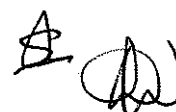


IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case Number: 41970/2017

In the matter between:

GROUNDWORK	First Applicant
MINING AND ENVIRONMENTAL JUSTICE COMMUNITY NETWORK OF SOUTH AFRICA	Second Applicant
EARTHLIFE AFRICA JOHANNESBURG	Third Applicant
BIRDLIFE SOUTH AFRICA	Fourth Applicant
ENDANGERED WILDLIFE TRUST	Fifth Applicant
FEDERATION FOR A SUSTAINABLE ENVIRONMENT	Sixth Applicant
ASSOCIATION FOR WATER AND RURAL DEVELOPMENT	Seventh Applicant
BENCH MARKS FOUNDATION	Eighth Applicant
and	
ATHA-AFRICA VENTURES (PTY) LTD	First Respondent
DR PIXLEY KA ISAKA SEME LOCAL MUNICIPALITY	Second Respondent
GERT SIBANDE DISTRICT MUNICIPALITY	Third Respondent
MEC FOR AGRICULTURE, RURAL DEVELOPMENT, LAND, AND ENVIRONMENTAL AFFAIRS MPUMALANGA	Fourth Respondent
MINISTER OF ENVIRONMENTAL AFFAIRS	Fifth Respondent
CHIEF DIRECTOR, DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND, AND ENVIRONMENTAL AFFAIRS MPUMALANGA	Sixth Respondent
MINISTER OF MINERAL RESOURCES	Seventh Respondent
THE MINISTER OF WATER AND SANITATION	Seventh Respondent



FIRST RESPONDENT'S ANSWERING AFFIDAVIT ON URGENCY

I, the undersigned

PRAVEER TRIPATHI

do hereby declare under oath as follows:

DEPONENT

1. I am a major male businessman and the Senior Vice President of the Sixth Respondent, Atha-Africa Ventures (Pty) Ltd ("*Atha Africa*"). I am employed in this capacity at 8th Floor, Sinosteel Plaza, 159 Rivonia Road, Morningside, Sandton, 2144, Gauteng Province.
2. By virtue of my capacity as the Senior Vice President of Atha Africa, I am duly authorised to depose to this answering affidavit and to oppose this allegedly urgent application on behalf of Atha Africa.
3. The contents of this affidavit are within my personal knowledge, unless the contrary is stated or appears from the context, and are to the best of my knowledge and belief both true and correct.
4. Insofar as this affidavit contains legal submissions, I make those submissions on the basis of legal advice which Atha Africa and I have received from our legal representative and which advice we accept.



INTRODUCTION

5. In this answering affidavit, I only deal with the lack of urgency in the application launched by the Applicants. I will demonstrate to this Honourable Court that -

- .1 in the first instance, this application is not urgent at all; and
- .2 in the second instance, Atha Africa - because of the ridiculously and unreasonable short period of time afforded to it to file its answering affidavit - did not have a proper and reasonable opportunity to consult with our legal representatives and to prepare a proper response to the Applicants' allegations regarding the merits of their application.

6. The Applicants' legal representatives ("CER") have been bombarding Atha Africa with demands for an undertaking not to commence mining, which were repeatedly met with the response that Atha Africa will only commence mining once all the relevant notices, consents and permissions were in place. CER then launched this application at **16:44 pm on Tuesday 20 June 2017** and filed a further supplementary affidavit as late as **Thursday 22 June 2017**, adding to the allegations which Atha Africa was asked to respond to by **Friday 23 June 2017**, after the Applicants have already enrolled the matter for hearing in the urgent court. In this regard I point out that paragraph 5.1 of the Practice Manual requires that the Applicants provide a reasonable time within which the Respondents may file an answering affidavit and also provides that the date and time selected by the



Applicants for the enrolment of the application must enable the Applicants to file a replying affidavit if necessary. This application was launched at 16:44 pm on Tuesday, 20 June 2017 and afforded time for the delivery of answering affidavits by no later than 16:00 pm on Friday, 23 June 2017. The further supplementary affidavit was filed on Thursday, 22 June 2017. Having regard to the closure of the urgent roll at 12:00 pm on a Thursday, Atha Africa was in effect given 1½ days to answer to founding (and supplementary) papers whilst the Applicants prepared their papers over a period of weeks. This is, with respect, litigation by ambush.

