

**THE NORTH GAUTENG HIGH COURT, PRETORIA**

Case

In the matter between:

**AIDS LAW PROJECT**

Applicant

and

**THE REGISTRAR OF COMPANIES**

First Respondent

**CIPRO**

Second Respondent

**EMANUEL NOKO MANYELO**

Third Respondent

**THE MINISTER OF TRADE AND INDUSTRY**

Fourth Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**MARK HEYWOOD**

make the following statement under oath:

**THE PARTIES**

1. I am the Executive Director of the Aids Law Project (*the ALP*). It is a not-for-profit association incorporated under s 21 of the Companies Act 61 of 1973. It owns

and operates a registered law clinic at Braamfontein Centre, 23 Jorissen Street, Braamfontein, Johannesburg. I am duly authorised to bring this application and make this affidavit on its behalf.

2. The first respondent is the Registrar of Companies (*the Registrar*) of CIPRO, Block F Entufukweni, DTI Campus, Meintjies Street, Sunnyside, Pretoria.
3. The second respondent is the Companies and Intellectual Property Registration Office (CIPRO), an entity within the Department of Trade and Industry which performs the functions of the Companies Registration Office in terms of the Companies Act, of Block F Entufukweni, DTI Campus, Meintjies Street, Sunnyside, Pretoria.
4. The third respondent is Emanuel Noko Manyelo (Mr Manyelo), CIPRO's Acting Manager: Name Reservations and Objection (Legal Advisor) care of CIPRO, of Block F Entufukweni, DTI Campus, Meintjies Street, Sunnyside, Pretoria.
5. The fourth respondent is the Minister of Trade and Industry in his capacity as the Minister responsible for the administration of the Companies Act by the first, second and third respondents, of care of the State Attorney, 8<sup>th</sup> Floor, Old Mutual Centre, 167 Andries Street, Pretoria.

#### **THE PURPOSE OF THIS APPLICATION**

6. The ALP wishes to change its name to "*SECTION 27, incorporating the AIDS Law Project*". It duly applied for the reservation of this name in terms of s 42 of the Companies Act. The respondents are obliged to reserve the name unless it

is “*undesirable*”. Despite the fact that it is not, they refused to register the name for spurious and frivolous reasons.

7. The ALP seeks relief from this court in terms of s 48 of the Companies Act. It asks that the respondents’ decision be set aside and that they be ordered to reserve the new name. It also asks for a punitive order for costs against them including Mr Manyelo in his personal capacity, as a mark of the court’s disapproval of their conduct in this matter.

## **THE FACTS**

8. The ALP has until now confined its activities to HIV/AIDS related issues. It recently decided to reconstitute itself to broaden its mission and objectives to include the promotion and realisation of the rights entrenched in s 27 of the Constitution. It decided to change its name to reflect this change of mission. After thorough and careful deliberation, it decided that the most appropriate new name would be “*Section 27, incorporating the AIDS Law Project*”.
9. On 25 February 2010, the ALP duly lodged an application with the Registrar via CIPRO’s website, requesting the reservation of the following alternative names in order of preference:
  - 9.1. SECTION 27 INCORPORATING THE AIDS LAW PROJECT;
  - 9.2. SECTION 27 A HUMAN RIGHTS ORGANISATION INCORPORATING THE AIDS LAW PROJECT;
  - 9.3. SECTION 20-SEVEN INCORPORATING THE AIDS LAW PROJECT;and
  - 9.4. SECTION TWENTY 7 INCORPORATING THE AIDS LAW PROJECT.

10. The respondents refused the application by a letter dated 11 March 2010, annexure FA1. ALP's company secretary retrieved the letter from the CIPRO website on 16 April 2010. She assures me that it was only published on the CIPRO website during the week of 12 to 16 April 2010.

11. As appears from the letter:

11.1. The first part dealt with a comparison between the new name and existing names on the CIPRO database. They bore no resemblance to the new name the ALP sought to reserve.

11.2. The second part of the letter said that the reason for the refusal of the ALP's application was that,

*“Your proposed name connote governmental patronage. The wording employed to serve as a name cannot be allowed and are calculated to cause damage moreover misleading and undesirable.”*

12. On 26 April 2010 I addressed a letter annexure FA2 to the Registrar appealing to him to reconsider the refusal. As appears from the letter, I fully motivated our request for reconsideration. Within an hour of despatching the letter, an attorney at the ALP Umunyana Rugege received a telephone call from Mr Manyelo. He informed her that the requested name could not be registered because it referred to a section of the Constitution which belonged to all citizens of South Africa and was a “government issue”. Mr Manyelo undertook to confirm his decision in writing which he did in an e-mail later that day, annexure FA3.

13. As appears from Mr Manyelo's e-mail, he no longer contended that the new name "*connote governmental patronage*" or was "*calculated to cause damage moreover misleading and undesirable*" as was done in the original refusal. He now advanced two reasons namely that,

- "*the Registrar cannot allow or approve names that construe itself as the provision of the Act of Parliament. In view that, you cannot employ Sec 27 of the Constitution of the Land to serve as the name of an entity or any organisation*" and
- "*If you want to incorporate Section 27 of the Constitution of the South African Act, you need to obtain a written consent from the Parliament of South Africa*".

I submit with respect that both reasons are gibberish and disclose no comprehensible reason for the refusal or, insofar as they do, are entirely spurious and frivolous.

14. In his concluding paragraph, Mr Manyelo advised the ALP "*that you may coach or qualify the word Section 27 with the Geographical area such as: Section 27 Tshwane AIDS Law Projects etc*". He did not explain why the ALP's new name "*SECTION 27, incorporating the AIDS Law Project*" did not measure up to his advice.

