

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CC CASE NUMBER:
SCA CASE NUMBER: 1029/2018
HC CASE NUMBER: 21904/2015

In the application between:

CASH PAYMASTER SERVICES (PTY) LTD Applicant

and

**CHIEF EXECUTIVE OFFICER OF THE SOUTH AFRICAN
SOCIAL SECURITY AGENCY** First Respondent

SOUTH AFRICAN SOCIAL SECURITY AGENCY Second Respondent

CORRUPTION WATCH (NPC) (RF) Third Respondent

NOTICE OF APPLICATION FOR CONDONATION

BE PLEASED TO TAKE NOTICE THAT the Applicant seeks an order in the following terms:

- 1 Granting condonation for the late filing of the Applicant's application for leave to appeal against the judgment and order of the Supreme Court of Appeal (per Justice Plasket (Navsa JA, Saldulker JA, Swain JA and Molemela JA concurring), dated 30 September 2019;

2 Further and/or alternative relief.

BE PLEASED TO TAKE NOTICE FURTHER that the affidavit of **NUNTHAKUMARIN PILLAY** attached hereto will be relied upon in support of this application.

BE PLEASED TO TAKE NOTICE FURTHER that the Applicant has appointed Stein Scop Attorneys at the Fifth Floor, Capital Hill, 6 Benmore Road, Morningside, Sandton as the address at which notice and service of all process in these proceedings shall be accepted.

DATED at JOHANNESBURG on this the **22nd** day of **OCTOBER 2019**.



Stein Scop Attorneys Incorporated
Attorneys for the appellant
Fifth Floor, Capital Hill
6 Benmore Road, Morningside
Johannesburg
Tel: (011) 380 8080
Mobile: 071 606 2313
Email: glenn@steinscop.com and
sian@steinscop.com
Ref: CAS1/0001/G Stein

To:
The Registrar
Constitutional Court of South Africa

And to:
The State Attorney
Attorney for the first and second respondent
Ground Floor, SALU Building
316 Thabo Sehume Street
Pretoria, 0002
Tel: (012) 309 1582
Email: mmatlamela@justice.gov.za

SERVICE BY HAND

And to:
Dockrat Attorneys
Attorneys for the third respondent
4 Roberts Avenue
Kensington
Johannesburg
Tel: (011) 618 2247/8/9
Fax: (011) 618 1163
Email: yusuf@dockrat.co.za
Ref: Mr T DOCKRAT

SERVICE BY HAND

ACCEPTED WITHOUT PREJUDICE

DATE: 22/12/17

TIME: 12h57

SIGNATURE: 

DOCKRAT INCORPORATED ATTORNEYS

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CC CASE NUMBER:
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In the application between:

CASH PAYMASTER SERVICES (PTY) LTD

Applicant

and

**CHIEF EXECUTIVE OFFICER OF THE SOUTH AFRICAN
SOCIAL SECURITY AGENCY**

First Respondent

SOUTH AFRICAN SOCIAL SECURITY AGENCY

Second Respondent

CORRUPTION WATCH (NPC) (RF)

Third Respondent

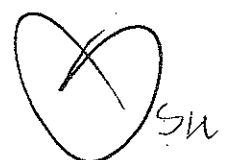
FOUNDING AFFIDAVIT: CONDONATION APPLICATION

I, the undersigned,

NUNTHAKUMARIN PILLAY

do hereby make oath and state as follows:

- 1 I am a major male and director of the applicant ("CPS") which was the third respondent before the High Court.



- 2 The facts contained in this affidavit are within my personal knowledge, save where the contrary clearly appears, and are to the best of my belief both true and correct. Where I make legal submissions, I do so on the advice of my legal advisors.
- 3 This is an application for condonation for the late filing of the applicant's application for leave to appeal against the judgment and order of the Supreme Court of Appeal ("SCA") (per Plasket JA) in case 1029/2018 delivered on 30 September 2019 ("the Judgment").
- 4 After considering the Judgment, the applicant made the decision to brief new attorneys in order to consider its position and advise on any further course of action. Mr Alexander Smith and I of the applicant met with the applicant's new attorneys, Stein Scop Attorneys Incorporated ("Stein Scop") for the first time at 12:30 on Friday, 11 October 2019. At that preliminary meeting the prospect of an appeal to the Constitutional Court of South Africa was raised by Stein Scop.
- 5 After considering this over the weekend, the applicant advised its erstwhile attorneys, Smit Sewgoolan Incorporated ("Smit Sewgoolan") that it was terminating their mandate on Monday, 14 October 2019. On that same day, the applicant consulted with Stein Scop in order to properly brief them on the matter.
- 6 On the afternoon of Monday, 14 October 2019 Mr Glenn Stein of Stein Scop phoned Mr Tiaan Jonker of Smit Sewgoolan in order to arrange collection of the files in respect of the matter from Smit Sewgoolan in order that Stein Scop