7. Because of the Applicants' extremely unreasonable and irresponsible conduct in refusing to allow Atha Arica a proper opportunity to consult with its legal representatives and because of the Applicants' utter disregard for the practice directive and/or prescripts of the practice manual of this Honourable Court, regarding the enrolment of urgent matters, I respectfully submit that this application should not only be dismissed or alternatively struck from the roll for lack of urgency but the Applicants should also not be allowed to hide behind section 32(3)(a) of the National Environmental Management Act 107 of 1998 (*the NEMA*) to escape an appropriate costs order. I respectfully submit that the Applicants should be ordered to pay the costs of this application on an attorney and own client scale and Atha Africa will ask this Honourable Court to award costs *de bonis propriis*.

8. I do not deal with the remaining allegations in the founding affidavit regarding the alleged merits of the Applicants' affidavit because of the ridiculously and unreasonable short period of time afforded to Atha Africa for the filing of an answering affidavit - it was simply not possible to do so in the short time available.



This should, however, not be construed as an admission of any of the allegations relied upon by the Applicants. If this Honourable Court should find that the application is indeed urgent or semi-urgent (both of which is denied), Atha Africa respectfully requests this Honourable Court to postpone the application to afford Atha Africa a proper and reasonable opportunity to respond to the allegations contained in the Applicants' founding application.

9. Before I proceed to deal with the lack of urgency I provide this Honourable Court first with relevant and essential background information, set out by way of a brief overview given the constraints of time.

ESSENTIAL BACKGROUND FACTS

10. At the centre of this application is a mining right which was granted to Atha Africa in terms of section 23 of the Mineral and Petroleum Resources Development Act 28 of 2002 (*"the MPRDA"*) to conduct underground coal mining activities on certain immovable properties situated in the Mpumalanga Province, which is referred to as the Yzermyn Underground Coal Mine. The mining right application was preceded by prospecting activities which Atha Africa conducted in terms of a prospecting right and, in terms of section 19(1)(b) of the MPRDA, Atha Africa as the holder of a prospecting right had the exclusive right to apply for and be granted a mining right in respect of the mineral and prospecting area concerned.

11. Four (4) of the immovable properties, included in Atha Africa's mining right, fall within an area declared in terms of the National Environmental Management:



Protected Areas Act 57 of 2003 (*the NEMPAA*) as the Mabola Protected Environment, which in total include 21 immovable properties with a total extent of some 8578,929 hectares. I point out that the Mabola Protected Environment was declared as such after Atha Africa had already lodged its mining right application. I also point out that, of all the classes of protected areas envisaged in the NEMPAA, a Protected Environment is the only one where mining is allowed with ministerial consents under section 48 of the NEMPAA (which consents were duly obtained by Atha Africa).

12. I point out that there will be no surface infrastructure on any of the immovable properties which have been included in the Mabola Protected Environment and that Atha Africa's activities on those four (4) immovable properties will be restricted to underground mining. Atha Africa's surface infrastructure will be erected on portions of Portion 1 of the farm Yzermyn 96 HT, which has been specially excluded from the declaration of the Mabola Protected Environment for the specific purpose of accommodating surface infrastructure for purposes of Atha Africa's Yzermyn Coal Mine. Even the layout of the surface structure on the relevant area of Portion 1 of the farm Yzermyn 96 HT has been planned to ensure that the potential impact on the environment will be minimal.

13. Atha Africa's mining right relates to the following immovable properties, which are all privately owned:

13.1 the farm Bloemhof 92 HT;

A handwritten signature in black ink, consisting of stylized initials or a name, located in the bottom right corner of the page.

- 13.2 the farm Goedgevonden 95 HT;
- 13.3 the farm Kromhoek 93 HT;
- 13.4 Portion 1 of the farm Nauwgevonden 110 HT;
- 13.5 the farm Paardekop 109 HT;
- 13.6 the farm Uitzicht 108 HT;
- 13.7 Portion 2 and the Remaining Extent of the farm Van der Waltspoort 81 HT;
- 13.8 the farm Virginia 91 HT;
- 13.9 Portion 1 of the farm Yzermyn 96 HT;
- 13.10 the Remaining Extent of the farm Yzermyn 96 HT; and
- 13.11 the farm Zoetfontein 94 HT;

(which immovable properties are jointly hereinafter referred to as the "*Mining Properties*").

14 . The individual landowners of the Mining Properties have not been joined to this application, although they no doubt have a direct and substantial interest in the relief that is being sought by the Applicants in respect of their land.