#### **THE NEW NAME IS NOT UNDESIRABLE**

15. I submit with respect that the only question is whether ALP's new name is "*undesirable*" within the meaning of s 41 of the Companies Act. I submit with

respect that it is not for the reasons set out in my letter of 26 April 2010 annexure FA2 and for the reasons that follow.

16. The reasons for the decision given by Mr Manyelo, for which he provides no legal basis, are different from that of the initial decision. However, the response makes no more sense than the initial response.
17. First, the Constitution is not an act of parliament, but a product of the Constitutional Assembly that was convened and empowered under the transitional arrangements of the Interim Constitution. The Constitution does not belong to the state or the government; if anything it belongs to all South Africans. More importantly, all of us are protected by the Constitution and owe loyalty to the values, freedoms and rights it confers.
18. Indeed we anticipate that the reference to section 27 will inspire the question: 'What is section 27?' A fundamental objective of the organisation we hope to call 'SECTION27, incorporating the AIDS Law Project', is to promote awareness of the rights in section 27 of the Constitution so that those who need its protection may seek it.
19. Second, to suggest that this in some way connotes either a connection with government or an encroachment on a 'government issue', misconceives the relationships created by the Constitution and the rights and duties it confers and imposes upon us all.
20. Third, Mr Manyelo suggests that in order to succeed in reserving the name, we need merely add a few qualifying words to 'SECTION27'. He proposes, as an

example, ‘Section 27 Tshwane AIDS Law Projects’. I am unable to comprehend why the current qualifying words (‘incorporating the AIDS Law Project’) would not suffice for this purpose. It is also difficult to understand why the emphatic objection to the reference to a provision of the Constitution is rendered mute by the mere addition of a few words.

21. In any event, the reasons provided by Mr Manyelo are based on our explanation of the name. On its face, it is not apparent that the name is a reference to the Constitution at all. As in the examples mentioned below, it could simply be a reference to a section of anything (such as a piece of land, a law or a clause of a contract).

22. Fourth, there are a number of examples of companies whose names comprise the word ‘Section’ and a number. For example, the following entry appears in the Johannesburg telephone directory: ‘SECTION EIGHT DISTRIBUTION SOLUTIONS CC’. In addition, a cursory search of the CIPRO website reveals the following company names:

SECTION TWO ELECTRICAL

SECTION FIVE TRADING

SECTION 19 LIQUORS

SECTION 51 THE PRESIDENT

SECTION 59 PROPERTIES

SECTION 84 INVESTMENT

ARTICLE 40 MEDIA

ARTICLE 58 DOC

ARTICLE SEVEN INTERNET SOLUTIONS

23. Finally, an example of a like-minded organisation is 'Article 19'. It is a charity registered in the United Kingdom that takes its name from Article 19 of the Universal Declaration of Human Rights which protects the right to freedom of opinion and expression. The Declaration which was adopted in 1948 in response to the atrocities of World War Two, gives global expression to the inherent dignity and inalienable rights of all persons 'as the foundation of freedom, justice and peace in the world'. It would be absurd to suggest that by naming itself after a provision of the Declaration, Article 19 enjoys the 'patronage' of all the countries who are signatories to the Declaration or are members of the United Nations itself. South Africa is a member of the United Nations and a signatory to the Declaration and is bound by it.
24. By the same reasoning of the Registrar, no company could reserve a name that includes the word 'article' in it. However, the Registrar has registered names including 'Article 58 Doc', whose stated objective it is to provide services related to the signing of Article 58 documents.
25. We submit that there is simply no rational basis for the decision taken by the Registrar and CIPRO.

## **CONCLUSION**

26. I submit that the ALP's new name is not undesirable, that the respondents were accordingly obliged to reserve it in terms of s 42 of the Companies Act and that their refusal to do so is unlawful. I in any event submit that their refusal to reserve the name is both irrational and unreasonable within the meaning of s 6(1) of the Promotion of Administrative Justice Act, 2000.

## **COSTS**

27. The ALP asks for costs against the respondents jointly and severally including Mr Manyelo in his personal capacity. It asks that they pay the costs on the attorney and client scale as a mark of this court's disapproval of the spurious and frivolous basis upon which they have compelled the ALP to make this application, apparently without ever giving any serious consideration to its application.

28. Their conduct is particularly egregious if compared with the standards they set themselves:

28.1. Annexure FA4 is CIPRO's own description of itself, its vision, its mission, its slogan and its corporate values published on its website. Its vision is "*To provide global leadership in the efficient registration of businesses and intellectual property rights*". Its corporate values include "*fairness*", "*accuracy*", "*customer focus*" and "*accountability*".

28.2. CIPRO also displays a "*Quality Statement*" annexure FA5 on their website, in terms of which they commit themselves to "*the highest standards in all that we undertake*". They say their management and staff "*are committed to serving our customers with excellence to ensure their continued satisfaction*" and that they do so by maintaining "*our quality management system*" with the objective of providing "*world class services relating to the registration of business entities*". They promise "*regular open and transparent reviews of the performance of*

*the quality management system” to “identify further improvement opportunities”.*

29. I submit with respect that in this case the respondents fell woefully short of their own standards.

30. The ALP accordingly asks for an order in the terms sought in its notice of motion.

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MARK HEYWOOD

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at ..... on this the ..... day of ..... 2010 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

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COMMISSIONER OF OATHS

FULL NAMES:

ADDRESS:

EX OFFICIO: