

# VR Law Incorporated

16th Floor, The Forum | 2 Maude Street, Sandton 011 326 5620 | werner@vr-law.co.za | VR-Law.co.za

Company Reg Nr: 2020/667337/21

VAT Reg Nr: 4890294103

8 June 2021

Your Ref: Our Ref:

President Ramaphosa WVR/mm/MAT1269

### His Excellency President Ramaphosa

Email:

presidentrsa@presidency.gov.za

Cc:

ministry@economic.gov.za

Dear Honourable President Ramaphosa

## RE: FRIENDS OF SMM (FOSMM) AND AFRICA HERITAGE SOCIETY (AHS)

- 1. We act on behalf of the Friends of SMM (FOSMM), a voluntary institution established in terms of the laws of Zimbabwe, and the Africa Heritage Society (AHS), a body corporate established in terms of the laws of South Africa, (hereinafter referred to as "our Clients") whose Connections2Communities initiative seeks to raise awareness of the urgency and need to promote active citizenship as a guarantee to the building of the Africa that is zero tolerant to the abuses of public power.
- May we therefore humbly beg your indulgence and pardon, dear honourable President Ramaphosa, for this desperate procedural and substantive appeal, whereby our Clients

are compelled by circumstances, to request you personally to urgently intervene at your earliest convenience.

- 3. Our instructions are as follows.
- 4. A matter was brought to our attention per the attached letter dated 15 January 2021, addressed to Honourable Ebrahim Patel, in his capacity as the Minister of Trade and Industry, a member of your cabinet.
- 3. Notwithstanding the fact that the said respected Minister received the letter, he ostensibly refused, failed and neglected to respond to it. Therefore, our last hope of redemption from this untenable situation vests within your powers and jurisdiction, as we have absolutely no doubt that you will rise to the challenge for justice, as you have demonstrated fearlessly before.
- 4. It is not in dispute that the Republic of South Africa is a member of SADC, AU and the UN. As a signatory to these treaties and protocols, it is trite that you have a duty as President of a member state to ensure that the rule of law is protected and preserved.
- 5. As background, the control and management of a company, SMM Holdings Private Limited, that was wholly owned by a UK registered company, SMM Holdings Limited, was divested and deprived by a law called the Reconstruction of State Indebted Insolvent Companies Act (the Recon Act), that permits the Minister of Justice of Zimbabwe to issue a reconstruction order in relation to a targeted company.
- 6. In relation to SMM, an order was issued by the then Zimbabwean Minister of Justice, Honourable Chinamasa, in relation to SMM. Consequently, an Administrator was extrajudicially appointed by Minister Chinamasa resulting in the dismissal of the board of the company's board.
- 7. Relying on the power and authority derived from this patently unconstitutional order, Mr. Gwaradzimba, was solely appointed by said Chinamasa to assume the control of SMM.

- 8. SMM under his control, has launched, instituted, and defended a number of litigations in South Africa.
- 9. Notwithstanding, according to your well-motivated and eloquently articulated public policy, any law that offends public morality should not be recognized and enforced by foreign state. As will be noted in Ms. Janice Greaver, a Board Member of FOSMM and SMMH, the UK company whose control of SMM, was divested by this same law without it being afforded the opportunity to be heard.
- 10. The question is whether SMM's, a private company that was alienated from its sole shareholder by this Act, had authority to litigate on the instructions of an Administrator, a creature not recognized by any law in South Africa, could be recognized and enforced in any constitutional state.
- 11. It is the case that although the authority of SMM to litigate was raised on numerous times, the Courts in South Africa apparently refused to openly and transparently deal with the matter.
- 12. As a consequence, it is instructive but regrettably to note that an uncured legal injury was occasioned on members of our Clients, like SMM, and thereby creating a legal precedent, whose outcome is respectfully absurd to create a precedent that draconian laws of foreign states can be recognized and enforced in the jurisdiction of South Africa.
- 12. President Mnangagwa, representing the government of Zimbabwe, has pledged his recognition of this repugnant law, fortifying his government's position that no evil was committed in giving life to this Act.
- 13. The problem statement is clear. South Africa's courts and members of the Executive have no real interest in promoting and protecting said Act.

