

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 314/2018

In the matter between:

HIGHER EDUCATION TRANSFORMATION

NETWORK NPO REGISTRATION 116-851

Applicant

and

COUNCIL FOR HIGHER EDUCATION

First Respondent

LAW SOCIETY OF SOUTH AFRICA

Second Respondent

MINISTER OF HIGHER EDUCATION

AND TRAINING

Third Respondent

COUNCIL OF THE WALTER SISULU UNIVERSITY

Fourth Respondent

AFFIDAVIT

I, the undersigned,

KHAYA MAPHINDA

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do hereby make oath and state:

1. I am an adult male in the full time employ of the Fourth Respondent as its Registrar, based at its Mthatha Campus.
2. I am duly authorized to depose to this Affidavit on behalf of the Fourth Respondent.
3. The facts to which I now depose fall within my personal knowledge and belief, unless the context thereof indicates to the contrary, and are both true and correct.
4. The citation of Walter Sisulu University by means of reference to its Council is incorrect. The University has been established as a legal entity in terms of the Higher Education Act and is governed by its institutional statute. The Council is one of the structures of the University. It cannot be cited separately. However, for present purposes I am instructed to accept that the University itself has been brought before the Honourable Court.
5. I depose to this affidavit in response to the relief sought by the Applicant and in circumstances where the Fourth Respondent is cited as a party with an interest in the relief sought.

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6. Fourth Respondent has elected to abide by the decision of this Honourable Court. However, this does not mean that Fourth Respondent accepts that there is any merit in the application. Fourth Respondent believes that it has little to offer in the adjudication of the application which will not be placed before the Honourable Court by First Respondent, which has indeed indicated its intention to oppose the application. In particular, Fourth Respondent accepts the decisions of First Respondent, and Fourth Respondent is presently engaged in the processes required for the re-accreditation of the LLB programme.

7. In my capacity as the Registrar of the Fourth Respondent and in terms of section 12 of the Institutional Statute of the Fourth Respondent, I serve as Secretary to the University Council (Fourth Respondent) and in terms of section 58 of the Institutional Statute. my functions include, *inter alia*:
 - 7.1 supporting the vice-chancellor in the management and administration of the University at an institutional level;

 - 7.2 a general custodial function at the institutional level, and in furtherance thereof to ensure that the entire University complies with statute, relevant legislation, national higher education policies and the policies and rules of the University

8. I accordingly submit that it is appropriate that I depose to this affidavit on behalf of the Fourth Respondent.



9. The Fourth Respondent has been informed that this affidavit should, in terms of this Honourable Court's practice directives have been filed prior to noon on Thursday, 11 January 2018.
10. Practically it has been impossible for the Fourth Respondent to prepare and file this affidavit in compliance with the practice directive. The Fourth Respondent is an academic institution governed by statute and various of the institutional representatives of the Fourth Respondent are still on their annual leave.
11. Difficulties were experienced in obtaining the necessary agreement from those parties to file this affidavit.
12. The Fourth Respondent humbly apologises for the delay in the filing of this affidavit and any inconvenience caused to this Applicant. If condonation is necessary, I apply for it.
13. For the purposes of this affidavit it is not necessary for the Fourth Respondent to reply to each and every averment made within the affidavit but to set out the facts that the Fourth Respondent believes are relevant and necessary to be placed before this Honourable Court in order for the Court to properly consider the relief that is sought.
14. Other than to point out that the citation of the University is not correct, the Fourth Respondent does reply to paragraphs 1.1 to 3.6 of the Founding Affidavit.

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15. **AD PARAGRAPH 4.2**

- 15.1 In order to address the issue of urgency raised by the Applicant in this paragraph it is necessary to set out certain historical facts;
- 15.2 On 10 February 2017 the First Respondent addressed correspondence to Professor M G Mahlomaholo, the Fourth Respondent's Deputy Vice-Chancellor Academic Affairs and Research.
- 15.3 A copy that correspondence is annexed hereto marked "KM1";
- 15.4 The content of that correspondence is self-explanatory but in essence the First Respondent indicated that it had undertaken a national review of the Bachelor of Laws (LLB) programme;
- 15.5 The correspondence further indicated that the national review is a peer-review exercise focusing on the re-accreditation of the existing LLB programmes based upon the HEQC's (Higher Education Equality Council) criteria;
- 15.6 A copy of the accreditation criteria is annexed hereto marked "KM2";
- 15.7 The Second paragraph of "KM1" refers to a site visit which occurred at the Mthatha Campus of the Fourth Respondent during 2016. Although I was not present at that site meeting I am aware that it took place;

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- 15.8 The correspondence furthermore indicates that at its meeting on 9 February 2017 the HEQC reviewed the National Standard and Review Committees (NSRC) recommendation regarding the LLB programme offered by the Fourth Respondent. That body endorsed the NSRC's decision to put the Fourth Respondent's LLB programme on notice of withdrawal of accreditation.
- 15.9 It is important to note that that was not a final decision and that the Fourth Respondent was provided with an opportunity to respond by 3 March 2017;
- 15.10 Prior to the making of a final decision on the withdrawal or otherwise of the Fourth Respondent's accreditation to present the LLB programme the HEQC made the draft report together with recommendations submitted to the NRSCS available to the Fourth Respondent;
- 15.11 A copy of that report is annexed hereto marked "KM3";
- 15.12 The Fourth Respondent did submit response by 3 March 2017. A copy thereof is annexed hereto marked "KM4";
- 15.13 On 7 April 2017 further correspondence was addressed to Fourth Respondent by First Respondent.
- 15.14 A copy of that correspondence is annexed hereto marked "KM5";