LACK OF URGENCY

15 This application is not urgent at all.

16 Atha Africa is not planning to commence mining activities on 28 June 2017 as alleged by the Applicants. The Applicants (legally represented by the Centre for Environmental Rights, holding itself out as experts in environmental law) are fully aware that there is a whole host of conditions and statutory permissions which Atha Africa has to comply with in order to commence mining. I have for the convenience of this Honourable Court prepared a schedule of the permits and permissions which Atha Africa has either already obtained or have applied for, and the current status of those applications. I annex a copy of the schedule as annexure 'AA1' hereto.

16.1 In order to undertake this underground mining project, Atha Africa requires a mining right in terms of the MPRDA, a copy of which is attached as annexure 'AA2' hereto. This legislation is administered by the National Department of Mineral Resources. In terms of this mining right, Atha Africa is legally obliged in terms of section 23(5) thereof to commence mining within one year from the date on which the mining right becomes effective. In this instance that date would have been 28 June 2017. However, Atha Africa already realised towards the end of May 2017 that this would not be feasible, given all the other consents and permissions that were outstanding. As a result and as soon as a resolution could be taken by the Board of



Directors of the Atha Group (some of whom were travelling abroad) in this regard, a decision was taken on 19 June 2017 and supplied to Atha Africa (as the South African subsidiary) only on 21 June 2017. A copy of the consequent application for extension in terms of section 25(2)(b) of the MPRDA is attached as annexure 'AA3' hereto. As set out in the last column headed "*Compliance Status*" in annexure 'AA1', an application for the extension of the period for commencement with mining activities is pending.

16.2 Atha Africa also requires an environmental authorisation in terms of the NEMA in order to commence with certain listed activities incidental to or related to the underground coal mining project. Although this is national legislation, this environmental authorisation was granted by the provincial authority responsible for environmental affairs in Mpumalanga. A copy of the environmental authorisation is attached as annexure 'AA4' hereto. In the last column headed "*Compliance Status*" in annexure 'AA1', the following are indicated:

16.2.1 A written notification of commencement must be given to the provincial authorities no later than 14 days prior to the commencement of the activity, which has not yet been done.

16.2.2 The current Environmental Management Programme Report must be amended to allow for a best environmental



option in respect of Management and Monitoring - the proposed amendment for the Environmental Management Programme Report, to be informed by specialist studies, is yet to be submitted for approval and such amendment has not yet been affected.

16.2.3 The required Environmental Control Officer has already been appointed.

16.2.4 The Environmental Control Officer is responsible for the establishment of an Environmental Committee (which has to be established before construction can commence, of which committee the membership as well as the purpose, outcomes, role and functions thereof must be approved by the provincial authority), none of which has yet been done although we have taken some steps in respect thereof

16.2.5 A permit must be obtained for the removal and relocation and/or destruction (where inevitable) of indigenous protected and endangered plant and animal species (on the small surface area planned to be used for infrastructure on Portion 1 of the farm Yzermyn 96 HT), in respect of which an application has been submitted.

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.

16.2.6 Liaison with landowners and/or farmers has been concluded.

16.2.7 A "*Plant Rescue and Protection*" Plan has been finalised.

16.2.8 A wetland specialist must carry out quarterly audits of the wetlands to be submitted to the provincial authority and the Environmental Committee, which is in pending.

16.2.9 In the result and in view of **paragraph 16.2.1, 16.2.2, 16.2.4 and 16.2.5 above**, Atha Africa cannot commence mining, either on 28 June 2017 or within the foreseeable future.

16.3 Furthermore Atha Africa also requires a water use licence in terms of the National Water Act 36 of 1998 ("*the NWA*") in order to commence with and undertake the underground coal mining project. This legislation is administered by the National Department of Water and Sanitation. A copy of the water use licence is attached as annexure '**AA5**' hereto.

16.3.1 The Department of Water and Sanitation must be notified in writing one week prior to commencement of the licensed activity, which has not been done.

16.3.2 Likewise the current Environmental Management Programme Report must be amended to allow for a best



environmental option in respect of Management and Monitoring - the proposed amendment for the Environmental Management Programme Report, to be informed by specialist studies, is yet to be submitted for approval and such amendment has not yet been affected.

16.3.3 Work Method Statement, site plans and detailed design drawings for the construction of all infrastructure must be submitted to the Department of Water and Sanitation for written approval before construction of the infrastructure can commence. This process is pending, but in practice it is a process that takes months and is not something that is completed overnight.