- 14. State actors should be committed disciples in the aspect of policy implementation and adherence and cannot be allowed to be cheerleaders and enforcers of unjust laws, imported with ease from Zimbabwe.
- 15. It is worth highlighting that Judge President of the South Gauteng Local Division, His Lordship Justice Sutherland, dismissed our Clients' request to provide an explanation as to why the authority of SMM to litigate in SA was tolerated notwithstanding the origin of the law.
- 16. It cannot be disputed those institutions that once served to democratise the state now undermine democratic control.
- 17. You have repeatedly asserted your administration's commitment to build an efficient, capable and ethical state free from corruption. Yet this matter exposes the ostensible hypocrisy of South African foreign policy and largely explains why South Africa is at odds with the Western world on sanctions on Zimbabwe.
- 18. At the centre of this commitment, your administration has chosen to not only be blind to the property and human rights abuses in Zimbabwe, but to actually recognize and enforce the decisions and actions of the Zimbabwean government in the South African jurisdiction.
- 19. We are instructed to put it to you that your government is not only apparently complicit in undermining the rule of law in Zimbabwe but is also a leading force in refusing to use diplomatic instruments to encourage the state actors in Zimbabwe to reform their ways for the benefit of the continent.
- 20. Zimbabwe is in a profound social and economic crisis. There is clearly a need for a real and fundamental public policy shift. This matter clearly exposes the fault lines in South Africa's public policy that would openly embrace with ease the recognition and enforcement of a law that offend public policy.

- 21. Given the gravity of the issues inherent in this matter, our instructions are that the issues raised in the letter of Ms. Mwamba to Minister Patel are addressed by not later than 7 days from the receipt of this letter, failing which, we are instructed to approach the court for appropriate relief.
- 22. Please accept, your Excellency, President Ramaphosa, the renewed assurances of our and our Clients' highest consideration and esteem.

Yours truly

WERNER JANSE VAN RENSBURG



### TO THE MINISTER OF TRADE AND INDUSTRY

15 January 2021

Attention Mr Ebrahim Patel

My name is YVONNE MWAMBA, a member of Connections to communities C2C initiative and a contributor to our online publication, iniAfricaNews', active citizenship awareness campaign

It is against a backdrop of the fact that although companies play a key role as instruments for human beings to solve problems, there exists no shared understanding of what is and is not a company.

In a group called - what is a company - one of the C2C projects in which I am an active member of, a case study has been brought to the fore that has a number of issues inherent in it to help learn and improve on corporate literacy matters, the issue of the role of directors as opposed to shareholders is a contentious one.

The case study involves a judgment granted to a Zimbabwean company, SMM Holdings Private Limited (SMM) in SA in October 2012.

One issue the Court was asked to determine is whether the authority to litigate in the name of SMM that is a consequence of an act of a foreign state can be recognized and enforced in the jurisdiction of SA.

This facts of this matter raises interesting legal, constitutional and diplomatic questions that we believe may benefit from your insights.

With respect to the inherent diplomatic issues, the Presiding Judge had this to say:

4 Westwood Way, Sunninghill, Sandton, Johannesburg | 2196 GP. RSA

T: +27 71 732 2590, +27 61 534 7599

C2C IS A MEMBER OF THE 1873 NETWORK



"[18] Mr Kyle then requested leave to appeal my decision in respect of the separation of issues on the point relating to the Zimbabwe 'Reconstruction Act'. He argued that the defendants had been prejudiced by the refusal to hear these issues first. The plaintiff argued that the order was not definitive of the rights between the parties, nor final, and that there was no basis for the application for leave to appeal. I dismissed the application for leave to appeal with costs. I placed on record that the fact that it was undesirable for appeals to be heard piecemeal in actions and my lack of confidence that the courts above the High Court would consider there to be merit in the point informed my decision. I also pointed out that the setting aside of action done in terms of legislation in Zimbabwe could have major diplomatic implications. This would necessitate the joinder of at least one South African cabinet minister. No member of the South African cabinet had received any notice of such an argument to treat as pro non scripto in a South African court actions done in terms of the laws of a foreign state."

It is self-evident from the above that although the Court noted that the authority to litigate in South Africa was created by a law enacted under unusual circumstances in Zimbabwe in which the Minister of Justice was confirmed with judicial powers to remove directors of a company and replace them with his nominee without the involvement of the judiciary, it was not the duty of the Court to decide on this matter.

He made reference to the role of the executive branch of government of SA as a possible bridge to address the matter of the conflict of laws inherent in the matter.

Zimbabwe has been under sanctions since 2001 and this draconian law was given life to during the sanctions era.

The SA government together with the SADC nation-states support the removal of sanctions against Zimbabwe.

SA is Zimbabwe's biggest trading partner. This law in question is inimical to the rule to law and poses so grave a risk to constitutionalism that the silence of the SA government on its recognition and enforcement by the SA judiciary has created a very toxic precedent to encourage other rogue states from doing the same.

4 Westwood Way, Sunninghill, Sandton, Johannesburg | 2196 GP. RSA

T: +27 71 732 2590, +27 61 534 7599

C2C IS A MEMBER OF THE 1873 NETWORK



When this matter was brought to our attention, we decided as group to approach the Deputy Judge President in the court in which this dispute was heard and determined.

Attached hereto are copies of the letters dealing with this matter.

You will note from the response of this Acting Deputy Judge President that he has no problem with our quest to develop a body of knowledge on what, if any, are the obligations of the judiciary and the executive in a forum country in which a foreign law and rights acquired therefrom that is repugnant to the values in the forum jurisdiction should be treated.

It is true and fact that SA companies were liquidated at the instance of this captured company.

It is not in dispute that this captured company controlled by the Minister of Justice in SA obtained a favorable monetary judgment in the amount of R18 million after staging a state-assisted corporate coup against the shareholder, a South African citizen, and the absurdity of it all, his company was used to sue him in SA.

After having lost his company in Zimbabwe from thuggish maneuvers, he became a victim in SA.

I am not sure whether you are familiar with this matter and the precedent it has set with the constructive participation of the SA judiciary in undermining the rule of law.

If not, we would be more than happy to share the copy of the judgement and the facts in our possession.

As part of our general literacy, we would be grateful if you could assist with responding to the following questions that have arisen in our group in relation to this matter:

- 1. Can a Company be registered absent board members?
- 2. Once the control and management of a Company has been diversed using the mighty of Law, what becomes of the entity that follows?
- 3. Does the new Animal remain in the register of Companies
- 4. If so, what would be the entry on the records where directors are normally??

4 Westwood Way, Sunninghill, Sandton, Johannesburg | 2196 GP. RSA

T: +27 71 732 2590, +27 61 534 7599

C2C IS A MEMBER OF THE 1873 NETWORK



We are committed to make SADC and its member states great.

It is now law that the SA government has jurisdiction to deal with matters of that undermine the rule of law that occur outside its borders as this landmark case instructs:

https://www.google.com/url?sa=t&source=web&rct=j&url=https://m.polity.org.za/article/zuma-acted-unlawfully-on-sadc-tribunal-2018-03-

 $\underline{01\&\text{ved}=2\text{ahUKEwiWxvaCyZ3uAhUkShUIHUeZBpIQFjAFegQIBxAB\&usg=AOvVaw1OiKgehRaDiB0MAgLC71Ya}.$ 

I would also want to know what, if any, steps your department will take to protect the integrity of the SA justice system against the intrusion or invasion by foreign states.

Your response will be greatly appreciated.

