements are substantially true in every material part.

AD PARAGRAPH 8

76 The respondents admit having published the impugned statements and as alluded above persist on the truthfulness of the impugned statements and that the publication of same was to the benefit of public. Annexure WDS 1 and 2 were accordingly responded to as alluded above *vide* annexure WDS 18 wherein we categorically stated that we decline the applicant's invitation to furnishing in writing by no later than 15 January 2013 with any apology and/or undertaking to stop the alleged unlawful conduct because we verily believe same to be reasonable and justifiable in a free, open and democratic society.

AD PARAGRAPH 9

77 The respondents note the allegations contained in this paragraph.

AD PARAGRAPHS 10.1 AND 10.2

78 The respondents note the allegations contained in these paragraphs.

AD PARAGRAPH 10.3

79 The respondents deny the allegations contained in this paragraph in that as alluded above *vide* annexure WDS 34 the applicant was still a member of Studentewag as late as 09 March 1995.

AD PARAGRAPH 10.4

80 The respondents admit the allegations contained in this paragraph.

AD PARAGRAPH 11

81 The respondents admit the allegations contained in this paragraph.

AD PARAGRAPH 12

82 The respondents bear no knowledge of the allegations contained in this paragraph and accordingly deny same and put the applicant to the proof thereof.

AD PARAGRAPH 13

83 The respondents deny the allegations contained in the paragraph and repeat the contents of annexure WDS 31 herein as if expressly traversed.

AD PARAGRAPH 14

84 Save for admitting that Nelson Mandela's meeting was not in 1990 but in 1991 as pointed out by the applicant; that at all material times hereto he was a member of the Conservative Party; that on 23 August 1991 the applicant published an article in Die Perdeby; the respondents deny the balance of the allegations contained in this paragraph.

85 It is significant to point that our statement of 16 October 2012 and subsequent others do not say the applicant was involved in disrupting the Mandela meeting but that he *"...was a leader and a member of the Konserwatieve Party-Tuks, a Studentewag of the Conservative Party at the university, a far right radical*

grouping which managed amongst others to disrupt through sheer violence the Honourable President Mandela visit to the UP...."

86 It is therefore not correct as stated on behalf of the applicant vide WDS 1 and 2 that the respondents ever alleged that the applicant was "involved" with the disruption of a meeting by amongst the former President Nelson Mandela.

87 The facts that the foregoing statement issued by us remains substantially true in every material part therefore still remain.

AD PARAGRAPH 15

88 The respondents deny each and every allegation contained in this paragraph and refer this Honourable Court to the affidavit of Legoabe who categorically states at paragraphs 8, 10 and 11 of his affidavit (i.e. annexure WDS 31) *inter alia* as follows; that:

"8. On the 10th March 1994, the National Party (NP-Tuks) organised a meeting of students at the campus of the University of Pretoria to be address by Mr Roelf Meyer, a former Cabinet Minister of the old South African National Congress (ANC).

9.....

10. The above-mentioned meeting were violet disrupted by a large group of violent rightwindg members and supporters of KP-Tuks and Afrikaner Studentewag.

Mr Willie Spies formed part of the members of KP- Tuks, Afrikaner Studentewag, Skietvereniging and Afrikaner Studente Front who actively participated in the violent disruption of the aforesaid meeting" (our emphasis)

AD PARAGRAPH 16

89 The respondents deny that Sonop Hostel was ever transformed or became an integrated residence at all material times hereto. As alluded above (i.e. annexure WDS 32) which was released in September 1999 by the South African Human Rights Commission (SAHRC) at that time only one Black students out of 37 new graduates was given accommodation at Sonop Hostel.

90 According to Independent on Line news website, downloaded on 04 November 2012 releasing its findings into the allegations of racism at Tuks, Commissioner Pansy Tlakula said racism and discrimination still existed at the number of students at the university. Tlakula also said 148 students lived in the hostel (Sonop), which had stringent admission criteria for black students, and the only black student given a place was recruited from Cradock in the Eastern Cape. Three (3) other black students who were applied for admission were sent elsewhere.

