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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2025-111881**

In the matter between:

Sakeliga NPC,Transvaal Agricultural Union of South Africa,CT van der Merwe Boerdery (Pty) Ltd,Twyfel Nie Plase (Pty) Ltd,Blouberg Sitrus (Pty) Ltd,Pontdrif Citrus (Pty) Ltd,Corfuscore (Pty) Ltd,Mosima Beleggings (Pty) Ltd	Plaintiff / Applicant / Appellant
and	
Minister of Water and Sanitation,Director-General of Water and Sanitation,Department of Water and Sanitation	Defendant / Respondent

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Notice of Motion (Long Form)

NOTE: **This document was filed electronically by the Registrar on 11/7/2025 at 10:45:34 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**

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GAUTENG DIVISION,
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GAUTENG DIVISION,
PRETORIA

ELECTR SIGNED BY:

Registrar of High Court of South Africa , Gauteng Division,Pretoria

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO.: _____/2025

In the application between:

SAKELIGA NPC	First Applicant
TRANSVAAL AGRICULTURAL UNION OF SOUTH AFRICA	Second Applicant
CT VAN DER MERWE BOERDERY (PTY) LTD	Third Applicant
TWYFEL NIE PLASE (PTY) LTD	Fourth Applicant
BLOUBERG SITRUS (PTY) LTD	Fifth Applicant
PONTDRIF CITRUS (PTY) LTD	Sixth Applicant
CORFUSCORE (PTY) LTD	Seventh Applicant
MOSIMA BELEGGINGS (PTY) LTD	Eighth Applicant

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PRETORIA

and

MINISTER OF WATER AND SANITATION	First Respondent
DIRECTOR-GENERAL DEPARTMENT OF WATER AND SANITATION	Second Respondent
DEPARTMENT OF WATER AND SANITATION	Third Respondent

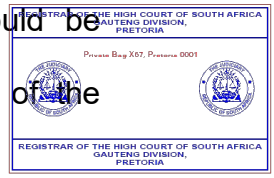
NOTICE OF MOTION

TAKE NOTICE that the above-mentioned Applicants will make application to this Honourable Court on the _____ **2025** at **10h00** for an

order in the following terms:

1 That it is declared that water use charges in terms of the *National Water Act*, 36 of 1998 in respect of water utilized for commercial irrigation and/or other commercial purposes by private individuals or entities is subject to a three year prescription period in terms of Section 11(d) of the *Prescription Act*, 68 of 1969;

2 That it is declared that a three year prescription period would be applicable in respect of the following accounts for water use of the relevant Applicants:



2.1 The Third Applicant – account numbers 100337470 and 100363209;

2.2 The Fourth Applicant – account numbers 100212260, 100336650 and 100338379;

2.3 The Fifth Applicant – account numbers 100341100 and 100113490;

2.4 The Sixth Applicant – account numbers 101196529, 101196511 and 100154438;

2.5 The Seventh Applicant – account numbers 101889668, 101921199 and 101199141;

2.6 The Eighth Applicant - account numbers 100372796, 100372757, 100372838 and 100216878.

3 That the Respondents are ordered to provide to the Applicants' attorneys complete itemized statements, together with all relevant invoices, in respect of all the accounts mentioned in prayer 2 and the sub-prayers thereto, dealing with all amounts claimed to be owed, within 60 (sixty) calendar days from date of this order;

4 That the First to Third Respondents are ordered to pay the costs of this application on Scale C;

5 That further and/or alternative relief be granted.



KINDLY TAKE NOTICE that the accompanying Founding Affidavit of **TOBIAS VIVIAN ALBERTS**, together with annexures and confirmatory affidavits thereto, will be used in support of the application.

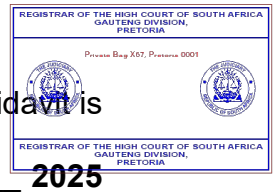
TAKE FURTHER NOTICE that the Applicants have appointed attorneys **KRIEK WASSENAAR & VENTER INCORPORATED**, with address mentioned hereunder, as attorneys and as address at which it will accept all documents, correspondence, notices and pleadings herein.