Yours faithfully

Yvonne Mwamba

C2C Corporate Literacy Ambassador



12 January 2021

### Dear Honourable Mr. Justice P. Mojapelo,

- A question has arisen in our association regarding the role played by the court that you preside
  over, in undermining the rule of law and constitutionalism. As background to this matter, I
  attach a note that I shared with our members in a WhatsApp group (Annexure 1) where the role
  of the judiciary in promoting and protecting the rule of law is being heavily contested, especially
  in relation to corporate matters and the role of the board in controlling and directing the affairs
  of the company.
- 2. One of the case studies that we have been looking at is the matter of SMM Holdings Private Limited v Mutumwa Mawere and Parmanathan Mariemuthu as defendants.
- 3. It is my understanding that you certified the matter as trial ready and subsequently allocated the Honourable Mr. Justice N. Willis to preside over the matter.
- 4. For easier reference, I provide the link to the judgment: https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.saflii.org/za/cases/ZAG PJHC/2012/186.html&ved=2ahUKEwi50eTSwJXuAhWhTBUIHRL8Cl8QFjAAegQIAxAC&usg=AOvV aw0N4TWvS6PluJY-y0bpF9Wd.
- 5. You will note from the link that the Plaintiff was a company called SMM Holdings Private Limited (SMM) and the Defendants are natural persons.
- 6. From reading this judgment, the issue of authority looms large in the matter.
- 7. Over the last few months, we have been interrogating in our association the question "what is a company?".
- 8. In our association, a question has arisen as to whether the company that was given audience by your court was indeed a company as provided for in the Companies Act, or if this was in fact an organ of state.
- 9. The facts of this matter confirm that on 3 September 2004, the government of Zimbabwe issued a decree in the circumstances fully described in an extract from an affidavit deposed by the then Zimbabwean Minister of Justice, Legal and Parliamentary Affairs, Hon. Patrick Chinamasa, attached hereto and marked Annexure 2.

www.iniafrica.com
T: +27 12 943 6195 | E: info@iniafrica.com
1 Amarand Avenue, Waterkloof Glen, Pretoria 0081 | P.O. Box 39416, Faerie Glen, 0043 GP. RSA



- 10. You will note that the effect of the reconstruction order that the Minister issued without the involvement of the judiciary in Zimbabwe, was to divest and deprive the shareholders of SMM the right to control and direct the company.
- 11. Pursuant to this order, the control and management of the company was placed under an extrajudicially appointed Administrator, under whose authority SMM instituted legal proceedings under your court.
- 12. The authority of SMM to litigate in South Africa was based on the fact that the control and direction of the company was divested by an act of a foreign state in a manner that even Willis J accepted as draconian and socialist.
- 13. Notwithstanding, the Learned Judge proceeded to recognise and enforce the authority and awarded this creature of statute a monetary judgment and in so doing put the entire judiciary into disrepute.
- 14. This judgment has been in existence since 2012 and has set a precedent that the SA judiciary will, as a forum, tolerate laws like the Reconstruction of State Indebted Insolvent Companies Act, whose existence and operation pose too grave a risk to public policy to warrant any recognition and enforcement at all.
- 15. As you are aware, the Zondo Commission seeks to investigate matters that have a direct implication on the use or abuse of public power, including judicial discretion.
- 16. In this matter, the question is whether your Court in terms of international law, had any discretion to entertain and enforce the purported rights of the government of Zimbabwe that approached the Courts under the guise of a company.
- 17. In paragraph 1 of the judgment, it is stated by the Learned Judge that:

  "[1] The plaintiff, a Zimbabwean company, claims..." when no facts support the proposition that the company's directors (who in terms of the Companies Act are vested with the control and management of a company) had authorised this litigation in the name of the company.
- 18. If the directors did not authorise the litigation, then Rule 7 of the Uniform Rules of your court demand that when authority is challenged, no further steps can be taken in processing any dispute until the authority question is satisfactorily resolved by the Court.

www.iniafrica.com
T: +27 12 943 6195 | E: info@iniafrica.com
1 Amarand Avenue, Waterkloof Glen, Pretoria 0081 | P.O. Box 39416, Faerie Glen, 0043 GP, RSA



