

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

CASE NO: 15996/2017

In the matter between:

DUDUZILE CYNTHIA MYENI **Applicant**

and

ORGANISATION UNDOING TAX ABUSE NPC	First Respondent
SOUTH AFRICAN AIRWAYS PILOTS ASSOCIATION	Second Respondent
SOUTH AFRICAN AIRWAYS SOC LTD	Third Respondent
AIR CHEFS SOC LTD	Fourth Respondent
MINISTER OF FINANCE	Fifth Respondent

In re:

ORGANISATION UNDOING TAX ABUSE NPC	First Plaintiff
SOUTH AFRICAN AIRWAYS PILOTS ASSOCIATION	Second Plaintiff

and

DUDUZILE CYNTHIA MYENI	First Defendant
SOUTH AFRICAN AIRWAYS SOC LTD	Second Defendant
AIR CHEFS SOC LTD	Third Defendant
MINISTER OF FINANCE	Fourth Defendant

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE THAT the Applicant (“Duduzile Cynthia Myeni”) intends applying to the above Honourable Court on a date and time to be determined by the Registrar for leave to appeal to the Supreme Court of Appeal against the order of Lordship Judge R G Tolmay, handed down on 12 December 2019 under case number **15996/2017**.

TAKE NOTICE FURTHER that the grounds upon which leave to appeal is sought are that the Court erred in the following respects:

1. The learned Judge misdirected herself by interpreting section 162 of the Companies Act 71 of 2008, (“the Act”) to mean that the first Plaintiff has *locus standi* to bring application in terms of section 162.

2. Section 162(1) states the following:

- (a) relating to the promotion, formation or management of a juristic person;*
- (b) regulating an industry or sector of an industry; or*
- (c) imposing obligations on, prohibiting any conduct by, or otherwise regulating the activities of, juristic person¹*

Subsection (2) “a company, a shareholder, director, company secretary or prescribed officer of a company, a registered trade union that represents employees of the company or another representative of the employees of a company may apply to a court for an order declaring a person delinquent or under probation if –

¹ Section 161 (1) of the Companies Act 71 of 2008

(a) *the person is a director of that company or, within the 24 months immediately preceding the application, was a director of that company;*
and

(b) *any of the circumstances contemplated in –*

(i) *subsection (5) (a) to (c) apply in the case of an application for a delinquency; or*

(ii) *subsections (7) (a) and (8) apply, in the case of an application for probation.”²*

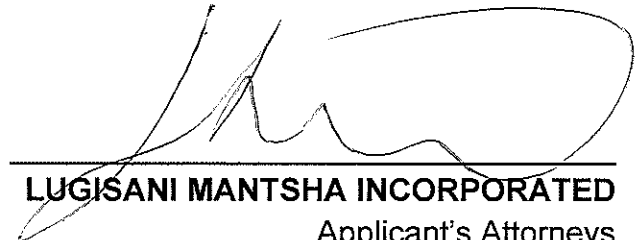
3. It is submitted that another court will interpret section 162 of the Companies Act, not to extend *locus standi* to the first Plaintiff.

4. The learned Judge misdirected herself in deciding to hear and making rulings on the interlocutory applications for leave to amend the plea and joinder application before hearing the special plea of *locus standi* of the first Plaintiff. By so doing the Honourable Judge placed herself in untenable position where she could no longer refuse the *locus standi of the First Plaintiff* given that she had already ruled in favour of the First Plaintiff in both interlocutory applications. The Second Plaintiff had not opposed both interlocutory applications and thus denying the First Plaintiff *locus standi* would have invalidated the rulings on the interlocutory applications.

² Section 162(2) of the Companies Act 71 of 2008

5. It is submitted that another court will find that the learned Judge had erred in hearing the amendments and joinder applications before *locus standi*.

Dated at **JOHANNESBURG** on this the **21ST** day of **JANUARY 2020**.



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**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT, PRETORIA**

AND TO: PANDOR ATTORNEYS
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