TAKE FURTHER NOTICE that if you intend opposing this application you are required:

(a) to firstly notify the Applicants' attorneys in writing within 15 (fifteen) days of service of this application upon you; and

(b) secondly within 15 (fifteen) days, after having served notice of intention to oppose the application, to file your Answering Affidavit, if any;

FURTHER TAKE NOTICE that you are required to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.



If no such notice of intention to oppose be given, or if the answering affidavit is not filed in time, the application will be made on _____ **2025** at **10h00.**

KINDLY SET THE MATTER DOWN FOR HEARING ACCORDINGLY.

SIGNED at **PRETORIA** on **4 JULY 2025**.

KRIEK WASSENAAR & VENTER INC
ATTORNEYS FOR THE APPLICANTS
3rd Floor, HB Forum Building
13 Stamvrug Street, Val De Grace
Pretoria
Tel: 012 803 4719
E-mail: rohann@kriekprok.co.za
liam@kriekprok.co.za
REF: R Eloff/L Enslin/QB1248

TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT PRETORIA**

AND TO: **MINISTER OF WATER AND SANITATION**
FIRST RESPONDENT
185 Francis Baard Street,
Sedibeng Building,
10th Floor, Room 1029,
Pretoria, Gauteng

SERVICE BY SHERIFF



AND TO: **DIRECTOR-GENERAL DEPARTMENT OF WATER AND SANITATION**
SECOND RESPONDENT
Sedibeng Building,
185 Francis Baard Street,
Pretoria, Gauteng

SERVICE BY SHERIFF

AND TO: **DEPARTMENT OF WATER AND SANITATION**
THIRD RESPONDENT
Sedibeng Building,
185 Francis Baard Street,
Pretoria, Gauteng

SERVICE BY SHERIFF

AND TO: **THE STATE ATTORNEY**
316 Thabo Sehume Street,
Pretoria, Gauteng

SERVICE BY SHERIFF

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IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2025-111881**

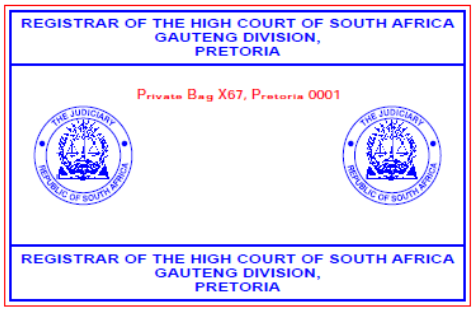
In the matter between:

Sakeliga NPC,Transvaal Agricultural Union of South Africa,CT van der Merwe Boerdery (Pty) Ltd,Twyfel Nie Plase (Pty) Ltd,Blouberg Sitrus (Pty) Ltd,Pontdrif Citrus (Pty) Ltd,Corfuscore (Pty) Ltd,Mosima Beleggings (Pty) Ltd	Plaintiff / Applicant / Appellant
and	
Minister of Water and Sanitation,Director-General of Water and Sanitation,Department of Water and Sanitation	Defendant / Respondent

---

Founding Affidavit

NOTE: **This document was filed electronically by the Registrar on 14/7/2025 at 9:13:10 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.**



ELECTRONICALLY SIGNED BY:

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO.: _____/2025

In the application between:

SAKELIGA NPC	First Applicant
TRANSVAAL AGRICULTURAL UNION OF SOUTH AFRICA	Second Applicant
CT VAN DER MERWE BOERDERY (PTY) LTD	Third Applicant
TWYFEL NIE PLASE (PTY) LTD	Fourth Applicant
BLOUBERG SITRUS (PTY) LTD	Fifth Applicant
PONTDRIF CITRUS (PTY) LTD	Sixth Applicant
CORFUSCORE (PTY) LTD	Seventh Applicant
MOSIMA BELEGGINGS (PTY) LTD	Eighth Applicant

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and

MINISTER OF WATER AND SANITATION	First Respondent
DIRECTOR-GENERAL DEPARTMENT OF WATER AND SANITATION	Second Respondent
DEPARTMENT OF WATER AND SANITATION	Third Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

TOBIAS VIVIAN ALBERTS

hereby declare under oath that:

1 I am a major legal officer of the first applicant, with its registered address at Block A, Floor 5, Loftus Park, 416 Kirkness Street, Arcadia, Pretoria, Gauteng Province.