- 19. Evidently the Learned Judge failed, refused and neglected to test and resolve the authority issue notwithstanding the provisions of the Constitution of SA that reads as follows: "The Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice."
- 20. The question that arises is whether the decision to ignore and dismiss in a cavalier manner the question of authority was in the interest of justice, or whether this is how your Court handles these matters in the ordinary course of judicial business.
- 21. Did your court undermine the due and proper administration of justice by giving audience to an organ of a foreign state as if it had bona fide rights to assert in a court of law?
- 22. I draw your attention to paragraph 13 of the judgment as follows:

  "[13] On Monday, 10 September 2012, when the matter was formally called before me, the hearing opened with an application brought in terms of Rule 30 in terms of which the defendants claimed that the power of attorney delivered by the plaintiff pursuant to a Rule 7(1) notice was defective in that it was not retrospective. Mr Kyle argued the matter. The defendants sought that the application for trial date be set aside and that the matter be struck from the roll. I dismissed the application, holding that the power of attorney, by necessary implication, ratified all the proceedings that had been brought by the plaintiff thus far."
- 23. It is clear from the above that the Court was alive to the rule 7(1) authority challenge, yet it endorsed an irregular step of a defective power of attorney and brazenly allowed the matter to proceed.
- 24. It is also worth highlighting the contents of paragraph 14 of the judgment, in which the Court was requested to separate issues in terms of Rule 33(4) in relation to the legal identity of SMM. "[14] Mr Kyle then proceeded to request that the issue of whether the plaintiff was still subject to a 'reconstruction order' in terms of Zimbabwean law be dealt with in a separation of issues in terms of Rule 33(4). In particular, the defendants claimed that the reconstruction order had been cancelled, even though they admitted that there had been no publication of the alleged cancellation thereof in the Zimbabwean Government Gazette. The court found that it would not convenient to order a separation of issues on the grounds which had been claimed to justify it."

www.iniafrica.com
T: +27 12 943 6195 | E: info@iniafrica.com
1 Amarand Avenue, Waterkloof Glen, Pretoria 0081 | P.O. Box 39416, Faerie Glen, 0043 GP, RSA



- 25. For reasons that seem to offend the administration of justice and the protection of the constitutional order in South Africa, your court found that it would not be convenient to order a separation of issues which would have been in the interest of justice.
- 26. Notwithstanding an application for the recusal of Willis J in paragraph 15 of the judgment set out below, the Learned Judge saw this request as an attack on the bench:

  [15] "Mr Kyle then proceeded to apply for my recusal. He claimed that the issues in the special plea had been pre-determined and that there was clear bias in favour of the plaintiff. After argument, the application for recusal was dismissed with costs. At that stage, I had not even read any of documents in the nine Leverarch files before me. I had not even heard an opening address. I had no idea of the history of the matter and had merely read the practice notes and annexures which had been filed. There appeared to me to be no legitimate grounds for my recusal. At that stage I had no sense of the basketfuls of mambas with which I would be presented during this case. The application for my recusal was the mere beginning of a strategy of intimidation of the bench."
- 27. The following paragraphs, extracted from the judgment, clearly give a glimpse into how your Court administers justice:
  - "[17] ... The petition to the SCA was unsuccessful.

[18] Mr Kyle then requested leave to appeal my decision in respect of the separation of issues on the point relating to the Zimbabwe 'Reconstruction Act'. He argued that the defendants had been prejudiced by the refusal to hear these issues first. The plaintiff argued that the order was not definitive of the rights between the parties, nor final, and that there was no basis for the application for leave to appeal. I dismissed the application for leave to appeal with costs. I placed on record that the fact that it was undesirable for appeals to be heard piece-meal in actions and my lack of confidence that the courts above the High Court would consider there to be merit in the point informed my decision. I also pointed out that the setting aside of action done in terms of legislation in Zimbabwe could have major diplomatic implications. This would necessitate the joinder of at least one South African cabinet minister. No member of the South African cabinet had received any notice of such an argument to treat as pro non scripto in a South African court actions done in terms of the laws of a foreign state.

www.iniafrica.com
T: +27 12 943 6195 | E: info@iniafrica.com
1 Amarand Avenue, Waterkloof Glen, Pretoria 0081 | P.O. Box 39416, Faerie Glen, 0043 GP. RSA



[19] Mr Kyle then requested that the matter stand down so that he could draft a petition for leave to appeal to the Supreme Court of Appeal ('SCA'). The plaintiff objected. They decided that the trial would proceed but pointed out that the petition could be drafted in the meantime.

[20] Mr Kyle then informed the court that he withdrew as attorney of record in the matter. He did not seek the leave of the court to withdraw. The first and second defendants thereafter represented themselves. The first defendant decided to proceed with the trial and to defend the matter personally."

- 28. It would appear in the judgment that this matter was brought to the attention of the Judicial Services Commission before the judgment was handed down by your court as set out below: "[26] On Friday, 5 October 2012, before I had delivered judgment in this matter, the first defendant lodged a complaint with the Chief Justice, as head of the Judicial Service Commission, about my conduct in this trial. I annex a copy of the complaint to this judgment as 'Annexure 'A'. [27] In his written heads of argument, submitted at the end of the case, the first defendant submitted that the following were the issues which the court had to consider in deciding the matter:
  - (i) whether the plaintiff was properly authorised to bring these proceedings against the defendants;
  - (ii) whether the plaintiff was entitled to bring the claim for relief against the defendants;
  - (iii) whether SAS was indebted to the plaintiff as alleged in its amended particulars of claim;
  - (iv) whether the agency agreement between SAS and the plaintiff was valid and enforceable;
  - (v) whether the order of the court obtained in consequence of the purported cession agreement was used to divert funds that were due to the plaintiff;
  - (vi) whether the sum of ZAR 18 043 374, 21 paid to Petter represented funds collected by SAS pursuant to a valid agreement in existence and, therefore whether such funds were available solely for the purpose of discharging an obligation to the plaintiff;

www.iniafrica.com
T: +27 12 943 6195 | E: info@iniafrica.com
1 Amarand Avenue, Waterkloof Glen, Pretoria 0081 | P.O. Box 39416, Faerie Glen, 0043 GP. RSA



- (vii) whether SAS had in its possession the aforesaid amount of ZAR 18 043 374, 21 at the time when the order per Van Oosten J was granted;
- (viii) the status of an amount of United States \$4 646 445 paid by SAS;
- (ix) whether the first defendant was a director of SAS at the material time and was knowingly a party to the business of SAS being carried on recklessly or with intent to defraud its creditors or for any fraudulent purpose;
- (x) if the first defendant had knowingly been a party to the fraud, the extent of his liability under section 424 of the old Companies Act."
- 29. It is clear from the above that even the highest court in the country was apprised on this travesty of justice, but in dismissing the complainant, this confirms complicity.
- 30. In paragraph 28, the issue of the true bona fides of SMM was brought to the fore. The Learned Judge rejected the proposition that the government of Zimbabwe had captured SMM and as such the real Plaintiff was the government of Zimbabwe.
- 31. The substitution of SMM by an organ of a foreign state was also raised, but this issue was contemptuously dismissed as follows:
  - "[28] In his written heads of argument presented at the end of the case, the first defendant further submitted that 'it is common cause that the real driving force behind this litigation is the government of Zimbabwe'. This is not correct. He also submitted that 'There is no dispute on the fact that the Reconstruction Act (of Zimbabwe) is a penal law and allows the government to superimpose itself as a party on commercial transactions'. This, too, is incorrect."
- 32. In a rescission application on this matter, you allocated Honourable Mr. Justice Makume to preside over the application after Willis J dismissed the leave to appeal application.
- 33. The link to this judgment is: https://www.google.com/url?sa=t&source=web&rct=j&url=http://www.saflii.org/za/cases/ZAG PJHC/2014/327.html&ved=2ahUKEwjh3-K00JXuAhXWQxUIHSqsAlcQFjAAegQIARAB&usg=AOvVaw2SjabFhZ3cFKm7DmLpHj42
- 34. The finding by Makume J is set out below:
  - "[31] In the application the applicant raised several issues which had been decided upon in previous judgments for example the authority of Mr Gwaradzimba as well as the power of the

www.iniafrica.com
T: +27 12 943 6195 | E: info@iniafrica.com
1 Amarand Avenue, Waterkloof Glen, Pretoria 0081 | P.O. Box 39416, Faerie Glen, 0043 GP. RSA