91 Tlakula went on to state that the fact that only one (1) black student was living at the hostel meant that the university was unable to stick to its goal, which is that 10 % of residence for first-year studies would be black. She is also stated that the continued associate with the university with this residence (Sonop) may tarnish the image that the university wants to develop and portray to the word. She therefore recommended that the university sever ties with this residence (Sonop) and allow operating independently and not impeding the university's attempts to transform. I attach a copy of the said download from the Independent on Line news website hereto and mark same annexure "**WDS 36**".

92 The SAHR report also observed that hostel at the university were allocated according to race, and several black student have complained of discriminate in residences, judging by a lack of facility. DieMatie dated 13 October 1999 for its own part reported that "*Proof of racism was apparently found at Sonop, a student residence which has previously be owned by the Dutch Reformed Church. The residence is now owned by Sonop Old Boys, who run it as a private company ....*" I attach a copy of the said DieMatie dated 13 October 1999 hereto and mark same annexure "**WDS 37**".

AD PARAGRAPHS 17 AND 18

93 Save for denying that the applicant as Chairperson of Sonop Hostel or when he was an ordinary resident of Sonop Hostel he was unaware of any racist activities that the hostel was involved and that there was never any victimisation incidents in the said hostel on blacks, I admit the balance of the allegations contained in this paragraph.

94 Evidence points to the contrary. For an example Herman Mahlaba, a former full-time student of the university during the periods 1993 to 1998 who studied for a Bachelor of Prosecutionis (B Proc) states amongst other things at paragraph 14 of the Sworn Statement that:

"*14 Between 1993 and 1994 I wanted to stay in Sonop residence on campus, when I went to check my name on the waiting list, I was arrogantly told that Sonop was not taking black students by the Chairman Willie Spies*"

95 I attach the said Sworn Statement hereto, mark same annexure "**WDS 38**" and beg this Honourable Court to incorporate the contents thereof herein as if specifically traversed verbatim as I will refer where relevant to the said annexure in due course.

96 According to the SAHRC report referred to above the Commission's delegation was informed that whilst the Board (i.e. the Sonop Board) accepted the policy of integration, because of "hardened tradition" implementation was the difficult part. I refer this Honourable Court to the last but one paragraph at page 7 of the said report.

AD PARAGRAPHS 19, 20, 21, 22 AND 23

97 The allegations contained in these paragraphs are noted. Unfortunately, the applicant however must accept that he cannot rewrite history to suit his convenience. Any attempt to distort the historical injustices of our past is unconstitutional, since the Constitution in its preamble recognised the injustices of our past.

98 Regard being had to the subject matter of the statements and the time, manner and occasion of the publication of same is for the public benefit in that it is for the public benefit that the truth about the applicant's conduct should be known; regard being had to the fact that the Constitution in its preamble enjoins us to recognise the injustices of our past and to heal the division of the past and to establish a society based on democratic values, social justice and fundamental human rights.

AD PARAGRAPH 24

99 The respondents admit the allegations contained in this paragraph. It is however pertinent to point out that in 1995 on behalf of the Stundentewag, Pretoria the applicant opined as follows in the Second Report of the Volkstaat Council (i.e. annexure WDS 34):

"*In spite of historical demands, there is no volkstaat in existence which could simply be recognised. A volkstaat will have established through sacrifice. And artificially fabricated volkstaat, which will in long run not be able to withstand pressure, must be avoided. A solid foundation must be laid for later development*"

AD PARAGRAPH 25

100 The respondents note the allegations contained in this paragraph. This does not distract from the fact that the applicant as chairperson of Sonop Mens Hostel before advent of democracy and before the applicant was admitted as an attorney he presided over the systematic abuse, victimisation and exclusion of countless black students at the Sonop Mens Hostel and that between 1990 and 1992, the applicant was a leader and a member of the Konserwatieve Party-Tuks, a student wing of the Conservative Party at the university, a far right radical grouping which managed amongst others to disrupt through sheer violence the Honourable President Nelson Mandela's visit to the UP in 1990 as well as then Minister Roelf Meyer's address to students in 1993.