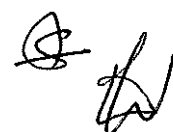
16.3.4 The required Environmental Control Officer has been appointed.

16.3.5 The required Storm Water Management Plan has been approved.

16.3.6 In the result and in view of **paragraph 16.3.1, 16.3.2 and 16.3.3 above**, Atha Africa cannot commence mining, either on 28 June 2017 or within the foreseeable future.



- 16.4 Atha Africa also requires ministerial consents in terms of section 48 of the NEMPAA for commercial mining in a Protected Environment. This legislation is administered by the National Department of Environmental Affairs. A copy of the ministerial consents (by the Minister of Mineral Resources given on 21 November 2016 and by the Minister of Environmental Affairs given on 20 August 2016 respectively) is attached as annexure **'AA6'** hereto. Under this consent, written notification of commencement of the project must be given prior to the commencement of any activity but this has not yet been done.
- 16.5 Under the applicable municipal land use planning legislation, Atha Africa must also obtain a rezoning of Portion 1 of the farm Yzermyn 96 HT which allows for the surface of the land in question to be used for mining activities. This legislation is administered by the local municipality. This process for obtaining the required rezoning is underway, as appears from a letter of 12 June 2017 attached as annexure **'AA7'** hereto. This is another reason why Atha Africa will not commence mining either on 28 June 2017 or within the foreseeable future
- 16.6 Accordingly it is clear that there are a number of notices and permissions that are still pending or must still be given. Without those notices or permissions, mining cannot commence.



17 . In this regard the Applicants and CER have been constantly informed that Atha Africa will only commence mining once all the required notices, consents or permissions were in place. What is more, the Applicants and CER are intimately acquainted with all of these documentation. I know that CER is in possession of the ministerial consents under section 48 of the NEMPAA (annexure 'AA6'), the water use licence under the NWA (annexure 'AA5') and the environmental authorisation under the NEMA (annexure 'AA4'). The Applicants and CER have lodged administrative appeals against the granting of the water use licence and against the granting of the environmental authorisation, and are on record as considering a review of the ministerial consents. They therefore must know about all these further requirements to be complied with before mining can commence.

18 . Atha Africa is a responsible miner and foreign investor who is committed to create a real and definite socio-economic benefit to the region and the South African national interest. Atha Africa has through its attorney of record, in almost all its letters to the Applicants' legal representatives, continuously stated that it will only commence with mining operations once it has complied with all its statutory obligations and requirements.

19 . I had an interview with a journalist on 3 May 2017, which resulted in an article being published only on 18 May 2017. At the beginning of May 2017 we were still optimistic that we would be able to comply with the legal obligation under the MPRDA to commence mining on or before 28 June 2017 (which was conveyed to the journalist) but, over the next few weeks, we realised that various matters were



getting delayed for reasons beyond the control of Atha Africa. Most of the requirements mentioned in **paragraph 16 above** were not within the control of Atha Africa and the timelines for obtaining all of them were very uncertain. This underground coal mining project requires a capital expense deployment of an estimated R 500 million. The deployment of this kind of funding can only be done on the basis of a very definite project scheduling. Additionally, putting the standard FIDIC Engineering Contract Packages in place for the various construction activities also require many weeks to finalise. Atha Africa has invited tenders and received a number of bids by April 2017, but because of the uncertain timelines could not make any final selection of contractors. As a result, this process was also postponed and is yet another reason why Atha Africa will not be able to commence mining either on 28 June 2017 or within the foreseeable future. In a project of this magnitude, when it comes to foreign investment within a constantly changing regulatory environment and regulatory uncertainty amidst a barrage media propaganda initiated by the Applicants, situations and deadlines change very quickly: whilst Atha Africa had the aspiration on 3 May 2017 to commence with the mining project within the deadline imposed by the MPRDA, the situation changed so rapidly that Atha Africa was forced to rethink its schedule.

20 . Furthermore the Applicants waited until the very last minute before they launched this application, thereby creating their own urgency.

20.1 In Case 73278/2015 before this Honourable Court, the Applicants (represented by CER as attorney of record) launched an application for the review and setting aside of the decisions pertaining to the granting



of a mining right in terms of section 23 of the MPRDA. That application was launched on or about 9 September 2015.