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- 15.15 That correspondence confirmed that the First Respondent had considered the Fourth Respondent's representations and that the HEQC had endorsed the NSRC's recommendation to place Fourth Respondent's LLB programme on "notice of withdrawal of accreditation".
- 15.16 That correspondence furthermore directed Fourth Respondent put in place measures to address the reasons, concerns and recommendations set out in the review report and that an Improvement Plan be prepared with clear targets, resource allocations and milestones within a specific time frame;
- 15.17 The deadline for that submission was 6 October 2017;
- 15.18 Prior to 6 October 2017 the required improvement plan was submitted to the First Respondent;
- 15.19 A copy of the improvement plan (without its numerous annexures) is for the sake of completeness annexed hereto marked "**KM6**";
- 15.20 On 14 November 2017 further correspondence was addressed by First Respondent to Fourth Respondent. A copy of that correspondence is annexed hereto marked "**KM7**";
- 15.21 The essence of that communication is that Fourth Respondent's accreditation to present the LLB programme was withdrawn;
- 15.22 Importantly the First Respondent advised Fourth Respondent to design and develop a new LLB programme and submit it to their offices for accreditation;

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15.23 Furthermore, Fourth Respondent was advised that it was not permitted to enrol new students into the current LLB programme from the **2019** academic year;

15.24 This decision in no way impacts upon enrolment in 2018 and on the programmes offered this year.

16. **AD PARAGRAPH 5.1 – 5.3 THEREOF**

16.1 The relief, if granted, will create manifold confusion. At the present time the deficiency in the LLB programme are being addressed in accordance with the requirements of the First Respondent. If this decision were to be set aside, Fourth Respondent's programme designed to meet the challenges presented would be placed in disarray. The Application fails to specify which of the deficiencies are accepted and which are rejected. It is not proper to set aside the process engaged upon. The Fourth Respondent has embarked on a process of redesigning its LLB programme for submission to First Respondent for the purposes of accreditation of its LLB Programme for the 2019 academic year.

16.2 The relief sought in prayer 3 of the Notice of Motion is misguided, and places Fourth Respondent in a quandary. The processes of accreditation involve dialogue with the University and participation by the University in any remedial action. The Application fails to perceive that the relief sought in prayer 3, namely, reaccreditation, has to follow upon

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the suspension of accreditation. Prayers 2 and 3 of the Notice of Motion are contradictory.

16.2.1 Since prayer 3 does not directly refer to Fourth Respondent it is misconceived but this also means that Fourth Respondent is not required to answer these averments.

17. **AD PARAGRAPHS 6.1 – 6-9 THEREOF**

The Fourth Respondent does not take issue with any of the factual averments contained herein.

18. **AD PARAGRAPH 6.10 THEREOF**

The content of this paragraph is admitted this statement directly undermines the Applicants case on urgency. Fourth Respondent is addressing the various problems and it hopes to have secured reaccreditation by the commencement of the 2019 academic year.

19. **AD PARAHGRAPH 6.11 THEREOF**

The content of this paragraph is noted and does not call for a response by Fourth Respondent other than to state once again that the Fourth Respondent does not support the relief sought for the reasons already stated.

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20. **AD PARAGRAPHS 7.1 – 7.6 THEREOF**

The content of these paragraphs is noted and the Fourth Respondent does not take issue with any of the submissions made therein.

21. **AD PARAGRAPHS 8.3, 8.4 AND 8.5 THEREOF**

21.1 No basis for these averments exist. The right to education provided for in the Constitution is given effect to insofar as to tertiary education is concerned by way of the Higher Education Act. This Act in turn provides for various quality assurance provisions by way of recommendations to the Third Respondent by the First Respondent. Proper decisions taken by all of these bodies does not aggregate or deny rights of students. What these decisions do is to provide the appropriate quality education to these very students.

21.2 The transition between the existing programme and any new programme is one of the issues presently under discussion. There will be not prejudice to existing students. Indeed the offering of a compliant LLB can only be to the advantage of existing students.

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22. **AD PARAGRAPH 8.6 THEREOF**

The Fourth Respondent does not agree with the submissions made in this paragraph. The Fourth Respondent is and was the only party who could make informed submissions to the First Respondent regarding accreditation of its LLB programme. As already noted, Fourth Respondent accepts the decision taken on review and it is addressing the deficiencies which led to the decision.

23. **AD PARAGRAPHS 8.7 AND 8.8 THEREOF**

It is not at all clear to Fourth Respondent what institutional support it is meant to receive from First Respondent. It is not clear how such is to be provided by way of any power given by the Higher Education Act to the First Respondent. Nor is it at all clear how any such failure can provide grounds for the relief sought.

24. **AD PARAGRAPH 8.9 THEREOF**

The statement made in this paragraph is very vague. Fourth Respondent assumes that what is meant is that the Second Respondent should have played a role in setting requirements for professional registration, membership or licensing and the regulation of the professional conduct of a particular profession. The Fourth Respondent is of the opinion that this statement falls outside the bounds of the accreditation process of the LLB programme and relates to the conduct of the profession in itself.

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25. **AD PARAGRAPHS 9.1, 9.2, 9.3, 9.4, 9.5, 9.6 AND 9.7 THEREOF**

The content of these paragraphs does not call for a reply.

26. **AD PARAGRAPH 10.1 THEREOF**

The Fourth Respondent has already stated that it does not agree with the submission made within this paragraph and does not take issue at this point in time with the decision taken by the First Respondent to withdraw Fourth Respondent's LLB programme accreditation.

27. **AD PARAGRAPHS 10.2 AND 10.2.1 TO 10.2.16 THEREOF**

The Fourth Respondent does not take issue with the statement made in this paragraph in as much as that which is stated is in accordance with the content of "KM2".

28. **AD PARAGRAPHS 10.3, 10.4, 10.5 AND 10.6 THEREOF**

The Fourth Respondent is not in a position to reply to the content of these paragraphs and the knowledge falls exclusively in the knowledge of the First Respondent.

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29. AD PARAGRAPHS 11.1, 11.2, 11.3, 11.4, 11.5, 11.6 AND 11.7 THEREOF

31.1 The Fourth Respondent has taken note of the content of these paragraphs. The Fourth Respondent is of the opinion that the time periods provided namely by 6 October 2017 to the First Respondent's requests and directives were not unreasonable and that the Fourth Respondent was able to and did submit a comprehensive improvement plan to the First Respondent's offices.

31.2 The First Respondent did not require the appointment of Professors and Doctors of Law. They simply required a plan to be implemented for the appointment in due course of those Professors and Doctors of Law.

31.3 The First Respondent also did not require that infrastructure be developed and constructed during the seven-month period. All they required was a plan for the future development of such infrastructure and this and other additional information was submitted to their offices, timeously, and in compliance with the deadline.

30. AD PARAGRAPH 12.1 AND 12.2 THEREOF

The Fourth Respondent fails to understand the submission made herein. The LLB programme presented by the Fourth Respondent is not a candidacy

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programme and is a programme that has been presented by the Fourth Respondent over a period of many years.

31. **AD PARAGRAPH 12.3 THEREOF**

The Fourth Respondent is unable to respond to the averments made in this paragraph which fall within the exclusive knowledge of the First Respondent.

32. **AD PARAGRAPHS 13.1, 13.2, 13.3, 13.4, 13.5 AND 13.6 THEREOF**

Fourth Respondent is not in a position to reply to these paragraphs other than to state that it is uncertain what submissions the Second Respondent could have made in furtherance of the Fourth Respondent's implementation plan, submitted timeously, to the First Respondent.

33. **AD PARAGRAPHS 14.1 TO 14.3 THEREOF**

The Fourth Respondent is unable to reply to the averments made within this paragraph which fall within the exclusive knowledge of the First Respondent.

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34. **AD PARAGRAPHS 15.1 TO 15.3, 16.1, 16.2, 17.1, 17.2, 17.3, 17.4 AND 17.5
THEREOF**

The Fourth Respondent is again unable to reply to the averments contained within these paragraphs which does not fall within its personal knowledge.

35. **AD PARAGRAPHS 18 AND 19 THEREOF**

As already stated the Fourth Respondent has elected to abide by this Court's decision in this matter and does not intend to reply to the content of these paragraphs.

36. **AD PARAGRAPH 20 THEREOF**

Fourth Respondent has already addressed the issue of urgency and does not intend doing so once again.

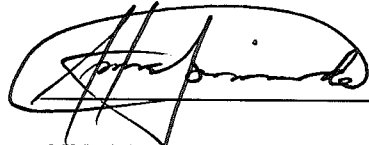
37. **AD PARAGRAPH 21 THEREOF**

The Fourth Respondent does not support the relief sought for the reasons already stated and has agreed to abide by this Honourable Court's decision.

The content of these paragraphs is noted.

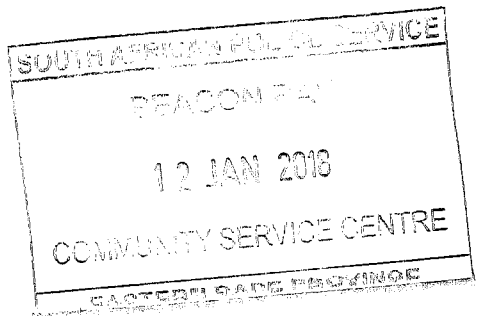
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The deponent has acknowledged that he knows and understands the content of this affidavit, which was signed and sworn to before me at East London on this day of January 2018 having complied with the regulations contained in GN R1258 of 21 July 1972 (as amended) and GN R1648 of 19 August 1977 (as amended).


COMMISSIONER OF OATHS



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