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I, the undersigned

BUTHOLEZWE NYATHI


do hereby make oath and state that:

- 1 I am an adult male, born 26 June 1979, employed as a professional nurse and residing in Pretoria. I am unmarried.

- 2 I am the third applicant in this application. I make this application:
 - 2.1 in my own interest, as a person who was subjected to unlawful arrest on 3 July 2009 and charged with "loitering";

 - 2.2 in the interest of the people living at and around the Central Methodist Mission ("the Church"), who face the risk of further unlawful police action;
and

 - 2.3 in the public interest

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in terms of section 38(a), (c) and (d) of the Constitution.

- 3 I support the relief sought in the notice of motion to which this affidavit is attached.
- 4 Except where the context indicates otherwise, the facts stated in this affidavit are within my personal knowledge and, to the best of my knowledge and belief, are both true and correct.
- 5 I am a Zimbabwean citizen. I first came to South Africa in November 2003. I was granted refugee status in 2005 and renewed it at the beginning of 2009, receiving a one year extension.
- 6 My role with the Church is as a volunteer. I act as a programme facilitator, seeking to enable people to discover what they are interested in so they can develop the necessary skills. My goal is for the residents—particularly the Zimbabweans—to participate in skills and income-generating projects so they can become self-reliant, can better integrate into South African society, and also will be prepared for when they go back to Zimbabwe.
- 7 In this volunteer role I convened a gathering of the people living at the Church and took a survey of what skills they would like to learn. The requests were recorded and I asked Bishop Paul Verryn if the Church could find teachers to come and teach these skills to the residents. The skills people wished to learn included: working in a barber shop, shop-making (woodwork), copper-making, shoemaking, and buying and selling; longer-term projects included sewing, carpentry and mechanics.

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- 8 I have never lived at the Church but I visit and attend the refugee meetings and other committee meetings each week. On the evening of the arrests of 3 July 2009 I was attending a meeting relating to my Skills and Income Project.
- 9 Following the meeting I went to go see Evans Kuntonda ("Kuntonda"), who was busy assisting with a child birth inside the Church. I saw people running into the Church, saying that the police were raiding. I decided to go outside to observe what was going on.
- 10 Once outside the Church gate, I saw that the police had formed a ring around the Church residents and were demanding that they sit down in front of the court building.
- 11 At this point I took a photograph of what was happening with my cell phone. I was immediately confronted by four officers wearing Johannesburg Metropolitan Police Department ("JMPD") uniforms. They asked that I delete the picture and I complied.
- 12 I asked the officers if I could see the person in charge of the operation, and was told that the "director" was somewhere nearby. I was, however, unable to speak to him.
- 13 At this point I phoned Kuntonda, who told me that he had been put with the others in the group in front of the High Court building. He asked me to get into my car and drive down the street, but stay close by to observe what was happening, which I did.

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- 14 I observed the officers being verbally abusive toward the detainees while they were ordering them to sit on the pavement. They were speaking in Zulu, and saying things such as "You want to run away!" if a person tried to move, forcefully taking them and throwing them back on the pavement. They accused the detainees of committing crimes around the area such as robbery. The other common insult I heard in Zulu most closely translates as calling a man by his mother's private parts. I also observed officers grab people walking by on the sidewalk and detain them. Some police even chased after people who were not sitting in the group.
- 15 At this point I saw two Pikitup trucks arrive. Police officers and truck workers began to throw the blankets and personal belongings of the detainees into the trash.
- 16 From my car I observed absolute mayhem: people were running away and the police were chasing after them. I left my car to better observe what was happening and to try to see where Kuntonda was. After previous police action at the Church, the the leadership had asked that if there were future operations we should try to observe names, badge numbers, and as much detail as possible. With this in mind I slowly approached the group from the opposite side of the street. I heard more verbal abuse directed at the detainees, some of whom they were accusing of trying to escape. I decided to join the group and sit with the other detainees. At this point I did not believe that I would be in any trouble, as I had clearly approached

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from the outside. I thought perhaps that the police would just address the detainees, and explain why the raid was taking place.