20.2 Attached to the founding papers was an annexure 'PML 15', of which I attach a copy as annexure 'AA8' hereto. This letter of 14 April 2015 recorded the decision of the Minister of Mineral Resources but of importance for this matter is paragraph 4 thereof: therein it is pointed out that in terms of section 23(5) of the MPRDA, the mining right will come into effect on the date on which the Environmental Management Programme is approved and that in terms of section 25(2)(b) thereof mining activities must commence within one year of the effective date.

20.3 Ordinarily such an Environmental Management Programme is approved within a matter of months, wherefore the Applicants should have realised that Atha Africa would soon be under a legal compulsion to commence with mining activities. Be that as it may, the Environmental Management Programme was approved on 28 June 2016.

20.4 Some of the Applicants were registered interested and affected parties for the purposes of the environmental impact assessment and therefore they must have been notified of this outcome. In fact, CER on behalf of the Applicants lodged an administrative appeal against the decision of the Regional Manager of the Department of Mineral Resources to approve the Environmental Management Programme as



early as on or about 13 October 2016. A copy of the relevant notice of appeal is attached as annexure '**AA9**' hereto.

20.5 In the result the Applicants must have and did know already since approximately 13 October 2016 (that is, some eight months ago) that Atha Africa was under a legal obligation to commence mining by no later than 28 June 2017 yet they waited until 20 June 2017 to rush of the court. Under these circumstances the Applicants have created their own urgency.

21 In the result I respectfully submit that the deviation from the Uniform Rules of Court by the Applicants is not justified by any urgency and there is no reason for any abrogation or curtailment of the time period referred to in rule 6(5) of the Uniform Rules of Court.

22 There is therefore with respect no reason why this application should take precedence over other matters on the court roll and no reason why the Honourable Court should grant the order for the enrolment of this application as an urgent application.

RIDICULOUS AND UNREASONABLE SHORT TIME PERIOD

23 The Applicants' legal representative ("CER") addressed a letter to Atha Africa's attorney on 19 June 2017, a copy of which is attached as annexure '**AA10**'



hereto. As appears more fully from this letter, it is four pages long and addresses a number of complex matters relating to matters of which Atha Africa's attorney would not have any knowledge of, namely the status of pending applications lodged by Atha Africa.

24 . I state for the record that Atha Africa does not know when the permissions and permits which it requires will be granted and whether any administrative appeals will be lodged against the granting of the permissions or permits. It is therefore simply impossible to give any firm indication of when Atha Africa will be in a position to legally commence with mining operations. Atha Africa has always been adamant it will only commence mining once it has obtained all relevant statutory permissions and consents. The commencement of a mining operation is also not with respect as simple as the mere pushing of a "*start button*": it requires construction and conclusion of contracts, all of which depends on the granting of all the relevant permits and permissions.

25 . In paragraph 21 of the said letter (annexure '**AA10**'), CER requested that Atha Africa should furnish it by **9:00 on Tuesday 20 June 2017** with an undertaking that it will not commence with mining operations. This request was extremely unreasonable and opportunistic. I respectfully submit that CER clearly did not want to afford Atha Africa an appropriate time to respond to its allegations and was already set on rushing off to court, no doubt with funding that they obtain from third parties and under the false apprehension that the Applicants will be protected against any possible costs orders in terms of section 32 of NEMA.



26 . Mr Joubert of GFJ Attorneys (the attorney of record for Atha Africa) first attempted to get hold of myself and other members of Atha Africa's management, and also our legal counsel, which he could not do within the short period of time as we all were engaged in our respective daily duties. I respectfully refer this Honourable Court to the confirmatory affidavit of Mr Joubert, attached as annexure 'AA11' hereto.

27 . Atha Africa's attorney of record, GFJ Attorneys, responded to CER by letter dated 20 June 2017 and which was dispatched to CER on 20 June 2017 at 11:15. I attach a copy of this letter as annexure 'AA12' hereto. As appears more fully from this letter, Mr Joubert informed CER as follows (own underlining):

"3. We take issue with your unreasonable demand that unless our client does not provide you with a response by 9:00 today; you will proceed with an urgent interdict application. Your demand is unreasonable to the extreme. We were not in a position to consult with our client or counsel today. As you know, our client is part of a multinational group with well-established internal governance and decision-making structures, which in turn warrants that all decisions and or instructions to legal counsel must be informed and signed off by the relevant mandated holders within the company. You will appreciate that this is not an uncommon or unreasonable corporate governance regime.