2 The facts contained in this affidavit fall within my personal knowledge, save where otherwise indicated or where the contrary is evident from the context hereof, and are true and correct. Where I make legal submissions herein, I do so on the advice of the applicant's legal representatives.

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3 I am duly authorised to institute this application on behalf of the applicants. As proof of the aforesaid, I attach hereto copies of resolutions adopted and/or power of attorneys signed by the applicants, marked **FA01**, **FA02**, **FA03**, **FA04**, **FA05**, **FA06**, **FA07** and **FA08** respectively.

THE PARTIES

THE APPLICANTS

4 The first applicant is Sakeliga NPC, a non-profit company duly incorporated in terms of the relevant legislation in the Republic of South Africa with registration number 2012/043725/08 and registered address/principal place of business at Building A, Fifth Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria.

5 The second applicant is the Transvaal Agricultural Union of South Africa, a voluntary association with its members being commercial farmers across the Republic of South Africa. The second applicant has its address at 194 James Dr, Silverton, Pretoria.

6 The third applicant is CT Van der Merwe Boerdery (Pty) Ltd, a company duly incorporated in terms of the relevant legislation in the Republic of South Africa with registration number 1997/015461/07 and registered address/principal place of business Plaas Kwaggasbult, Dendron, Limpopo, 0715.

7 The fourth applicant is Twyfel Nie Plase (Pty) Ltd, a company duly incorporated in terms of the relevant legislation in the Republic of South Africa with registration number 1996/010129/07 and registered address/principal place of business at Plaas Kwaggasbult, Dendron, Limpopo, 0715.

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8 The fifth applicant is Blouberg Sitrus (Pty) Ltd, a company duly incorporated in terms of the relevant legislation in the Republic of South Africa with registration number 2000/011389/07 and registered address/principal place of business at Plaas Fraaifontein, MS447, Vivo, Limpopo.

9 The sixth applicant is Pontdrif Citrus (Pty) Ltd, a company duly incorporated in terms of the relevant legislation in the Republic of South Africa with registration number 1996/013207/07 and registered address/principal place of business at Plaas Fraaifontein, MS447, Vivo, Limpopo.

10 The seventh applicant is Corfuscore (Pty) Ltd, a company duly incorporated in terms of the relevant legislation in the Republic of South Africa with registration number 2014/049788/07 and registered address/principal place of business at Office No 11, JCJ Corner Building, 2 Biccard Street, Polokwane, Limpopo, 0699.

11 The eighth applicant is Mosima Beleggings (Pty) Ltd, a company duly incorporated in terms of the relevant legislation in the Republic of South Africa with registration number 1998/015635/07 and registered address/principal place

of business Office No 11, JCJ Corner Building, 2 Biccard Street, Polokwane, Limpopo, 0699.

THE RESPONDENTS

12 The first respondent is the Minister of Water and Sanitation, the Minister in the cabinet responsible for the said department with address at 185 Francis Baard Street, Pretoria. The papers will also be served on the office of the State Attorney, Pretoria, being 316 Thabo Sehume Street, Pretoria.

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13 The second respondent is the Director-General of the Department of Water and Sanitation, the official appointed as such with address at 185 Francis Baard Street, Pretoria. The papers will also be served on the office of the State Attorney, Pretoria, being 316 Thabo Sehume Street, Pretoria.

14 The third respondent is the Department of Water and Sanitation. The said Government Department in the National sphere with address at 185 Francis Baard Street, Pretoria. The papers will also be served on the office of the State Attorney, Pretoria, being 316 Thabo Sehume Street, Pretoria.

THE PURPOSE OF THE APPLICATION

15 The purpose of this application is to request declaratory relief to the effect that water use charges on water use for commercial and agricultural purposes are subject to a three-year prescription period.

16 The application specifically relates to water use charges under the National Water Act, 36 of 1998 (hereafter referred to “NWA” or “the Act”) and in particular,

only where such water is used in the private sector for agricultural or other commercial activities.