AD PARAGRAPHS 26 AND 27

101 The respondents deny each and every allegation contained in these paragraphs. The respondents aver that to the extent the statements which the applicant is complaining about are true and to the public benefit does not take away anything from him or arrogate anything to him which he did not have in the past as far as his past is concerned. I am advised that in our law once a defence of truth and public benefit is established same cannot be defeated by proof of malice or improper motive on the part of the defendant. It will therefore be argued on behalf of the respondents at the hearing of this application that proof by us that the alleged defamatory statement are true and that the publication thereof is for the public benefit is a complete defence to the applicant's motion.

AD PARAGRAPH 28

102 The respondents notes the allegations contained in this paragraph.

AD PARAGRAPH 29

103 We deny that at no stage during the process of the said election did we lodge any complaint with regard to the legitimacy of the election procedure into the Tuks-Alumni.

104 For instance, at our Tuks-Alumni Annual General Meeting (2010 AGM) held at Hatfield Campus on 19 October 2010, the following issues were placed on the

agenda (1) Welcome; (2) Constituting (i.e. Quorum); (3) Minutes of the previous meeting (consideration and adoption thereof); (4) In Memoriam; (5) Amendment of the Alumni Constitution; (6) Election of new members of the Alumni Board; (7) General (8) Closure; and (9) Refreshments.

105 The amendment of the Alumni Constitution to entrench an election system or mechanism that guarantees that the Tuks-Alumni Board reflect broadly the racial and gender composition of its members united in their diversity in concert with the Constitution of the Republic was discussed and deliberated upon and it was resolved by the house to postpone further deliberations and adoption of proposed new amendments until the Afrikaans version of the said constitution is translated into English for the benefit of non-Afrikaans speaking alumni.

106 It was agreed that the remaining items on the agenda will be discussed, deliberated and concluded during that meeting i.e. Election of new members of the Alumni Board; General; Closure; and (9) Refreshments.

107 Under "General" we had indicated that we intended to discuss temporary mechanisms to be put in place pending the amendment of the constitution to ensure that the elections then underway of new members of the Alumni Board is conducted in a manner that is fair, transparent and ensures that the outcome thereof reflect broadly the racial and gender composition of its members united in their diversity in concert with the Constitution of the Republic.

108 With that understanding, the meeting proceeded with remaining items mentioned above at paragraph 106. Alumni present who did not vote either through proxy or electronically were requested to go and cast their votes outside. Nothing to the

effect that the meeting is adjourned was pronounced by the Chairperson. Most of us, especially black Alumni were under the impression that we will return to the AGM after voting and engage on issues of broad representation on the Board.

109 We were thus surprised and shocked to be told by the Chairperson and Dr DC Jacobs that the AGM was adjourned and we will get the result next week, where 5 of the 11 candidates would have been elected to the Board. As a matter of fact and law, the above outstanding items were never entertained by the house.

110 The foregoing is contained in my letter to the Vice Chancellor dated 19 October 2010 which I attach hereto and mark annexure "**WDS 39**", *to wit*:

"*Dear Prof Cheryl de la Rey*

LETTER OF COMPLAINT: TUKSALUMNI BOARD 67thANNUAL GENERAL MEETING (AGM) HELD AT HATFIELD CAMPUS ON THE 14TH OCTOBER 2010

1. ***Purpose***

   To inform you about irregularities that took place at the AGM on the above-mentioned date as well as seeking intervention from you as the Vice- Chancellor and Principal empowered to intervene through applying Section 9 of Chapter 4 of the University Statute of 2003, operational as from 1 January 2004.

2. ***Brief scenario on what happened at the AGM***

   2.1. First and foremost, it must be noted that some of the black alumni who were present at the aborted AGM requested me, to initiate a process of engagement with you on these issues and other related matters.

2.2. *The AGM was chaired by the outgoing chairperson of TuksAlumni Board Mr Rikus Immink. The agenda of the AGM was adopted as follows*

- *" Welcome*
- *Constituting*
- *Minutes of the previous meeting*
- *In Memoriam*
- *Amendments to the Alumni Constitution*
- *Election of new members of the Tuks Alumni Board*
- *General Closure*
- *Refreshment in the foyer"*

2.3. *After inconclusive deliberations on item 6, relating to Amending the Tuks Association Constitution, it was resolved by the house to postpone further deliberations and adoption of the new amendments until the Afrikaans version is translated into English for the benefit of non- Afrikaans speaking and reading alumni. (Please note that, only the Afrikaans version of the amendments was presented to us). We wondered why? Because the University language policy is clear on this matter. English and Afrikaans must be enhanced and strengthened in the long term as per the Statute of the University of Pretoria which came into operation on the 1st January 2004, long before this AGM.*

2.4. *According to our understanding, this specific resolution was adopted as follows:*

That, Tuks Alumni office avail the English translated version on the Tuks Alumni website, so as to give all alumni an opportunity to make inputs either in writing or at the special AGM which will be held on the 3rd or 4th November 2010 to finalise and adopt the amendments.

2.5. *The meeting emphasised that the only item rescheduled or postponed was items 6 on the agenda which deals with the amendments of the Constitution and the remaining items on the adopted agenda must be concluded .Proff Niek Grove and Antonie De Klerk, representing Top Management agreed with most of the deliberations. They were the people who proposed the postponement of the Afrikaans Amendments until these are translated into English and for Top Management to input in the new finalised amendments of the Constitution. The house immediately bought into this progressive proposal and adopted it.*

2.6. *Subsequent to that, the chairperson proceeded with item 7 on the agenda, which read as follows:*

- *"Election of new members of the Tuks Alumni Board".*

2.7. *Alumni present who did not vote either through proxy or electronically were requested to go and cast their votes outside. Nothing to the effect that the meeting is adjourned was pronounced by the Chairperson. Most of us, especially black Alumni were under the impression that we will return to the AGM after the voting and engage on issues of broad representation on the Tuks Alumni Board. More so, our impression was further informed by the remaining items on the adopted agenda which were still outstanding.*

2.8. The outstanding items on the adopted agenda read as follows:

- *"General*
- *Closure*
- *Refreshments in the foyer"*

2.9. As a matter of fact and law, the above outstanding items were never entertained by the house. As a result, some of us were surprised and shocked to be told by the Chairperson and Dr DC Jacobs that the meeting is adjourned and we will get the result next week, where 5 of the 11 candidates would have been elected to the Board.

3. Examination of the circumstances at the AGM

3.1. It is our considered view that the adopted agenda was not concluded either due to the incapacity of the chairperson to steer the meeting in the right direction or was afraid to engage on broad transformation issues required to be implemented by the Board through AGM resolutions.

3.2. It is common knowledge that the University has progressive policies and regulations, but the problem lies with implementation and the commitment of the implementers thereof. We need implementers with the right attitude to assist you to steer this University in a forward looking way that will in future be beneficial to all of us. Some of us are permanently associated with this University due to acquiring our degrees here.

3.3. It is our view that you need skilled, experienced, capable and decisive managers, who are not afraid of change:- managers who see change as a

progressive move that strives to ensure future opportunities for the benefit of future generations.

3.4. *As Alma Maters of this University, we have agreed not to despair, and be despondent, but to be active in the affairs of the University.*

4. Conclusion

4.1. It remains our informed opinion that, the AGM held on 14th October 2010 be rescheduled to deal with the unfinished business as it relates to the adopted agenda. As we do so, we must this time around, invite the ex-officio members of Tuks Alumni Board to observe and guide us in line with the Statute of the University of Pretoria, the Vision and Mission of the University and its strategic plan (2007-2011), policies, rules and regulations.

4.2. *We believe that Tuks Alumni Board is an inherent, connected and an integral part of the University, and as such must adhere to the above legal prescripts binding the University. In our honest view, it is not the situation currently.*

5. Recommendations

5.1. Our informed view is that we must thoroughly discuss three things in the proposed rescheduled meeting.

5.1.1 The Amendments to the Alumni Constitution,

5.1.2. The mandate of the current (4) four Tuks Alumni representatives on the University Council and to whom do they account and report back to? And,

5.1.3. How to make all structures of Tuks Alumni broadly representative including amongst others,

5.1.3.1. representation of the Executive Committee of the Board;

5.1.3.2. representation of the Alumni on the University Council; and

5.1.3.3. representation of Alumni on the Institutional Forum.

5. 2. Due to the slow process of transformation at the University, we propose that all stakeholders be invited to a transformation summit initiated by Top Management. If the proposal is agreed upon, the summit must happen as soon as possible.

5.3. We note and acknowledge that you are newly appointed CEO of the University and needed time to adjust, as such cannot put the blame on you for what is currently happening at the University, especially at the Tuks Alumni Board.

5.4. Similarly, we believe that to an extent, the current Top Management members who have been around before your appointment may have been blinded by the attitude of the middle management, and as a result, failed to enforce the policies of the University. However, now that Tuks Alumni has put transformation squarely on the agenda of the University again, we must grab this opportunity and set a decisive course for all to see the commitment and intention of the University leaders in as far as it relates to its current Mission Statement, which defines its local relevance through promoting equity, access, equal opportunities, redress, transformation and diversity.

5.5. We request the Vice- Chancellor and principal to arrange a formal meeting to further discuss the contents of this letter and other issues relating to the transformation agenda at the University. Furthermore, some of us are willing

to play our rightful part in assisting you, your capable team and all those who want transformation at this academically world – renowned and acclaimed University.

5.6. As we attempt to resolve this matter internally, we seek to demonstrate our belief and the trust we have in the Vice- Chancellor and Principal and her team in resolving these primary transformation imperatives. Nonetheless, it will be appreciated if we can get a response from you within (7) seven days on this letter.

I trust that you will consider our humble request favourably.

Yours Faithfully

_____

Mr Lucky Thekisho

Alumni (on behalf of other alumni)

Contact cell no: 0791831313"

111 I point out that reference to item 6 at paragraph 23 of annexure WDS 38 is actually a mistake because I clearly was actually referring to item 5 of the eight (8) items on the agenda.

112 The Vice Chancellor only responded to annexure WDS 38 on 28 October 2010 *vide* annexure WDS 39 which I attach hereto and mark as such.

AD PARAGRAPHS 30 AND 31

113 We deny that our assertion that black Alumni systematically and inherently excluded by the manner in which electoral process is conducted in terms of the Constitution because of due to the historical disadvantages of the past Black Alumni are in the minority. No doubt this truism is the very jurisprudential basis of Section 9 (2) of the Constitution which contemplates legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination. The said Section *inter alia* expressly provides as follows: "….to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

114 To the extent that it is common cause that the current constitution of Tuks-Alumni does not have any provision or contemplate any measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination, same cannot be said to be free and fair or cognisant with the Constitution of the Republic which expressly recognizes the injustices of the past.

115 For an example, Annexure WDS 5 states without fear of contradiction that at the time it was made, the following officials of Afriforum were serving on the Alumni Board Alana Bailey; Adam Jacobs; C van Rensburg; Johan Kriek, Kallie Kriel; Willie Spies; C Oberholzer. Needless to state, Afriforum is a well-known Afrikaner minority rights group which regards affirmative action, employment equity, BEE and other legislation and measures designated to promote the achievement of equality and designed to protect and advance persons or categories of persons

disadvantaged by unfair discrimination as "racially motivated policies that reduce any grouping to second-class citizens in the country of their birth". At least this much is said in its so-called Civil Rights Manifesto appearing on its website which I attach hereto and mark same as Annexure "**WDS 40**".

116 It is for this and other reasons that we as a progressive revolutionary entity that unapologetically subscribes to the guiding principles of the of the broad national democratic movement that liberated this Republic from the oppressive apartheid system that we regard the system of cooption referred to by the Applicant as patently patronising black people and not a genuinely designed to protect or advance alumni or categories of alumni who are disadvantaged by unfair discrimination. In the premise, for this reason that we rejected it with contempt when it was tendered as a measure to cure the unfairness of the system under which the applicant was elected to the Tuks Alumni Board.

117 It is against this backdrop that it can be deduced that our statement that *"…. We specifically dispute and reject the recent unfair 'elections' of Mr Willie Spies of Afriforum to the Council of the University of Pretoria on the basis of 'advancement of the general interests of the UP'"* is substantially true in every material part. It is so since the "sting of the charge", or the "gist of the defamation"; or the fact that there might be some exaggeration in the language that we used does not detract from the truthfulness of the statement and the public interest in same, regard being had to the facts and circumstances under which same was made.

118 Save as aforesaid, the balances of the allegation contained in these paragraphs are admitted.

AD PARAGRAPH 32

119 The contents of the paragraph are noted and do not enrich the discussions since as mentioned above, all the black alumni who are said to be constituting 40% of the Board are all co-opted or ex officio.

AD PARAGRAPHS 33, 34, 35, 36 AND 37

120 We deny that the various meetings referred to by the applicant bore any fruit. So as aforesaid the balance of the allegations contained in these paragraphs are admitted.

AD PARAGRAPHS 38 AND 39

121 The allegations contained in these paragraphs are noted.

AD PARAGRAPH 40

122 We deny each and every allegation contained in this paragraph and put the applicant to the proof thereof. The proper statement of fact pertaining to this matter is as stated in our letter dated 09 October 2012 which I annex hereto and mark same annexure "**WDS 41**". Due to constraints of time I beg this Honourable Court to incorporate this letter herein as if specifically traversed verbatim and contemporaneously invite the applicant to personally engage to the issues raised therein. This request is still germane due the fact that the letter dated 11 October 2012 from the university does not give any extraneous evidence as to where and how the potential conflict of interest was discussed and how the affected nominees were notified of same. Neither does it speak to the rationale behind the applicant being allowed to send the two critical university post at same time whilst on the

other hand historically disadvantage Alumni are screaming for measures designed to protect or advance persons or categories of person disadvantage by unfair discrimination to be taken by the university and the Alumni. I attach the 11 October 2012 the letter from the university hereto and mark same as annexure "**WDS 42**".

AD PARAGRAPHS 41- 45

123 We admit the allegations contained in these paragraphs and maintain that over and above the fact that we are entitled in terms of section 16 (1) (b) of the Constitution, the sting of the charge or the gist of the defamation remains truthful and beneficial to the public notwithstanding whether or not there might some exaggeration in the language used. It is important to point that parallel the so called intensive media campaign respondents tried to engage to all the stakeholder on these issues internally without any joy to date.

124 The foregoing is corroborated by a letter from the university dated 11 October 2012 which clearly note amongst other things that *"…. After a number of years, Tuks-Alumni has not made significant progress for all alumni of the university. The SCC was of the opinion that more could be done to strengths the activities of the alumni of the university*". I attach a copy of the said letter hereto and mark same annexure "**WDS 44**"

125 The university further states as follows in the last but one paragraph of annexure WDS 43 mentioned above:

"*In view of the above mentioned, the SCC requested the Executive of the University to review the current activities and governance structures of the alumni and to make proposals on the way forward. The SCC emphasised that alumni activities should*

form an integral part of the University's activities, should promote inclusivity amongst the University's alumni on an integrated basis, and that all alumni activities should be aimed at supporting the University's strategic direction and vision"

126 The executive undertook to report back at his next meeting scheduled for 31 October 2012 in order to table firm recommendations at the Council meeting scheduled for 21 November 2012.

127 On 13 October 2012 we also wrote a letter to the Chairperson of the Council of the University, detailing our grievances. I attach a copy of the said letter and mark same annexure "**WDS 45**", beg this Honourable Court's leave to incorporate same herein as if specifically traversed verbatim due time constraints. He also invites the applicant to speak in his reply to the issued raised therein.

128 The issues raised above were swiftly rejected by the university without any due of consideration and the applicant appointment was announced on 15 October 2012. This let us to write a letter dated 17 October 2012 again to the university reiterating our grievances and objections and other pertinent issues pertaining to the university. I attach a copy of the said letter hereto and mark same annexure "**WDS 46**" and same has not replied to.

129 It is against this backdrop that the respondents were left with no choice other than to formally lodge their complaint with the Equality Court under case number EC38/12 against the University and Afriforum.

130 The said legal action was aimed at compelling the University from appointing the applicant to the university council and sought to remedy the exclusion of Black Alumni from the alumni structures as well as non-compliance by the university with principles of Education White Paper of 2007 and the Employment Equity Act. I attach a letter from us to the university hereto adumbrating the foregoing and mark same annexure "**WDS 47**".

