

Original

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 2289/19P

In the matter between:

INGONYAMA TRUST

APPLICANT

and

ANDRÉ MARTIN SLADE trading as INNER SPACE
DEVELOPMENTS AND/OR SODWANA BAY GUEST LODGE
(IDENTITY NO. 6206065168 087)

FIRST RESPONDENT

THE UMHLABUYALINGANA LOCAL MUNICIPALITY

SECOND RESPONDENT



AND all other persons who occupy
under or through the First Respondent
the premises known as Portion 12 of
the Farm Reserve No. 14, Farm No.
15834 HV, Sodwana, KwaZulu-Natal

FILING NOTICE

TO: The Registrar of the High Court
Pietermaritzburg

AND TO : Andre Martin Slade
Who trades as Inner Space Developments and /or
Sodwana Bay Guest House
Portion 12 of the Farm Reserve
No. 14, Farm No. 15834 HV
Sodwana
KwaZulu- Natal

AND TO : Umhlabuyalingana Local Municipality
Main Road R22
Kwa Ngwanase
KwaZulu- Natal

DOCUMENT FILED: **APPLICANT'S REPLYING AFFIDAVIT**

FILED BY:

MASON INCORPORATED
PLAINTIFF'S ATTORNEYS
3RD FLOOR, FEDSURE HOUSE
251 CHURCH STREET
PIETERMARITZBURG
REF: Mr C Johnson/cm/09I001030

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 2289/19P

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AND all other persons who occupy under or through the First Respondent the premises known as Portion 12 of the Farm Reserve No. 14, Farm No. 15834 HV, Sodwana, KwaZulu-Natal

REPLYING AFFIDAVIT

I, the undersigned,

LUCAS MKHWANAZI

do hereby make oath and say that:

1.

I am a major male and the Head of the Secretariat of the Applicant.

2.

The contents hereof fall within my personal knowledge, save where to the contrary indicated, and are to the best of my belief true and correct.

3.


Where I make submissions of a legal nature, I do so on advice of the Applicant's legal representatives.

4.

I am duly authorized to depose to this replying affidavit on behalf of the Applicant, and refer the court to annexure "A" to the founding affidavit, which I deposed to on the 28th March 2019.

5.

I depose to this affidavit in reply to the answering affidavits deposed to by the First Respondent and by one Katarina Krizaniova.

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6.

The court will note from the aforesaid affidavits, that the bulk thereof consists of unfounded, scandalous and irrelevant allegations, having no bearing whatsoever on the merits of this application. Likewise, most of the annexures to the affidavits, are completely irrelevant.

7.

Applicant will, at the hearing of the main application, ask for those allegations and annexures to be struck out. Insofar as the Rules of Court require a party to apply for striking out within a specific period of time, I respectfully submit that it will be most cost effective, and convenient, for such application to be heard simultaneously with the main application.

8.

The paragraphs in the First Respondent's affidavit which ought to be struck out, are paragraphs 3, 4, 6, 7, 9, 10 and the paragraph under the heading "Ad paragraph



32". The annexures which ought to be struck out are annexures 1, 2, 3, 4, 5, 6 and 9.

9.

The paragraphs in the affidavit of Krizaniova, which ought to be struck out, are paragraphs 3, 4, 5, 6, 9, 10 (except for the first sentence), 11 and 12. The annexures that ought to be struck out are annexures 1, 3, 4 and 5.

10.

I accordingly refer the court to the application in terms of Rule 6(11), which will be attached to this affidavit and marked annexure "X1", and pray that it may please the court to grant that relief.

11.

I do not intend to reply to each and every allegation made in the answering affidavits.

12.

I will restrict this reply to the allegations which call for a reply.



13.

Each and every allegation in the answering affidavits, which contradict the allegations in my founding affidavit, or in this affidavit, is denied.

AD THE AFFIDAVIT OF FIRST RESPONDENT

14.

Ad paragraph 5

I draw the court's attention to clause 14.1 of the lease (annexure "D" to my founding affidavit), in terms of which, upon termination of the lease for whatever reason, all buildings and other permanent structures on the premises shall remain the property of the lessor, without compensation of any sort to First Respondent (the clause erroneously refers to the "premises", instead of the "property"), but I respectfully submit that the intention is clear.

15.

Ad paragraph 8

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I draw the court's attention to the fact that First Respondent was to use the premises only for the purposes set out in clause 8 of the schedule to the lease, being a commercial workshop and residence, and for no other purpose, and the failure to utilize the premises for the purposes intended, shall constitute a breach of the lease (clauses 6.4 and 7.7).

16.

Ad paragraph 11

Section 33(1) of the Constitution affords everyone the right to administrative action that is lawful, reasonable and procedurally fair.

17.

Ad paragraph 12

I once again refer the court to the provisions of the lease, referred to in paragraph 14 hereof. The land belongs to the Applicant and so does all improvements on the land upon termination of the lease for whatever reason.



18.

I deny that First Respondent has or had the constitutional right to use the premises as a guest house ("trading accommodation for cash", as he states).

19.

Ad paragraph 14 (under the heading "Ad paragraphs 25 – 28")

The sheriff's returns of service are attached to my founding affidavit as annexures "F" and "I" respectively.

20.

I have been advised that a sheriff's return of service is *prima facie* proof of the content thereof.

21.



The lease has been duly terminated and First Respondent has no right to occupation any longer.

22.

I draw the court's attention to First Respondent's version that, in 2014 already, he decided that he will no longer pay any rent.

23.

Ad the paragraphs under the heading "Ad paragraph 30"

With regard to the allegation that the First Respondent resides on the property on the basis of a Permission To Occupy granted by the Mbile Tribal Authority and the neighbours of the "Zulu" tribe, I draw the court's attention to the allegations in my founding affidavit with regard to Applicant's ownership of the land and the conclusion of the lease. Respondent did not take issue with the allegations regarding the conclusion of the lease, or the terms thereof.

24.

Ad the paragraphs under the heading "Ad paragraph 31"

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It is clear that the First Respondent does not deny the allegations in paragraph 31 of the founding affidavit.

25.

Ad the paragraphs under the headings "Ad paragraph 32 and Ad paragraph 33)

Should the court decide not to strike out these paragraphs, I draw the court's attention to the scandalous and defamatory remarks therein. These allegations support the Applicant's case and no landlord should be compelled to endure an occupier who has such contempt for other human beings, as portrayed by the First Respondent, in these paragraphs.

26.

Ad the paragraph under the heading "Ad paragraph 35"

The fact that there may be an appeal noted against a judgment, does not mean that the judgment cannot be disclosed or be referred to.

27.

Ad the paragraphs under the heading "Ad paragraph 36"



I draw the court's attention to the fact that the allegations in paragraph 36 of the founding affidavit are either noted or admitted by the First Respondent.

28.

Ad the paragraphs under the heading "Ad paragraph 37"

The house does not belong to the First Respondent or his wife and they have no right to occupy the premises anymore.

29.

Ad the paragraphs under the heading "Ad paragraph 43"

These allegations are far-fetched. Annexure 10 to the affidavit serves no proof at all.

30.

Ad the paragraph under the heading "Ad paragraph 46"

These allegations are denied.

31.

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Ad the paragraphs under the heading "Ad paragraph 50"

I have been advised that the confirmatory by Mr Johnson, deposed to on 29 March 2019, was indeed attached to the papers. In any event, I attach a copy of the affidavit hereto.


AD THE CONFIRMATORY AFFIDAVIT BY KATARINA KRIZANIOVA

32.

Save for noting the allegations that she has been resident on the premises since 1 November 2012 (paragraph 1), that she occupies the premises under or through First Respondent (paragraph 2), and that she has read the First Respondent's answering affidavit and agree with the statements thereof insofar as it concerns her knowledge thereof (paragraph 10), each and every other allegation in this affidavit is irrelevant and/or does not require a reply.

33.

I respectfully submit that the First Respondent has failed to put up a defence to the Applicant's application and pray that it may please the court to grant the relief set out in paragraphs 1 to 4 of the Notice of Motion.


DEPONENT



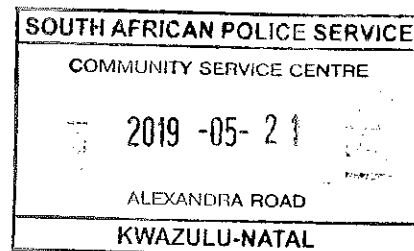
I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to at Pietermaritzburg before me on this 21 day of May 2019 the regulations contained in Government Notice No. R1258 of 21 July 1972 having been complied with.

2158064-2
[Signature]
COMMISSIONER OF OATHS

FULL NAME: Thembinkos Gladwin Mnyatza
BUSINESS ADDRESS: 101 Alexandra Road, Scottsville, PiB
CAPACITY: Sergeant.

CP 2019

Ingonyama Trust v AM Slade t.a Inner Space Development Replying Affid Mason 150519



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"X1"

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 2289/19P

In the matter between:

INGONYAMA TRUST

APPLICANT

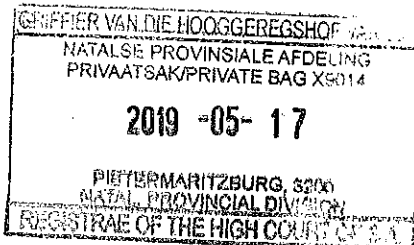
and

**ANDRÉ MARTIN SLADE trading as INNER SPACE
DEVELOPMENTS AND/OR SODWANA BAY GUEST LODGE**
(IDENTITY NO. 6206065168 087)

FIRST RESPONDENT

THE UMHLABUYALINGANA LOCAL MUNICIPALITY

SECOND RESPONDENT



AND all other persons who occupy under or through the First Respondent the premises known as Portion 12 of the Farm Reserve No. 14, Farm No. 15834 HV, Sodwana, KwaZulu-Natal

NOTICE IN TERMS OF RULE 6(11), READ WITH RULE 23(2)

**TO: THE REGISTRAR OF THE HIGH COURT
PIETERMARITZBURG**

AND TO: ANDRÉ MARTIN SLADE
who trades as INNER SPACE DEVELOPMENTS and/or
SODWANA BAY GUEST HOUSE
FIRST RESPONDENT
PORTION 12 OF THE FARM RESERVE NO. 14, FARM NO. 15834 HV,
SODWANA
KWAZULU-NATAL

AND TO: UMHLABUYALINGANA LOCAL MUNICIPALITY
SECOND RESPONDENT
MAIN ROAD, R22
KWA NGWANASE
KWAZULU-NATAL

AND TO: ALL THOSE WHO OCCUPY UNDER OR THROUGH FIRST
RESPONDENT PORTION 12 OF THE FARM RESERVE NO. 14, FARM
NO. 15834 HV, SODWANA, KWAZULU-NATAL

SIRS,

KINDLY TAKE NOTICE that application will be made simultaneously with the
hearing of the main application, for an order in the following terms:

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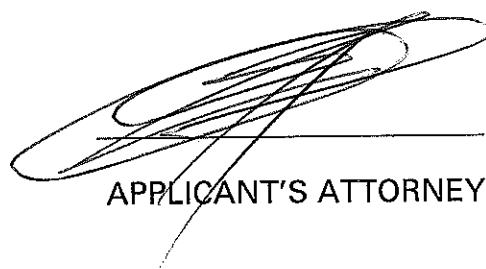
1. That, insofar as it may be necessary, Applicant's failure to move this application within the time period laid down in the Rules of Court, is hereby condoned.
2. That the following paragraphs of the answering affidavit, deposed to by the First Respondent on 10 May 2019, is hereby struck out, namely paragraphs 3, 4, 6, 7, 9, 10 and the paragraphs under the heading "Ad paragraph 32".
3. That the following annexures to the answering affidavit of First Respondent be struck out, namely annexures 1, 2, 3, 4, 5, 6 and 9.
4. That the following paragraphs of the confirmatory affidavit, deposed to by Katarina Krizaniova on 10 May 2019, be struck out, namely paragraphs 3, 4, 5, 6, 9, 10 (except for the first sentence), 11 and 12.
5. That following annexures to the confirmatory affidavit of Katarina Krizaniova be struck out, namely annexures 1, 3, 4 and 5.
6. That the costs of this application be costs in the main application.
7. Further and/or alternative relief.

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KINDLY FURTHER TAKE NOTICE that the replying affidavit, deposed to by **LUCAS MKWANAZI**, to which this notice will be attached, will be used in support of the application.

KINDLY enroll the application accordingly.

DATED AT PIETERMARITZBURG ON THIS 15TH DAY OF MAY 2019



APPLICANT'S ATTORNEY

MASON INCORPORATED
APPLICANT'S ATTORNEYS
THIRD FLOOR, FEDSURE HOUSE
251 CHURCH STREET
PIETERMARITZBURG
TEL: (033) 3454 230
(Ref: Mr. C Johnson/09I001/030)



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AND all other persons who occupy under or
through the First Respondent the premises known
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No. 15834 HV, Sodwana, KwaZulu-Natal

CONFIRMATORY AFFIDAVIT

I, the undersigned,

CARL JOHNSON

do hereby make oath and say:



1.

I am a major male attorney of this Honourable Court and I practice as a director at Mason Incorporated, which practices from the Third Floor, Fedsure House, 251 Church Street, Pietermaritzburg, KwaZulu-Natal.

2.

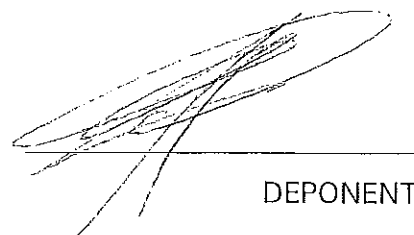
The contents hereof fall within my personal knowledge, save where to the contrary indicated, and are to the best of my belief true and correct.

3.

Mason Incorporated are the Applicant's attorneys of record and I deal with this matter.

4.

I have read the founding affidavit deposed to on behalf of the Applicant and confirm the contents thereof as far as it relates to both myself and to Mason Incorporated.



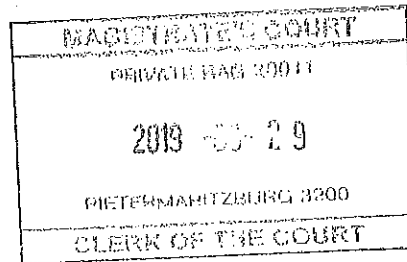
DEPONENT



I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to at Pietermaritzburg before me on this 29 day of March 2019 the regulations 2018 contained in Government Notice No. R1258 of 21 July 1972 having been complied with.

Gwender
COMMISSIONER OF OATHS

FULL NAME: Candice Gwender
BUSINESS ADDRESS: Corner Church and Otto Street, PMB
CAPACITY: Checking officer



[Handwritten signature]