4. Furthermore, you will appreciate that the legal counsel, currently on brief from our client, is a Senior Counsel who was not available for consultation today since he is attending to another urgent matter. It is only reasonable to brief the same SC, who possesses the full knowledge of this very complex matter, within a reasonable timeframe. Especially if there is, with respect, no merits for urgency whatsoever.

5. We strongly submit that, given the CER's history of multiple requests for time extensions during the existence of this matter, your vexatious demand to compel our client to make a decision within one day without proper consultation and taking clear instructions, alludes to nothing more than acting in bad faith and with disrespect.

6. In light of the abovementioned, we reiterate that there is no merit for urgency at all and that we will therefore, only revert to you after proper consultation with our client and counsel. We will, however, endeavor to revert back to you by the end of the week."

28 CER, however, failed to respond to the letter from Mr Joubert and instead at **16:44pm on Tuesday 20 June 2017** they emailed this application to Mr Joubert. A copy of the email is attached as annexure 'AA13' hereto. As appears more fully from this email, CER informed Mr Joubert as follows:



"The papers make up too large a file to send via email. We therefore attach the Notice of Motion to this email and the Founding Affidavit in two parts to subsequent emails and supply the full Founding Affidavit with annexures at the following Dropbox link."

29 . I refer this Honourable Court to the email from Mr Joubert to Ms Horsfield of CER which preceded the abovementioned email (contained in annexure 'AA13'), and in which he informed Ms Horsfield as follows:

"I confirm that you may serve your client's application via email. Please consider the relevant Court Rules of the High Court: Gauteng Division, in as far as same relates to reasonable timeframes. Our client strongly object against your extremely irrational and unreasonable demands.

Our client urges you to reconsider lodging an urgent interdict for the reasons as stated before in our correspondence and telephonic discussion with you. Our client reserve all their rights to strongly oppose the relevant application as well as to seek a punitive cost order against your client(s) at the CER."

30 . Atha Africa's attorney responded to CER's email in a letter dated 21 June 2017 (Wednesday), in which it informed CER as follows (own underlining):



"2. We note in your email ... that you state that 'The papers make up too large a file to send via email. We therefore attach the Notice of Motion to this email and the Founding Affidavit in two parts to subsequent emails and supply the full Founding Affidavit, **with annexures at the following Dropbox link...**

3. This is NOT what we agreed when we confirmed that you may serve via email. As repeatedly said before, we do not accept any documents via Dropbox! You know this very well. It is ridiculous that you, who have created your own irrational urgency, state that the 'papers make up too large a file to send via email', yet you expect our client to print out volumes of papers at their inconvenience and expense, whilst at the same time demanding an equally ridiculous and unreasonable timeframe in which our client needs to respond. We reiterate that we will not entertain your unreasonable timeframe in which our client needs to respond. We reiterate that we will not entertain your unreasonable and irregular requests and furthermore demand, as a matter of urgency that you provide us with hard copies of all the annexures which we will collect from your correspondents as soon as the documents are available."

A copy of this letter is attached as annexure '**AA14**' hereto.



31 CER's correspondents only made a hard copy of the urgent application available to Mr Joubert on Wednesday 21 June 2017 at 12:00pm. I respectfully refer this Honourable Court to the confirmatory affidavit of Mr Joubert.

32 Atha Africa was only able to consult with Mr Joubert on Thursday 22 June 2017 and realised that there was absolutely no urgency in the application. Atha Africa was by then already engaged in preparing an application to the Minister of Mineral Resources in terms of section 25(2)(b) of the MPRDA for an extension of a further year for Atha Africa to commence mining on the Mining Properties. Atha Africa's attorney in a letter dated 22 June 2017 (Thursday), a copy of which is attached as annexure 'AA15' hereto, informed CER as follows:

"1. We refer to our previous letter dated 19 June 2017 wherein we inter alia informed you firstly, that the time you afforded us to respond to your request for an undertaking was unreasonable in the extreme and secondly that we would only be in a position to consult and obtain instructions from our client during the course of this week.

2. You, however, elected to ignore our letter and proceeded to launch an interdict on an urgent basis in which the timelines you afforded us were ridiculous. Moreover, no attempt whatsoever was made by you to adhere to the practice directive of the North Gauteng High Court with regard to the bringing of urgent applications. We record that your notice of motion and founding



affidavit was sent to us by email on Tuesday afternoon at 16:45pm and that hard copies which by your own admission were too large for service, were only made available to us on Wednesday 21 June 2017 at 12pm. In this regard, Mr Joubert from our offices had to collect the documents from your correspondent in person.