17 In respect of the relevant applicants, relief is also sought to the effect that they should be provided with detailed statements of account and/or all associated invoices, but this will, *inter alia*, assist in determining which component of amounts on statements has been extinguished by prescription. The relief sought is set out in the notice of motion.

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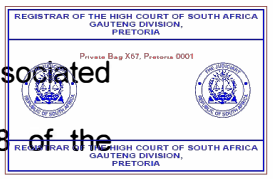
LOCUS STANDI OF THE FIRST APPLICANT

18 The first applicant is a business interest organisation with a basis of supporters and associated members and businesses.

19 The first applicant, *inter alia*, promotes free market and economic prosperity and strives to create a favourable business environment in the interest of its associated members and the common good. The first applicant is a regular public interest litigant where it, *inter alia*, litigates in pursuit of the realisation of important constitutional rights of its associated members. This is also such a case. Almost all of the associated members of the first applicant are South African citizens or entities owned and/or managed by South African citizens. A large number of these associated members lawfully utilize water in their enterprises. In various instances, this would also include existing lawful water uses as defined in section 32 of the NWA. There are also "new" rights that were conferred in terms of the NWA.

20 The purposes for which such water is utilized by associated members would include agriculture, industrial manufacturing and mining.

21 The conduct complained of in this application, *inter alia*, limits and/or infringes on the Constitutional rights of the associated members of the first respondent. As contemplated in sections 22, 32, 33 and/or 34 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), the conduct complained of severely impacts the profitability of the commercial enterprises and seeks to enforce substantial amounts of prescribed debt.



22 The first applicant institutes this application in the interest of its associated members, the public interest, and in its own interest. Section 38 of the Constitution enables it to do so.

LOCUS STANDI OF THE SECOND APPLICANT

23 The second applicant is a voluntary association representing various commercial farmers across South Africa.

24 A large number of these farmers are commercial irrigators. They lawfully use water to grow various crops, food and vegetables. They do so utilizing existing lawful uses and/or with licences/authorizations issued under the NWA.

25 A large number of these members have contacted the second applicant and complained about the fact that the Department of Water and Sanitation ("the Department") is attempting to enforce prescribed debt for water use charges against them.

26 The position of the members of the second applicant is similar to that of the associated membership of the first applicant. Their constitutional rights in terms of section 22, 32, 33 and 34 of the Constitution are also infringed on.

27 The second applicant brings this application in the interest of its members and in the public interest and also in its own interest. It also relies on section 38 of the Constitution to do so. The third and further applicants are all members of the Second Applicant.

LOCUS STANDI OF THE THIRD AND FURTHER APPLICANTS

28 The third and further applicants are commercial irrigation farmers. As part of their farming operations, they irrigate under existing lawful uses or licences issued in terms of the NWA. These entities are owned and managed by South African citizens.

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29 It appears that payment in respect of water use charges has been demanded from the third and further applicants. These applicants dispute liability on the basis of *inter alia* prescription. It is submitted that in any proceedings to enforce the alleged debt, the respondents would be limited to collecting only three years' debt from the commencement date of the litigation.

30 The Department is constantly threatening legal action against these irrigators but has not commenced any proceedings in a court of law. All of the Applicants require legal certainty on the questions posed herein.

31 The position of each respective applicant, who is a commercial irrigator, will be dealt with *infra*.

32 The third and further applicants bring this application in their own interest and in the public interest in terms of section 38 of the Constitution. Their constitutional rights in terms of section 22, 32, 33 and 34 of the Constitution have been infringed on.

BACKGROUND

33 The NWA has been in force since 1 October 1998.

34 As has previously been indicated, the water uses of a number of the applicants, who are commercial irrigators, derive from existing lawful uses that were already been used when the previous legislation was still in force. The Water Act, 54 of 1956, has been repealed by the NWA. Section 98 of the NWA still gives the old act some relevance since it keeps Water Boards/Irrigation Boards operational for some time. These bodies have the same powers that they used to have under the old Act.

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35 The 1956 Act drew a clear distinction between "rates" and "charges".[1]

36 Under the old Act a "rate" could be imposed irrespective of the water user concerned actually receiving the relevant public water, or not. It was a prerequisite for any "charge" that the actual supply or distribution of the water should occur.

