

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**Case no: /19**

In the matter between:

**AFRICAN CONTENT MOVEMENT  
APPLICANT**

**AND**

**SOUTH AFRICAN BROADCASTING CORPORATION  
RESPONDENT**

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**ANSWERING AFFIDAVIT**

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I, the undersigned,

**PHATHISWA MAGOPENI**

do hereby make oath and state:

1.

1.1 I am an adult female person employed by the Respondent as a Group Executive: News and Current Affairs.

1.2 As such, I have been duly authorised to depose to this affidavit for and on behalf of the Applicant.

1.3 The facts set out herein are within my personal knowledge and are to the best of my belief both true and correct, unless I expressly indicate so or the context indicates otherwise.

2.

Where I make legal submissions, I do so on the advice of my Legal Representatives and which advice I accept.

3.

My failure to deal with any averment should not be construed as the truth, admission, accuracy and /or correctness of that fact but rather be construed as denial thereof.

#### 4.

Before I can proceed to respond to the allegations made in the Founding Affidavit, it is important to give the following background:

- 4.1 For live broadcast of any event based on the request for the parties to submit their Activity Schedules in advance, the Applicant did not inform us of its manifesto in time save for 31 March 2019.
- 4.2 The Applicant did not meet the editorial criteria for the live coverage of political parties
- 4.3 The Applicant was further informed that the applicable criteria is taking into account the ICASA Regulations of equitable coverage of political parties and the Respondent's Editorial Guidelines attached hereto as Annexure "**A1**".

- 4.4 All parties that are currently in Parliament are carried live, while new and old parties not in Parliament are covered as news stories.
- 4.5 Live coverage has serious cost implications which is around R150 000.00 (One Hundred and Fifty Thousand Rand) excluding the costs of displacing programming from SABC 1 or SABC 2. It also involves a lot of logistics.
- 4.6 ICASA Regulations provides for allocation of airtime to political parties contesting elections giving them opportunity to advertise themselves on various platforms of the broadcast licensee.
- 4.7 These are 50-second inserts that gets compiled by parties themselves and submit to the broadcaster for transmissions before the scheduled airing time. I attach hereto the said schedule and is marked Annexure "**A2**".
- 4.8 It is the responsibility of ICASA to send Annexure "**A2**" to political parties.

4.9 In the circumstances ICASA should have been **joined** in these proceedings and failure to do so renders the application defective.

I have read the affidavit of **ROMEO RAMUADA** and wish to respond as follows;

5.

**AD PARAGRAPH 1 THEREOF**

I admit contents thereof.

6.

**AD PARAGRAPH 2 THEREOF**

I deny that contents thereof are true and correct.

7.

**AD PARAGRAPH 3 THEREOF**

I note contents thereof.

8.

**AD PARAGRAPH 4 THEREOF**

I note contents thereof.

9.

**AD PARAGRAPH 5 AND 6 THEREOF**

I note contents thereof.

10.

**AD PARAGRAPH 7 THEREOF**

I note contents thereof.

11.

**AD PARAGRAPH 7.1., 7.2. 7.3. AND 7.4 THEREOF**

I do not have knowledge of the averments contained therein.

12.

**AD PARAGRAPH 8 THEREOF**

I deny that this matter is urgent, otherwise I note the remainder of the allegations.

13.

**AD PARTIES**

14.

**AD PARAGRAPH 10 AND 11 THEREOF**

I admit contents thereof.

15.

**AD PARAGRAPH 12 THEREOF**

Save to state that Respondent's attorneys current address is Flexible

Workspace 106 Johan Avenue Corner Katherine, Sandton, otherwise

the remainder of the allegations is admitted.

16.

**AD PARAGRAPH 13 THEREOF**

I admit contents thereof.

17.

**AD PARAGRAPH 14 THEREOF**

18.

**AD PARAGRAPH 15 THEREOF**

I admit the jurisdiction of this Honourable court but I deny that this matter

involves a number of constitutional issues which need to be disposed off

on.

19.

**AD THE PURPOSE OF THIS APPLICATION**

**AD PARAGRAPH 16 THEREOF**

I note contents thereof.



20.

**AD PARAGRAPHS 17, 18, 19 AND 20 THEREOF**

I note contents thereof.

21.

**AD PARAGRAPHS 17, 18, 19 AND 20 THEREOF**

I note contents thereof.

22.

**AD PARAGRAPH 21 THEREOF**

I admit contents thereof.

23.

**AD PARAGRAPH 22 THEREOF**

Save to deny that that was a negative response, I admit the remainder of the allegations.

24.

**AD PARAGRAPH 23THEREOF**

I admit contents thereof.

25.

**AD PARAGRAPH 24 THEREOF**

I admit contents thereof.

26.

**AD PARAGRAPH 25 THEREOF**

I deny that it was indicated by that office that it awaited further instructions as to how to proceed with the Applicant's request save to say that office indicated it awaited instructions from the Respondent otherwise I admit the remainder of the allegations.

27.

**AD PARAGRAPH 26 THEREOF**

I admit contents thereof.

28.

**AD PARAGRAPH 27 THEREOF**

I admit contents thereof.

29.

**AD PARAGRAPH 28 THEREOF**

I deny contents thereof.

30.

**AD PARAGRAPH 29 THEREOF**

I admit contents thereof.

31.

**AD PARAGRAPH 30 THEREOF**

I admit contents thereof.

32.

**AD PARAGRAPH 31 THEREOF**

I deny contents thereof.

33.

**AD PARAGRAPH 32 THEREOF**

I note contents thereof.

34.

**AD PARAGRAPH 33 THEREOF**

Save to deny that the Applicant's election manifesto falls as alleged, I admit the remainder of the allegations.

35.

**AD PARAGRAPH 34 THEREOF**

I deny contents thereof.

36.

**AD PARAGRAPH 35 THEREOF**

I deny contents thereof. The Applicant is not entitled to the relief sought on those grounds.

37.

**AD PARAGRAPH 36 THEREOF**

The averments contained therein are irrelevant for the purposes of this Application and I accordingly deny same.

38.

**AD PARAGRAPH 37 THEREOF**

The story news coverage to be given to the Applicant suffices to its objective with regard to its election manifesto.

I deny any imputation pointing towards any untoward conduct by the Respondent which might prejudice the Applicant.

39.

**AD PARAGRAPH 38 THEREOF**

The allegations relate to ICASA which is not cited in these papers and I accordingly deny contents thereof.

40.

**AD PARAGRAPHS 39, 40, 41 AND 42 THEREOF**

I note contents thereof.

41.

**AD PARAGRAPH 43 THEREOF**

I deny contents thereof.

The ICASA Regulations contained and published under Government Gazette Volume 644 dated 25 February 2019, No. 42249, Regulation 4 thereof, regulates party election broadcasts (KB) and the procedure to be followed for the benefit of the Applicant once there is compliance therewith which is annexed hereto as Annexure “**A3**”.

42.

**AD PARAGRAPH 44 THEREOF**

I have already indicated that the story news coverage that will be afforded to Applicant suffices and I accordingly deny the allegations contained herein.

43.

**AD PARAGRAPH 45 THEREOF**

I deny contents thereof. All political parties are afforded equitable coverage through ICASA regulations.

44.

**AD PARAGRAPHS 46 AND 47 THEREOF**

I deny contents thereof.

45.

**AD PARAGRAPHS 48 AND 49 THEREOF**

I admit contents thereof.

46.

**AD PARAGRAPH 50 AND 51 THEREOF**

I deny contents thereof.

47.

**AD PARAGRAPH 52 THEREOF**

I deny contents thereof.

48.

**AD PARAGRAPH 53 THEREOF**

I deny contents thereof.

49.

**AD PARAGRAPH 54 THEREOF**

I deny that Regulation 4 obligation is to provide for live coverage rather it allocates time slots for party election broadcasts.

The time slots allocated in terms of the said Regulations is 50 (fifty) seconds.

50.

**AD PARAGRAPH 55 THEREOF**

I deny contents thereof.

51.

**AD PARAGRAPH 56 THEREOF**

I note contents thereof.

52.

**AD PARAGRAPHS 57, 58 AND 59 THEREOF**

I note contents thereof.

53.



**AD PARAGRAPH 60 THEREOF**

Only in exceptional circumstances can a live broadcast of a party's manifesto be allowed which is not applicable in this case.

54.

**AD PARAGRAPHS 61, 62, 63 AND 64 THEREOF**

I note contents thereof.

55.

**AD PARAGRAPH 65 THEREOF**

I deny contents thereof.

***AD URGENCY***

56.

**AD PARAGRAPH 66 THEREOF**

1. The Applicant does not disclose to this Honourable Court as to when it commenced with its preparations towards launching its manifesto.

2. The Applicant does not indicate what preparations were put in place for the launching of the said manifesto.
3. The call made by Mr Motsoeneng on 31 March 2019 clearly indicates that the Applicant had knowledge of certain things to be done prior to the launching of its manifesto.
4. Mr Motsoeneng knew very well that certain procedures should be followed prior to launching of the Applicant's manifesto.
5. The said call of 31 March 2019 was a clear, deliberate omission on the Applicant's side.
6. The intention of such deliberate omission had a sole purpose to create urgency of the relief sought.
7. The Applicant knew the Respondent's response on 31 March 2019 and a *morae* sent by its attorneys did not add any value for the urgency alleged.
8. In the circumstances, I humbly submit that this urgency is self-created.

57.

**AD PARAGRAPH 67 THEREOF**

1. I deny contents thereof.
2. The Applicant still benefits under Regulation 4 through provision of PEB.

58.

**AD PARAGRAPH 68 THEREOF**

I deny contents thereof.

59.

**AD PARAGRAPH 69 THEREOF**

1. I deny contents thereof.
2. The Applicant still benefits under Regulation 4 through provision of PEB.

60.

**AD PARAGRAPH 70 THEREOF**

I note contents thereof.

61.

**AD PARAGRAPH 71 THEREOF**

I deny that the Respondent has not rendered a justified decision.

62.

**AD PARAGRAPH 72 THEREOF**

I note contents thereof.

63.

**AD PARAGRAPH 73 THEREOF**

Wherefore I pray that this application be struck off the roll, with costs, for lack of urgency.

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**DEPONENT**

**THUS SIGNED AND SWORN TO** at \_\_\_\_\_ on this the \_\_\_\_\_ day of **April 2019**. The deponent having acknowledged that the deponent knows and understands the contents of this affidavit, that the oath which the deponent has taken in respect thereof is binding on the deponent's conscience, and that the contents of this affidavit are both true and correct.

I certify further that the provisions of Regulation R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, have been complied with.

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**COMMISSIONER OF OATHS**

**NAME:**

**ADDRESS:**