might brief counsel to prepare the application for leave to appeal. Mr Jonker advised Mr Stein that he would set up a DropBox that afternoon containing the appeal record so that Stein Scop could access the files as quickly as possible. A confirmatory affidavit deposed to by Mr Stein is delivered herewith.

- 7 Ms van der Weele of Stein Scop followed up this phone call with an e-mail to Mr Jonker in which she requested copies of the appeal record and the parties' heads of argument. Mr Jonker replied that he was waiting on a formal written instruction from the applicant and would upload the requested documents to a DropBox folder as soon as they received same. A copy of that e-mail chain is attached, marked "A".
- 8 Mr Jonker failed to provide Stein Scop with the DropBox details and instead sent an e-mail to Stein Scop on Tuesday, 15 October 2019 attaching the parties' heads of argument and advising that two sets of the appeal record could be collected by Stein Scop from the reception of Smit Sewgoolam. A copy of that e-mail is attached, marked "B".
- 9 The appeal record was collected by Stein Scop on the morning of Tuesday, 15 October 2019 and copies were made (constituting five volumes) in order to brief counsel.
- 10 Junior and senior counsel were briefed on Tuesday, 15 October 2019 and immediately began reading into the matter and preparing the applicant's application for leave to appeal.

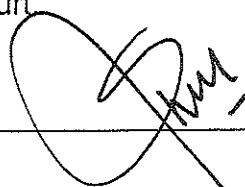


- 11 Counsel circulated the first draft of the application for leave to appeal on the afternoon of Sunday, 20 October 2019, which draft was immediately forwarded by Stein Scop to Ms Anja Lewington of the applicant's for comment.
- 12 Ms Lewington, Mr Smith, Mr Herman Kotze and I considered the draft and spent the morning of Monday, 21 October 2019 discussing and amending the draft in conjunction with Ms van der Weele of Stein Scop as well as senior counsel. The draft was finalised at around 12:30 on Monday, 21 October 2019. After I commissioned the founding affidavit at the Rosebank Police Station, Stein Scop was required to make 25 copies of the application. This process of copying the application took some time, which resulted in the application not being ready for delivery to the Constitutional Court by 15:30 on Monday, 21 October 2019.
- 13 Despite this, Ms van der Weele of Stein Scop e-mailed a copy of the application for leave to appeal to the respondents' attorneys on the afternoon of Monday, 21 October 2019. Copies of those e-mails are attached, marked "C" and "D", respectively. Upon being advised that Mr A Suliman, the lead attorney on the matter at MacRobert Attorneys Incorporated ("MacRobert"), had left the employ of MacRobert, a copy of the application was e-mailed to him as well. A copy of that e-mail is attached, marked "E". The application was also e-mailed to the Constitutional Court, a copy of which e-mail is attached as "F".
- 14 In the circumstances I humbly submit that:

A handwritten signature in black ink, consisting of a large, stylized loop followed by the initials "SW".


- 14.1 there had been no undue or unreasonable delay in the decision to apply for leave to appeal and the preparation of the application itself, all efforts having been made to deliver timeously;
- 14.2 the late filing of the application by only one day has caused no prejudice to the respondents, who were provided with copies of the application on the due date, being Monday, 21 October 2019 and hopefully no inconvenience to the Court; and
- 14.3 the matter concerns repayment of the sum of R317 million, which is clearly substantial and the applicant would be severely prejudiced if this application for condonation is not granted.

WHEREFORE the applicant prays for an order condoning the late filing of its application for leave to appeal to the Constitutional Court.



NUNTHAKUMARIN PILLAY

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of their knowledge both true and correct. This affidavit was signed and sworn to before me at ROSEBANK on this the 22 day of OCTOBER 2019, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

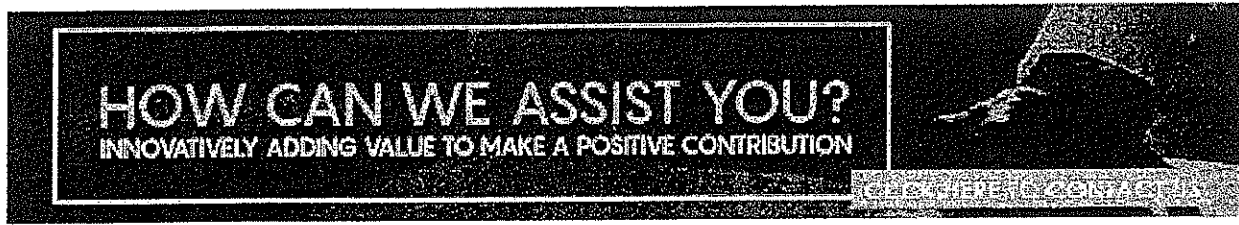
CS
7204281
Nunthakumar

COMMISSIONER OF OATHS

"A"

Sian van der Weele

From: Tiaan Jonker <tiaan@smitsew.co.za>
Sent: Monday, 14 October 2019 8:38 PM
To: Sian van der Weele
Cc: Glenn Stein; Bradley Scop; Alexandra Rakitzis; Brooke Roxburgh
Subject: RE: CPS / SASSA



Hi Sian,

No problem. I am waiting on formal written instruction from client. I will upload the requested documents to a Dropbox folder as soon as we receive same.

Regards,

Tiaan Jonker
Director

T. +27(0)11 646 0006 F. +27(0)86 538 3292 E. tiaan@smitsew.co.za
A. 12 Avonwold Road, Saxonwold, 2196 | Private Bag 836, Saxonwold, 2132



**SMIT SEWGOOLAM
INCORPORATED**
attorneys and conveyancers

Level 2 BBBEE Contributor | [Download BEE Certificate](#)

www.smitsew.co.za

[Disclaimer](#)

From: Sian van der Weele <sian@steinscop.com>
Sent: Monday, 14 October 2019 15:09
To: Tiaan Jonker <tiaan@smitsew.co.za>
Cc: Glenn Stein <glenn@steinscop.com>; Bradley Scop <bradley@steinscop.com>; Alexandra Rakitzis <alexandra@steinscop.com>; Brooke Roxburgh <brooke@steinscop.com>
Subject: CPS / SASSA

Dear Tiaan

I refer to the above matter and to your telephone discussion with Glenn Stein a short while ago.

As discussed, please could you send me the following documents in relation to the matter:

1. Full appeal record; and
2. Parties' heads of argument.

Please do not hesitate to phone me on 071 606 2313 should you wish to discuss the above request further.

Kind regards
Sian van der Weele

Disclaimer

A handwritten signature in black ink, appearing to be "Sian van der Weele".

"B"

Sian van der Weele

From: Tiaan Jonker <tiaan@smitsew.co.za>
Sent: Tuesday, 15 October 2019 9:51 AM
To: Sian van der Weele
Cc: Glenn Stein; Bradley Scop; Alexandra Rakitzis; Brooke Roxburgh; 'nandap@net1.com'; Danelle Roux; Chantelle van der Schyff
Subject: RE: CPS / SASSA
Attachments: 20190403 - CW's Heads, Practice Note and Authorities.pdf; 20190228 - CPS Heads, Practice Note and Chronology_SCA.pdf; 20190709 - Letter from SCA Registrar_Directions to SASSA and CEO.pdf; 20190802 - Second Respondent Explanatory Affidavit.pdf



Dear Sian,

I attach hereto the heads of argument as requested.

You may also wish to have regard the attached letter from the Registrar dated 9 July 2019 and the explanatory affidavit filed by SASSA, which is not included in the record.

Two sets of the complete record is available for collection from our reception.

Regards,

Tiaan Jonker
Director

T. +27(0)11 646 0006 F. +27(0)86 538 3292 E. tiaan@smitsew.co.za
A. 12 Avonwold Road, Saxonwold, 2196 | Private Bag 836, Saxonwold, 2132



**SMIT SEWGOOLAM
INCORPORATED**
attorneys and conveyancers

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WWW.SMITSEW.CO.ZA

Enclosures

From: Sian van der Weele [mailto:sian@steinscop.com]
Sent: Monday, October 14, 2019 3:09 PM
To: Tiaan Jonker <tiaan@smitsew.co.za>
Cc: Glenn Stein <glenn@steinscop.com>; Bradley Scop <bradley@steinscop.com>; Alexandra Rakitzis <alexandra@steinscop.com>; Brooke Roxburgh <brooke@steinscop.com>
Subject: CPS / SASSA

Dear Tiaan

I refer to the above matter and to your telephone discussion with Glenn Stein a short while ago.

As discussed, please could you send me the following documents in relation to the matter:

"C"

Sian van der Weele

From: Sian van der Weele
Sent: Monday, 21 October 2019 3:45 PM
To: mmatlamela@justice.gov.za; siphomo@sassa.gov.za; asuliman@macrobert.co.za
Cc: Glenn Stein; Bradley Scop; alex@steinscop.com; Brooke Roxburgh
Subject: Cash Paymaster Services (Pty) Ltd / The Chief Executive Officer of the South African Social Security Agency & others
Attachments: CAS10001 - Notice of substitution as attorneys of record 21102019.pdf; Application for leave to appeal (part 1).pdf; Application for leave to appeal (part 2).pdf

Dear Sirs

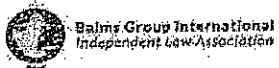
Please find attached the following documents:

1. Cash Paymaster Services (Pty) Ltd's (**our client**) notice of substitution as attorneys of record; and
2. Our client's application for leave to appeal to the Constitutional Court of South Africa (in two parts).

Hard copies of the documents will be delivered to your offices and to the Constitutional Court tomorrow.

Kind regards

Sian van der Weele
Director



Direct: +27(0)11 380 8070
Mobile: +27(0)71 606 2313
Landline: +27(0)11 380 8080
Email: sian@steinscop.com

Sandton Office: Fifth Floor, Capital Hill, 6 Benmore Road, Morningside, Sandton, Gauteng, 2057, South Africa
Melrose Arch Office: Ground Floor, 18 Melrose Boulevard, Melrose Arch, Melrose North, Gauteng, 2076, South Africa

www.steinscop.com

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Please consider the environment before printing this email.

"D"

Sian van der Weele

From: Sian van der Weele
Sent: Monday, 21 October 2019 5:31 PM
To: law@macrobert.co.za
Subject: Cash Paymaster Services (Pty) Ltd / The Chief Executive Officer of the South African Social Security Agency & others
Attachments: CAS10001 - Notice of substitution as attorneys of record 21102019.pdf; Application for leave to appeal (part 1).pdf; Application for leave to appeal (part 2).pdf

Dear Sirs

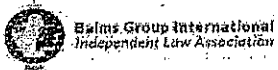
Please find attached the following documents:

1. Cash Paymaster Services (Pty) Ltd's (our client) notice of substitution as attorneys of record; and
2. Our client's application for leave to appeal to the Constitutional Court of South Africa (in two parts).

Hard copies of the documents will be delivered to your offices and to the Constitutional Court tomorrow.

Kind regards

Sian van der Weele
Director



Direct: +27(0)11 380 8070
Mobile: +27(0)71 606 2313
Landline: +27(0)11 380 8080
Email: sian@steinscop.com

Sandton Office: Fifth Floor, Capital Hill, 6 Benmore Road, Morningside, Sandton, Gauteng, 2057, South Africa
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Please consider the environment before printing this email.

"E"

Alexandra Rakitzis

From: Alexandra Rakitzis
Sent: Tuesday, 22 October 2019 11:21 AM
To: 'asuliman@dockrat.co.za'
Cc: Sian van der Weele; Glenn Stein; Bradley Scop; Brooke Roxburgh
Subject: Cash Paymaster Services (Pty) Ltd / The Chief Executive Officer of the South African Social Security Agency & others
Attachments: CAS10001 - Notice of substitution as attorneys of record 21102019.pdf; Application for leave to appeal (part 1).pdf; Application for leave to appeal (part 2).pdf

Dear Sirs

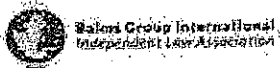
Please find attached the following documents:

1. Cash Paymaster Services (Pty) Ltd's (**our client**) notice of substitution as attorneys of record; and
2. Our client's application for leave to appeal to the Constitutional Court of South Africa (in two parts).

Hard copies of the documents will be delivered to your offices and to the Constitutional Court today.

Kind regards

Alexandra Rakitzis
Associate



Direct: +27(0)11 380 8087
Mobile: +27(0)72 587 6361
Landline: +27(0)11 380 8080
Email: alex@steinscop.com

Sandton Office: Fifth Floor, Capital Hill, 6 Benmore Road, Morningside, Sandton, Gauteng, 2057, South Africa
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Please consider the environment before printing this email.

" F "

Sian van der Weele

From: Sian van der Weele
Sent: Tuesday, 22 October 2019 8:00 AM
To: generaloffice@concourt.org.za
Cc: Glenn Stein; Bradley Scop; alex@steinscop.com; Brooke Roxburgh
Subject: Cash Paymaster Services (Pty) Ltd / The Chief Executive Officer of the South African Social Security Agency & others
Attachments: CPS v SASSA - appeal to Con Court (FINAL) 21102019.docx; Affidavit (part 1).pdf; Affidavit (part 2).pdf

Dear Sirs

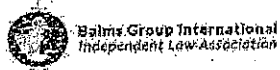
We act on behalf of the appellants in the above matter, Cash Paymaster Services (Pty) Ltd (**our client**).

Please see attached our client's application for leave to appeal to the Constitutional Court of South Africa, in MSWord as well as a PDF document including all of the annexures.

Hard copies will be delivered to the Court shortly.

Kind regards

Sian van der Weele
Director



Direct: +27(0)11 380 8070
Mobile: +27(0)71 606 2313
Landline: +27(0)11 380 8080
Email: sian@steinscop.com

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Please consider the environment before printing this email.

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Applicant

and

**CHIEF EXECUTIVE OFFICER OF THE SOUTH AFRICAN
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First Respondent

SOUTH AFRICAN SOCIAL SECURITY AGENCY

Second Respondent

CORRUPTION WATCH (NPC) (RF)

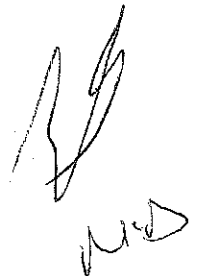
Third Respondent

FOUNDING AFFIDAVIT: CONDONATION APPLICATION

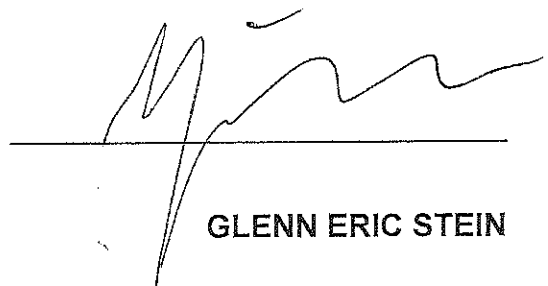
I, the undersigned,

GLENN ERIC STEIN

do hereby make oath and state as follows:

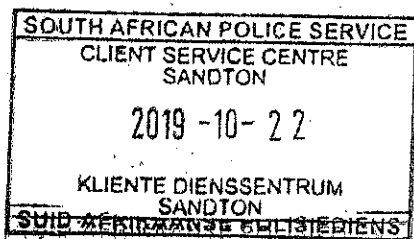


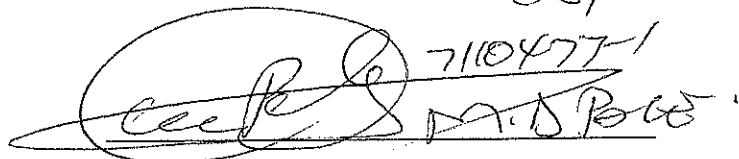
- 1 I am a major male attorney practicing as a director of Stein Scop Attorneys Incorporated (**Stein Scop**) at Fifth Floor, Capital Hill, 6 Benmore Road, Morningside, Sandton.
- 2 Stein Scop are the attorneys of record for the applicant.
- 3 The facts contained in this affidavit are within my personal knowledge, save where the contrary clearly appears, and are to the best of my belief both true and correct. Where I make legal submissions, I do so on the advice of my legal advisors.
- 4 I have read the affidavit of **NUNTHAKUMARIN PILLAY** in support of the applicant's application for condonation and I confirm the contents thereof insofar as the relate to me and Stein Scop.



GLENN ERIC STEIN

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of their knowledge both true and correct. This affidavit was signed and sworn to before me at Sandton on this the 22 day of 10 2019, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.



C.S.T.
 7110477-1


COMMISSIONER OF OATHS