37 This information is provided for background purposes. It appears that the water uses of the relevant applicants do not resort under the control of the Water Board or Irrigation Board operating under the transitional provisions of the NWA.

38 The NWA uses the phrase "water use charge". This application is primarily focused on the legal question whether water use charges under the NWA are extinguished by prescription and in particular a three-year period of prescription.

[1] See section 66, 90, 92, 116, 138F and 179A of the repealed 1956 Act

39 Section 56 of the NWA stipulates that the Minister may determine a pricing strategy for charges of any water use in the framework of existing relevant government policy in concurrence with the Minister of Finance. I do not currently go into detail about the method of compiling the pricing strategy and the factors to be considered. For current purposes, it suffices to say that it is admitted that in principle water use charges may be charged under the current legislation. During legal argument, reference will be made to particular sections of the NWA as and when necessary.

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40 It is important to know that section 57(5) of the NWA dictates that:

"*No charge under this Act* **may be of such a nature as to constitute the imposition of a tax, levy or duty.**"

41 In this regard it is worth mentioning that this places water use charges under the NWA under a similar footing to a "charge" under the previous Act. The position may, however, be different in respect of "rates" imposed by an Irrigation Board. Such a debt (which is not the relevant one in question for this application) would only prescribe after 30 years.

42 Where payment has been claimed from the various applicants for water use charges, it will be shown that constantly debt of older than three years is also being claimed.

43 The situation is made worse by the fact that for many years the Department has not furnished proper invoices and/or statements. There is still a complaint that some statements actually only show a balance that is claimed to be due and

owing. No real breakdown, dates and information is provided in various instances.

44 Section 11 of the Prescription Act, 68 of 1969, deals with the periods of prescription. Section 11(a) dictates, *inter alia*, that a 30-year prescription period applies in respect of "any debt in respect of any taxation imposed or levied by or under any law".

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45 Section 11(d) indicates that:

"Save where an Act of Parliament provides otherwise, three years in respect of any other debt."

46 It is submitted that this is the relevant timeframe applicable to water use charges for the water utilised for commercial and/or agricultural purposes. As has already been alluded to, water use charges are not a tax and accordingly and accordingly the 30-year period is not applicable.

47 The first respondent has a regulatory power to require that the use of water from a source should be monitored, measured and recorded. Section 59(1) of the NWA indicates that water use charges may only be made in respect of water used to which a person is voluntarily committed and must bear a direct relationship to the water use in question.

48 Currently the third and further applicants, and many others in a similar position (who are possibly not even members or supporters of the first and second applicants) are being harassed by the Departments' appointed debt collectors and/or attorneys. This harassment is an attempt to enforce *inter alia* prescribed debt. In most instances the debt older than 3 years will be the biggest component

of the arrears claimed. Despite the harassment, the Department has never issued summons so that a Court can decide the question. This forces the hand of the applicants into bringing this application. There is clearly a dispute in relation to prescription on the relevant water use charges.

49 When the position of the various irrigators is set out, I will also touch on the enforcement attempts in respect of each relevant water user.

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50 The applicants need clarity on the legal position. Whilst payment is constantly demanded, there appears to also be legal uncertainty on the side of the respondents. This makes it very difficult to do financial planning and budgeting for those depending on lawful water use as part of their business operation/s. The constant harassment by the debt collectors has also become disruptive to business.

51 If the prescribed debt can also be enforced (the applicants respectfully contend this is not the case) it will have a severe impact on many water users and, in particular, commercial farmers. In respect of some operations, this will lead to reduction of production, retrenchment of employees and even the total financial demise of some farming operations.

52 In some meetings of the second applicant's representatives with officials from the Department, those officials admitted that water use charges would prescribe and that only charges for the last three years could effectively be claimed. This has transpired at a meeting with the departmental officials on 29 October 2021. During the said meeting Mr Peter Senwamadi Matomi on behalf of the Department admitted that prescription would occur after three years.

53 I annexed correspondence dated 12 December 2022 to the Minister of Water Affairs and Sanitation by the general manager of the second applicant, Mr Bennie van Zyl, hereto as Annexure "**FA09**". Under the heading "LIMITATION OF CHARGES" it is recorded that:

"During TLU SA's meeting with the Department of Water Affairs and Sanitation on 29 October 2021, it was recognised by the Department's representative that the payment of water is a charge in terms of legislation. Accounts are therefore only valid for the preceding three years in terms of the prescription act."