3. We have consulted with our client regarding your request for an undertaking. Our client instructed us that they have applied to the Minister of Mineral Resources in terms of section 25(2)(b) of the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA") for an extension of a further year to commence its mining operations in respect of the land covered by its mining right. You are also no doubt aware of the numerous conditions that our client have to comply with before it can commence mining. There can be no question of your client having any apprehension that our client intended to commence mining on 28 June 2017. In any event if you had such an apprehension you would not have waited until the eleventh hour to launch an urgent application in circumstances where you were informed that we will only be able to consult with our client later during the week.

4. There is absolutely no urgency and any alleged urgency which your client rely on was no doubt self-created. It is with



respect, an abuse of the court process, and financial resources to persist with your application for interim relief.

5. We hereby afford you until 17:00 Friday 23 June 2017 to withdraw your court application for interim relief and to tender our costs, failing which we will have no option but to ask the High Court for a punitive costs order and an order de bonis propriis."

33 . I emphasize and respectfully submit that CER is clearly driving this litigation in its own interest. Atha Africa's attorney is not privy to all the business activities conducted by Atha Africa and needs to obtain instructions from Atha Africa before it can give any undertakings on behalf of Atha Africa. Mr Joubert informed CER of his difficulties to consult with Atha Africa and our legal counsel and requested to be afforded until the end of the week, which I respectfully submit was not an unreasonable request. Had CER adhered to this request, it would have known that there is no intention from Atha Africa to commence mining as they allege.

34 . On **Thursday 22 June 2017**, CER filed yet a further supplementary affidavit on behalf of the Applicants. The Applicants went ahead and **before** the lapsing of the time they afforded Atha Africa to respond, they enrolled the application for hearing on the urgent roll. This is a total disregard of the practice directive of this Honourable Court regarding urgent applications. In the result an



application in which the papers are not yet complete burdens the roll of the Honourable Court.

35 CER responded to our attorney's letter by way of a letter dated 23 June 2017 (Friday), a copy of which is attached as annexure 'AA16' hereto. As appears more fully from this letter, they refuse to withdraw their application and request Atha Africa to provide them with an undertaking that they will not commence with mining operations within a period of one year. I respectfully submit that this request is obnoxious and is clearly an attempt to use unjustified litigation as a lever for obtaining undertakings to which neither CER nor the Applicants are entitled. CER clearly, either in their own interest or on behalf of the Applicants, regard themselves as a law unto themselves with the authority to dictate extremely limited time-frames when there is absolute no justification for such a restriction or limitation upon the procedural rights of Atha Africa.

36 I respectfully submit that it is simply not possible for Atha Africa to respond to the lengthy affidavits filed by the Applicants; furthermore the absolute lack of urgency and total disregard to the practice directive of this Honourable Court render a response from Atha Africa to the merits of the Applicants' application, without any time for proper consultation and/or a proper consideration of the various allegations together with the huge financial and other implications of this matter, unwise and inadvisable - in fact, under the circumstances I respectfully submit that it cannot be expected of Atha Africa to rush into something as serious as this (impacting on a foreign investment of millions) under the unreasonable constraints imposed upon Atha Africa by the Applicants and CER.



37 . However, in the unlikely event that this Honourable Court is of the view that the application is urgent, I respectfully request this Honourable Court to grant Atha Africa an appropriate time to prepare an answering affidavit in response to the founding affidavits in this matter.

WHEREFORE and on behalf of Atha Africa, I respectfully pray that the application be dismissed with costs alternatively be struck from the roll for lack of urgency with costs, such costs to include the costs of two counsel and on an attorney and own client scale alternatively such costs on a punitive scale to be awarded *de bonis propriis*.



Deponent: P Tripathi

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit, that he has no objection to the making of the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at Rosebank on this 24th day of June 2017 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.



COMMISSIONER OF OATHS

FULL NAMES:

STREET ADDRESS:

CAPACITY:

AREA:

DANIEL FRANCOIS WEIDEMAN
COMMISSIONER OF OATHS
PRACTISING ATTORNEY R.S.A
6th FLOOR, JHI HOUSE
Cnr CRADOCK AVENUE & BAKER STREET
ROSEBANK
JOHANNESBURG
REPUBLIC OF S.A.