

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO.:

In the matter between:

Hola Bon Renaissance (HBR) FOUNDATION

First Applicant

and

**PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

and 14 Others

Respondent

APPLICANT'S FOUNDING AFFIDAVIT

I, the undersigned,

PREDDY MOTHOPENG

do hereby make oath and state –

1. I am a chairperson of HBR Foundation. I am duly authorized by the board to institute this application and to depose to this affidavit on behalf.
2. The facts set out in this affidavit are within my personal knowledge and are to the best of my knowledge, true and correct, unless appears otherwise from the context.

3. the detailed objectives of the applicant are set out in the constitution which is attached to my affidavit in the application as Annexure 14.....
4. Since its inception HBR Foundation “The African Empowerment” has been a Non Profit Organization and also non Political aligned/affiliated organization, which aims to address and encourage the communities’ transformation by creating a community that is skilled, self sustained with a central economic opportunity. While MYBiCO is an organization that represents youth in businesses, advocating for youth empowerment and that youth be actively involve in the mainstream economy.
5. HBR Foundation is a voluntary association which is essentially defined by its constitution. Voluntary associations derive their character from their constitutions. (wilken v Brebner & others 1935 AD 175 at 90). The constitution of the voluntary association will as a rule be construed benevolently and not narrow or restrictively . the object is to empower and not to dis-empower the voluntary association from functioning efficiency and effectively (Deutsche Evangelische Kirsche zu Pretoria v Hoepner 1911 TDP 218 at 232)
6. In these proceedings , the applicant acts:
 - 6.1.in its own interest to achieve the purpose and objective setout in its constitution
 - 6.2.in the interest of the Soweto community, which includes, elders, woman, man, youth, children, other civil society living under customary law

6.3. on behalf of the Soweto community which is living under customary law who as a result of discrimination are unable or afraid to act in their own name; and

6.4. in the public interest

7. Urgency of the application :

7.1. Granting the urgency of the application in terms of the rules of the Constitutional Court Part VI, rules 12

7.2. the honourable President Mr Jacob Geydleyihlekise Zuma, the President of the republic of South Africa is due to make the state of the nation address when parliament opens on the 10 February 2011 at 19H00 (see annexure 13).

7.3. In his state of the address he may pronounce the date of the local government election of which there is already a violation on the administration or executive act, hence we are requesting to the court to grant the urgency of these case. (see Musa Joe Moloji & others V Minister of Justice and constitutional development & others CCT 78/09 [2010] ZACC 2)

8. Direct Access

8.1.1. Granting the applicants leave to approach this court by way of direct access in terms of section 167(6)(a) of the constitution (see Musa Joe Moloji & others V Minister of Justice and constitutional development & others CCT 78/09 [2010] ZACC 2)

8.1.2. The Background

8.1.3. On the 15th October 2010 Hola Bon Renaissance (HBR) Foundation applied to the Municipal Demarcation Board (MDB) (see Annexure Application 01) for Soweto to be declared a local municipality.

8.1.4. Whereby on the same day the 15th of October at the MDB there was an acknowledgement letter of receipts provided to HBR Foundation, (see attached Annexure 1).

8.1.5. On the same day the intention to apply to the MDB for Soweto to be made a local municipality letters were then handed to the following:

8.1.6. Acknowledgement Notice of delivery letter from the State, and Government organs such as Chairperson of the Demarcation board , The Honourable President , Minister of Corporative and traditional Affairs, MEC for local Government , Premier of Gauteng, Independent Electoral Commission, District Magistrate, City of Joburg (see annexure : NOD 1) these is in accordance with the Act

8.1.7. Acknowledgement Notice of delivery letter from national offices political parties and civil Society such as SALGA, ANC, COPE, SANGOCO, SACP, YCL, ANCYL, COPEYM, COSATU (See Annexure : NOD 2)

8.1.8. Acknowledgement Notice of delivery letter from political parties in Provincial Legislature such as IFP,ACDP , FF+, ID, DA, ANC, COPE

8.1.9. Acknowledgement Notice of delivery letter from political parties in Greater Johannesburg Municipal Council such as APC, VF,CF,ID,DA,ANC, APC, ACDP, AZAPO, UDM, and IFP

8.1.10. While most Councillors in the City of Johannesburg if not all were SMSed a text message informing them about the application for Soweto to be a Municipal

8.1.11. Media Campaign these include print media and TV to mobilise the South African community about the application.

8.1.12. On the 8th November 2010 a faxed response letter dated 18th October 2010 was received, (see Annexure 2). Which state that the Board has suspended changes to the municipal boundaries in September 2008 and that all request shall requests for municipality boundaries will be address after the next election, while The board has clearly neglected and undermined their constitution mandate that of determining municipality boundaries in accordance with the Municipal Demarcation Act: Chapter 1, Section 4, function: the function of the board is to determine municipal boundaries in accordance with the act) and Chapter 7 of the RSA Constitution, by suspending changes to Municipal Boundaries since September 2008, as outlined in their letter (Annexure 2).

8.1.13. It is because of such violation on the constitution and any related Act and misconduct from demarcation board that has catalyze the riots, and protests of poor service delivery from municipalities that

might have the need to reconsider/re-determine its boundaries due to various reasons.