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54 The respondents never responded to this correspondence disagreeing with this position. It however appears that the respondents have changed their tune over time. The applicants' attorneys of record dispatched a letter of demand dated 30 April 2024 to the Director-General and the Department. Copies of the correspondence and proof of transmission is annexed hereto as Annexure "**FA10**" and "**FA11**". At the time the correspondence was only directed on behalf of the first two applicants. The correspondence complained of various accounting errors in paragraph [11] thereof.

55 In paragraph [12] of the letter, it is recorded that reports have been received at certain water users, particularly in Limpopo and Gauteng Provinces, have been issued with summons concerning alleged debts to the Department. The letter records:

"Consequently, a significant number of water users across South Africa, have been subjected to intimidation by debt collectors and are compelled to incur considerable expenses in defending themselves against claims primarily composed of prescribed amounts."

56 Paragraph [16] indicates that:

"While our clients remain perplexed by the Department's abandonment of the correct legal position, it will be surmised that this has been undertaken to (unlawfully) increase its revenue."

57 Paragraph [17] of the letter demanded that the Department seize all unlawful collection endeavours against water users concerning prescribed water charges. Paragraph [20] of the correspondence demanded a response by no later than 5 May 2024, failing which the first and second applicants reserve the right to approach the High Court for relief.

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58 Response was received from the Department which is dated 13 May 2024. I annex a copy thereof hereto as Annexure "**FA12**". Paragraph [2] of the letter in reply indicates that:

"Kindly note that the water use charges, and water research levies are applied to give effect to the progressive realisation of the right to access to water in terms of Section 27(1) of the Constitution. The water use charge imposed to your client does not constitute a debt as contemplated by the Prescription Act, but an obligation arising out of the Constitution of the Republic of South Africa and the National Water Act, 98 of 1998 (NWA) …."

59 The applicants strongly disagree with this statement. It has already been indicated that water utilized for commercial purposes and related water use charges are unrelated to section 27 of the Constitution. Paragraph [3] of the letter from the Department places reliance on the unreported case in ***Minister of Water and Sanitation v Amathole District Municipality***. The Department

indicates that in the said case the Court "*concurred with the aforesaid assertion and concluded that prescription does not apply to water use charges*".

60 All applicants, once again, strongly disagree with this assertion. It will be argued at the hearing that the said case was incorrectly decided and can also be distinguished from the current case at hand. It is also no binding president.

61 For the purposes of completeness, I annex a copy of the judgment in ***Minister of Water and Sanitation v Amathole District Municipality*** hereto as Annexure "**FA13**". I refer to it hereafter as "the judgment".

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62 It is firstly important to note that the judgment is by a single judge (the Honourable Judge Griffiths) in another Division.

63 It is also important to note that the defendant in that matter was an Organ of State, being a municipality. The current applicants before Court are not Organs of State and do not represent organs of state. The litigants before Court are in the private sector and they (or their members/supporters) utilise water for agricultural and/or other commercial purposes. The unreported judgment appears (at best) be authority for the over-broad proposition as between Organs of State, the payment of a statutory liability or debt is may possibly be regarded as a constitutional obligation and on that basis can possibly not prescribe.

64 It, with respect, appears that there are a number of errors in the judgment. In paragraph [11] of the judgment, reference is made to an earlier case where an exception was dismissed. Griffiths J, accordingly, found that the matter was *res judicata*.

65 As a matter of law, dismissals of exceptions are normally not dispositive of the legal issues and, accordingly, the question of *res judicata* cannot arise. The reasoning of the Honourable Judge, accordingly, with respect, appears to be incorrect. For the purposes of prescription, a "debt" should have an ordinary dictionary meaning, such as money, goods or services, which one person is under an obligation to pay or render to another. This would apply to water use charges under the NWA.