AD PARAGRAPH 46

131 The allegations contained in this paragraph are noted. It is particularly note worthy to point out that to the extent that the applicant concedes that this application has been in the pipeline and under consideration since October last year same cannot be urgent or if so he himself is the author of the said urgency for "over considering".

AD PARAGRAPH 47

132 The allegations contained in this paragraph are admitted. The respondents persist in their contention that the publications in question are substantially true in any every material part.

AD PARAGRAPH 48

133 We deny each and every allegation contained in this paragraph. And specifically aver that at all material times hereto the applicant was aware of each and every publication regarding him as same has been widely publicised since 16 October 2012 as he corroborate at paragraph 44 of his founding affidavit that:

"*Die lasterlike bewerings teen my is in byna elke mediaverklaring wat die respondent sedertdien oor sy dispuut met die raad uitgereik het, herhaal en die verklarings het gereeld prominente decking verkry in die media*".

AD PARAGRAPH 49

134 We deny each and every allegation contained in this paragraph and maintain that regard being had to the time, manner and occasions of the publications same were made for the public benefit. It is so since as a general principle, it is for public benefit that the truth about the character or conduct of the individual should be known.

AD PARAGRAPH 50

135 We note the allegations contained in this paragraph.

AD PARAGRAPH 51

136 We deny that the allegations contained in the press statements in question are absurd or that it was reasonable for the applicant to assume that same will go away with time. People forgive but do not forget.

AD PARAGRAPHS 52 AND 53

137 We note the allegations contained in these paragraphs and point out that it was naïve for the applicant to think that we can make such serious allegations about him without any justification or substantial information.

AD PARAGRAPH 54

138 We deny that any of the media statement in question are inaccurate and maintain. Alternatively that to the extent that the general charge of the statements in question are substantially true, same cannot be injuriously defamatory to the applicant.

AD PARAGRAPHS 55, 56, 57 AND 58

139 We admit the allegations contained in these paragraphs.

AD PARAGRAPH 59

140 We note the allegations contained in this paragraph and will deal with same during the Equality Court proceedings in due course.

AD PARAGRAPH 60

141 We note the allegations contained in this paragraph.

AD PARAGRAPH 61

142 We deny the allegations contained in this paragraph.

AD PARAGRAPH 62

143 Save for admitting that we are entitled to our freedom of expression, we bear no knowledge of the remainder of the allegations contained in this paragraph and the applicant to the proof thereof.

AD PARAGRAPHS 63 AND 64

144 Save for denying that the media statement in question is defamatory to the applicant, we admit the balance of the allegations contained in this paragraph.

AD PARAGRAPH 65

145 Save for admitting that we are entitled in terms of section 34 of Constitution to ventilate our grievances with the Equality Court, we deny the balance of the allegations contained in this paragraph.

AD PARAGRAPHS 66 - 72

146 We deny each and every allegations contained in these paragraphs for reasons alluded elsewhere in this affidavit.

AD PARAGRAPHS 73 AND 74

147 We deny that regard being had to the truthfulness and public interest in the publication of the historical injustices of the past committed by the applicant that as much as the truth hurts he will suffer any irreparable harm in the legal sense or if he has any legal remedy thereto.

AD PARAGRAPHS 75 - 79

148 We deny that the balance of convenience favours the order being granted, regard being had to the fact that this Honourable Court is effectively called upon to limit our freedom of expression.

AD PARAGRAPHS 80- 82

149 We deny that the applicant does not have any other alternative remedy, for reasons alluded above.

AD PARAGRAPHS 83, 84, 85 AND 86

150 For reasons alluded above, we deny that this matter is urgent, alternatively we maintain that the urgency is self created.

WHEREFORE we humbly it will pleas this Honourable Court to dismiss this applicant with costs alternatively to strike same off the roll for lack of urgency.

_____

DEPONENT

Signed and sworn before me at PRETORIA on this FRIDAY 08 FEBRAUARY 2013, the deponent having acknowledged that he knows and understands the contents of the affidavit, that he has no objection to taking the prescribed oath, and that he considers the prescribed oath binding on his conscience.

_____

COMMISIONER OF OATHS