8.1.14. The board has to act as an independent Demarcation Authority (Part 2 of Municipal Demarcation Act 1998, Section 24)

8.1.15. The Constitution, demarcation Act, and Municipal Structural Act give the board the powers to initiate a process that will result in Soweto being a local municipality. The Act gives the Board **21 days** for public participation and **19 days** for objections and thereafter decides on the merits.(see annexure 8)

8.1.16. The board has failed to carry its mandate but rather outlined clearly that they are not independent by is undermining progressive solution from civil society and communities but would rather activate this application provided the MEC for local government or City of Joburg requests them. On our followup with the MEC for local government and the city of Joburg we were informed that everything is at national with the MDB

8.1.17. **While the process of Re-determining Municipal Boundaries states:** Demarcation Act, 1998 allows the board to determine or re-determine a boundary on its own initiative or at the minister of Provincial and Local Government, the MEC responsible for local government in a province, or a municipality. When a municipality requests the Board to determine or re-determine a boundary that municipality must obtain the concurrence of any other municipality affected by the proposed determination. Where a request is received from a person or institution

other than the above-mentioned the Board can deal with it on its own initiative (see annexure 8)

8.1.18. furthermore In contrary with the Letter dated 18 October 2008 (see annexure 2), the MDB public document titled MDB unaudited Annual report for 2009/2010 annexure 7(d), contravene what the Chairperson of MDB Mr Landiwe Mahlangu is saying , When Mr Rapulana H Monareng the CEO of the MDB under page 2 (Future direction: Startegic plan 2009/10 – 2012/13) it states “ Our medium term for the period 2009/10 – 2012/13 has been approved by the board. We will continue to pursue our mandate with respect to a number of strategic themes which we have identified, as follows:

8.1.18.1. determine and re-determination of municipal boundaries and categorisation and re-categorisation of municipalities to lists a few

8.1.18.2. if indeed the municipal demarcation board has suspended its mandate it therefore means that the chairperson basic salary and board members allowance for the past 2 years including these year have been paid for doing nothing and it is estimated to be region of R 3,81m to R 4.2 million (see annexure 7(e)) .

8.1.19. 3. On the 09 November 2010 letter requesting board to resign was send out to the board see attached (Annexure 3), after numerous attempts to communicate with the representative of the Board but failed to get any responds, we then send yet another letter dated 11 November

2010, (see attached Annexure 4), requesting a response from the boards, still no respond

8.2. On the 24 November 2011 a letter was officially delivered to the President office (see annexure 5)

8.3. on the 03 December 2011, a second letter was then officially forwarded to the President office requesting a respond or at least an acknowledgement we had waited up to date, we have called numerous times (last request on 08 February 2011) no assistance from the office. (see annexure 6)

9. On interdict the honorable President of RSA

9.1.1. Interdict the Honourable President Jacob Gedleyihlekisa Zuma State of the national address from announcing the date of the local government elections. In terms of the rules of the constitutional court, Part III, rule 5(1). The authority responsible for the executive or administrative Act has violated the constitution of RSA (Act No 108 of 1996), the Municipal demarcation Act (Act No 27 of 1998) and the Municipal Structures Act (Act 108 of 1998) hereby referred to is the municipal demarcation board in join proceeding with the Head of State

9.1.2. There has been a violation and misconduct by the one arm of the administrative act that is MDB which is the major Role player in the preparation and process of Local government election. It is in the interest of electorate that the honourable President must not pronounce the date of the election, until rectification measures are taken into account.

- 9.1.3. Setting up an independent Tribunal to remove the Municipal Demarcation Board, we appeal to the court to grant it
- 9.1.4. Setting up an independent tribunal for thoroughly investigate and make a finding on the matter that includes the removal of municipal demarcation board members. In term of the demarcation process that is governed by three different pieces of legislation which all relate to each other. These are: the constitution of RSA (Act No 108 of 1996), the Municipal demarcation Act (Act No 27 of 1998) and the Municipal Structures Act (Act 108 of 1998)
- 9.1.5. In terms of the demarcation Process (see annexure 8) it states that the President of the Country has two roles in the demarcation. He
- 9.1.6. Appoints the board after receiving the recommendation of the selected panel
- 9.1.7. May remove a member of the board from his or her office, but only if misconduct, incapacity or incompetence on the part of the member is proved. Proving this requires an independent tribunal to thoroughly investigate and make a finding on the matter
- 9.1.8. With the above submission the mater is as clear and will request the court orders the President to setup the independent tribunal with immediate effect. And that the pronouncement by the Hounarable President on the date of the local government election be on sated after findings report of the tribunal.
- 9.1.9. Municipal demarcation board to reinstate its suspended activity

9.1.10. in terms of section 8, 9 10 we request the chief justice to order the municipal demarcation board to reinstate its suspended activity that of which is its core mandate of determining municipal boundaries in accordance with the municipal demarcation Act (Act No 27 of 1998) with immediate effect that fast track the process of Soweto to be a Municipal

Wherefore i humbly pray for an order as set out in our Notice of Motion.

PREDDY BONTSHITSWE MOTHOPENG

THUS SIGNED AND SWORN TO BEFORE ME AT
ON THIS THE DAY OF THE DEPONENT
HAVING ACKNOWLEDGED THAT HE KNOWS AND FULLY UNDERSTANDS THE
CONTENTS OF THIS AFFIDAVIT AND HAS NO OBJECTION TO TAKING THE
PRESCRIBED OATH WHICH HE CONSIDERS BINDING ON HIS CONSCIENCE.

COMMISSIONER OF OATHS