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66 There is no rational obligation to distinguish between (alleged) Constitutional obligations and other obligations to pay an amount of money. This would lead to a situation where a "debt" has one meaning under one set of circumstances and another meaning under other circumstances. This would be contrary to the rule of law requiring certainty and the fundamental principle of equality before the law.

67 There is no provision in the Constitution which expressly elevates an ordinary debt into a Constitutional obligation.

68 The NWA is legislation enacted to give effect to Section 24 and 25(8) of the Constitution and not Section 27 thereof.

69 The respondents (and with respect, also the judgment) also appear not to appreciate that Section 36 of the Constitution expressly allows rights in the Bill of Rights to be limited in terms of law of general application to the extent that such limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom. At the very least, the Prescription Act is also such a law of general application. Full legal argument will be advanced on the judgment when the case is heard. In summary, it suffices to say that the

applicants are of the view that it is not binding, distinguishable from their position, and wrongly decided.

70 Legal certainty on the issue is required, especially with a specific focus on the position of commercial irrigators and other role players in the private sector who utilises water for commercial purposes.

71 I now turn to deal with the position of the various applicants from whom payment of water use charges is being claimed. In various instances these applicants do not have all the invoices, statements and other paperwork available to them. It, however, becomes clear that the general approach is to also claim prescribed debt (older than 3 years) from them. This is the position in respect of all of the third and further applicants.

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72 Since the focus of this application is on the prescription-issue and liability for payment, this will also be where the focus of the discussion in respect of the irrespective water user applicants will be.

73 I do not intend to quote extensively from all the correspondents in relation to all the water user applicants. The correspondence from the Department is largely generic in nature.

CT VAN DER MERWE BOERDERY (PTY) LTD

74 This entity received two letters of demand for a debt which appears to be largely older than three years. I annex the two letters hereto as Annexures "**FA14**" and "**FA15**" respectively.

75 In respect of account number 100337470 the amount of R310,160.35 is claimed. In respect of account number 100363209 the amount of R255,768.54 is claimed, these demands are generic in nature and are all dated 27 September 2023. Importantly, the demands make no reference to an alleged constitutional duty to effect payment. The correctness of the particulars in all letters of demand in respect of all relevant applicants is disputed. At the very least a large part of the alleged liability has been extinguished by prescription.

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76 Paragraph [9] of the generic letters of demand threatens legal action and the issuing of summons, listing at credit bureaus, applying for default judgment and publishing of the name of the debtor, execution steps and the discontinuation and restriction of services.

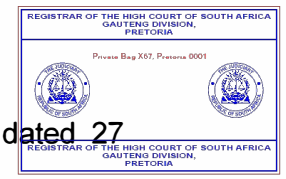
77 In various instances the notices are also non-sensible, threatening that reconnection fees would be charged, etc. In many instances the applicants irrigate from boreholes that are effectively under their sole control.

78 In respect of account number 100337470 I annex a statement with its date being 28 February 2019, and another statement with statement date being 30 April 2024, hereto annexed as Annexure "**FA16**" and "**FA17**" respectively. This particular applicant also has some other statements in its possession, but same is not annexed hereto for the sake of brevity. The Department should also have them since it issued same. The Honourable Court will note that between 2019 and 2024 the amount claimed increased from R193,680.71 to R216,726.42. No payment was made in the interim. These statements aren't a model of clarity only indicating balances brought forward. Specified accounts are required. Accounts and/or statements are required to properly assess the alleged liability. The details

are also required by the respective businesses for tax purposes when they need to submit their financial documents to the revenue service.

79 It appears that in respect of the other accounts this particular applicant does not have statements in its possession. A copy of the third applicant's confirmatory affidavit is attached hereto as annexure "**FA18**".

TWYFEL NIE PLASE (PTY) LTD



80 This particular applicant received three generic letters of demand dated 27 September 2023, annexed hereto as Annexure "**FA19**", "**FA20**" and "**FA21**". In respect of account number 100212260 in the amount of R81,259.35 is claimed.

81 In respect of account 10336650 in the amount of R100,630.21 is claimed. R84,207.66 is claimed in respect of account number 100338379.

82 In respect of account 100212260 I annex a statement dated 28 February 2019 in the amount of R45,329.84 and also the last statement in this particular applicant's possession for R66,396.53, dated 30 April 2024, hereto as Annexure "**FA22**" and "**FA23**". No payments have been made in the interim. These statements are also not a model of clarity.