Administrator under the Reconstruction Act of Zimbabwe. These matters had been ventilated in previous applications involving the same parties and finality reached yet the applicant saw it fit to raise them afresh.

[32] The application itself served before two judges on which instances all sorts of new material was sought to be introduced for instance after my Brother Francis J had postponed the matter during October 2013 it served before Vilakazi AJ on the 15th November 2013. It was on that day that the applicant sought to introduce a supplementary affidavit which effort was correctly opposed by the respondent. This was yet another act of adding more meaningless paper work. It is this conduct that I have come to the conclusion that it should be visited by a punitive costs order as applied for by the respondent.

[33] I accordingly make the following order:

- 1. The application for rescission of the judgment by Willis J dated the 12th October 2012 is dismissed.
- 2. The application to stay execution of the writ of execution including all the other prayers in the Notice of motion are dismissed.
- 3.The applicant is ordered to pay taxed costs of the application on an attorney and client scale.
  4.It is further ordered that the costs of the proceedings before Vilakazi AJ be paid jointly and severally by the applicant Mr Muthumwaziwa Mawere, his attorney Masewawatla Attorneys and his counsel Adv N S Petla de bonis propriis the one paying the other to be absolved."
- 35. What is clearly evident is the consistency of your court to take on an attitude that the pursuit of justice is not important at all.
- 36. Our attention has also been drawn to the manner in which the issue of authority has been handled in relation to the matter MR MUTUMWA DZIVA MAWERE // THE INDUSTRIAL DEVELOPMENT CORPORATION OF SOUTH AFRICA & 3 OTHERS [IWOV-Litigation.FID140792], in which the authority of IDC to litigate was also called into question.
- 37. Notwithstanding the fact that the authority to litigate was challenged in terms of an application to rescind the Makume J judgment, you have refused to allow this authority to be ventilated in an open court.

www.iniafrica.com
T: +27 12 943 6195 | E: info@iniafrica.com
1 Amarand Avenue, Waterkloof Glen, Pretoria 0081 | P.O. Box 39416, Faerie Glen, 0043 GP. RSA



- 38. You have failed to give reasons for your decision to admit the rescission application into the Commercial Court as a dispute under Case management.
- 39. Notwithstanding the questionable role that Makume J played in the SMM matter by dismissing the recission application based on new evidence provided that was not before the court *a quo* presided by Willis J, which would have disposed of the core dispute in the matter on whether money was paid by SAS to Petter between May and December 2004, you have appointed him as a case manager in another dispute involving Mawere, without dealing with the glaring conflict of interest inherent in a case manager presiding over an attack of his own judgment.
- 40. It is understood that Makume J is now presiding over a rescission dispute flowing from his own judgment.
- 41. It is significant that you have refused to furnish the reasons for your decision to appoint a conflicted judge.
- 42. In a constitutional democracy, I should like to believe that no one is above the law. However, your court seems to be the law unto itself.
- 43. We have resolved to bring these matters to the attention of both the JSC and the Zondo Commission to get guidance on whether your Court is acting in the interest of justice, or whether it is captured.
- 44. I am writing this letter to allow you to respond to the allegations made by no later than Friday, 15 January 2020, failing which we will proceed to refer the matters to the appropriate authorities in the interests of justice.

I trust that you will find this in order.

Regards,

Janice Greaver

www.iniafrica.com
T: +27 12 943 6195 | E: info@iniafrica.com
1 Amarand Avenue, Waterkloof Glen, Pretoria 0081 | P.O. Box 39416, Faerie Glen, 0043 GP. RSA