- 17 At this point I saw many large police trucks arrive on the scene, into which the officers started to load people. There was still verbal abuse and insults being yelled at the detainees, while they were being forcefully loaded into the truck. To my great surprise I too was violently thrown in by an officer, who ripped my jacket in the process. Several officers were holding electric shocking devices and would use them on anyone who resisted.
- 18 The truck I was in was very crowded and everyone was bumping into each other. I crashed into another detainee, who was angered by this and drew an "okapi" knife, and waved it at me threateningly. I defused the situation by speaking to him in isiZulu. I later learned that this man was actually a South African citizen.
- 19 When we arrived at the police station, my group from the truck was taken upstairs and squeezed into a small room. I noticed that most of the police at the station were not wearing full uniforms, but were merely wearing reflective vests marked "Police."
- 20 The police handed us papers saying that we were being charged with loitering and fined R300. By this point I was with Kuntonda again, and we instructed the detainees not to sign the papers. We believed that we had not been loitering, and that anyone who signed the papers would have admitted to the charge.

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[Handwritten signature]

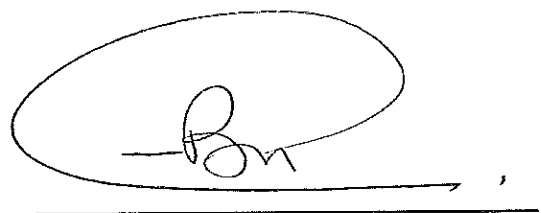
- 21 I then observed that people were being forced to sign a form, entitled "Notification of Rights." Several people were shocked with the electronic devices if they refused to sign the forms. One man, named Simon Muzvarwi, was shocked so badly that he fell to the ground. The JMPD officer who had shocked him made a show of him in front of the group. Meanwhile, an SAPS officer was observing the whole spectacle from behind the counter. When Muzvarwi was instructed to stand up and sign he did so. When others observed this scene they too agreed to sign out of fear of also being shocked.
- 22 Kuntonda was still refusing to sign when one officer explained to us that this particular form was not an admission of guilt and would not mean that the detainees accepted the charges. When Kuntonda relayed this to the group we all agreed to sign.
- 23 When I arrived at the front of the line to sign my papers I was identified as "the clever one" by the officer who had told me to delete the photo from my cell phone. I was then passed on to a female SAPS officer who also charged me with obstruction of a police officer. I was only charged with loitering the following day, when a new group of police officers showed confusion as to why I was not charged with loitering, as everyone else had been.
- 24 I watched and heard the officers struggling with the documentation and with inserting the correct details. It appeared to me that they were making up some of the facts, saying "let's say..." before writing an incorrect fact for my charges.

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- 25 We were finally put in the cells and only received food at 7:00 p.m. the following evening, Saturday 4 July, twenty hours after the arrest. We received two slices of bread and a tablespoon of beans. Prisoners were asked to clean and serve food with the promise of additional food, which I agreed to do out of hunger.
- 26 On Sunday, 5 July 2009, an officer performed a headcount at about 3:00 or 4:00 a.m. If anyone stepped out of line or attempted to leave the cell, they were beaten by the officer.
- 27 At approximately 11:00 a.m. we were asked by the same officer to step out of the cell if we wanted to receive a slice of bread. Everyone refused, fearing being beaten.
- 28 At 3:00 p.m. I asked the officer to give us food. We were all then given rice and chicken stew at about 5:30 p.m.
- 29 On Monday morning, 6 July 2009, we were asked to change cells in anticipation of going to court. It seemed to me that the attitude of the officers had changed—they were now acting in a more polite and respectful manner towards us.
- 30 At about noon on Monday, we received another two slices of bread each.
- 31 Later on in the afternoon we were called out in groups of forty. None of us was told what was happening, but it turned out that we were being released. I was released at about 4:00 p.m. on 6 July 2009.

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WHEREFORE I pray for an order as contained in the notice of motion to which this affidavit is attached.



DEPONENT

I HEREBY CERTIFY that the Deponent has acknowledged that s/he knows and understands the contents of this affidavit, which was sworn to and signed before me at JOHANNESBURG this 2 day of ^{October} ~~September~~ 2009 in compliance with the regulations contained in Government Notice R.1258, dated 21 July 1972, as amended.



COMMISSIONER OF OATHS

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