83 In respect of account 100336650 I annex a statement dated 28 February 2019 in the amount of R56,823.27 and the most recent statement dated 30 April 2024 for R81,002.77 hereto as annexure "**FA24**" and "**FA25**" respectively. These statements also do not provide any real clarity. No payments have been made in the interim. It is clear that all statements referenced contain, *inter alia*, debt older than three years.

84 I also annex a statement dated 28 February 2019 in respect of account 100338379 in the amount of R47,550.06 as annexure "**FA26**" The latest statement for this same account dated 30 April 2024 in the amount of R67,783.32 is also annexed hereto as annexure "**FA27**"

85 For the sake of brevity, I do not repeat the criticism in respect of each and every statement. It is clear that these statements do not show any real particulars of how amounts are made up. A copy of the fourth applicant's confirmatory affidavit is attached hereto as annexure "**FA28**".

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BLOUBERG SITRUS (PTY) LTD

86 This entity last received statements in about 2020. Under account number 100341100 the generic letter of demand was received on/or about 23 August 2023 in the amount of R66,891.56, I annex this letter of demand thereto as Annexure "**FA29**". A similar generic letter of demand was received for account 100113490 in the amount of R378,639.00. This letter is annexed hereto as annexure "**FA30**".

87 In respect of the account number 100341100 I annex the statement dated 30 June 2020 in the amount of R26,391.01 hereto as annexure "**FA31**" In respect of account number 100113490 I annex the statement of account dated 30 September 2018 hereto as annexure "**FA32**". It indicates a balance of R45,584.90 at the time. Obviously, the alleged indebtedness increases substantially over time. A copy of the fifth applicant's confirmatory affidavit is attached hereto as annexure "**FA33**".

PONTDRIF CITRUS (PTY) LTD

88 This entity received three letters of demand, annexed hereto as Annexure "**FA34**", "**FA35**", and "**FA36**" respectively. In respect of account number 101196529 R552,354.22 is claimed. R855,789.25 is claimed in respect of account 101196511. The third claim is for the amount of R490,954.09 in respect of account 100154438. This applicant does not have statements for all relevant accounts. I annex a statement for account 101196511 which is dated 31 March 2018 in the amount of R371,882.88, annexed hereto as annexure "**FA37**". In respect of account 100154438 this applicant is in possession of a statement dated 30 June 2020 in the amount of R263,248.39. See annexure "**FA38**" attached hereto. Also, in this regard debt of much older than three years is currently being claimed. A copy of the sixth applicant's confirmatory affidavit is attached hereto as annexure "**FA39**".

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CORFUSCORE (PTY) LTD

89 This entity received an undated letter of demand claiming that it owes a balance of R8,425.79 as at 31 March 2024. I annex a copy of this undated letter of demand hereto as annexure "**FA40**".

90 The first paragraph of the letter incorrectly and opportunistically claims that water use charges will only become due upon receipt of invoices. This is devoid of any truth. Nothing prohibited the relevant authorities from demanding payment and even instituting action years ago.

91 This entity has not regularly received invoices or statements. This is despite the fact that the Department has been well aware that it has been irrigating for many

years but the same applies to all the other respective irrigator applicants. All of these irrigators have utilised water resources on their respective land for longer than three years. A copy of the seventh applicants confirmatory affidavit is attached hereto as annexure "**FA41**".

MOSIMA BELEGGINGS (PTY) LTD

92 Mosima also received a number of generic letters of demand. In respect of account number 100372796 in the amount of R708,134.89 is claimed. I annex this letter hereto as annexure "**FA42**".

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93 R372,876,44 is also claimed in respect of account number 100372757. This letter of demand is annexed as annexure "**FA43**".

94 On account 100372838 in the amount of R94,796.03 is demanded. This letter is annexed as annexure "**FA44**". I also annex another letter of demand as annexure "**FA45**". This letter is in respect of account 100216878 in the amount of R60,584.94. I annex a further letter of demand in respect of account 100416309 in the amount of R84,760.02 hereto as annexure "**FA46**".

95 All of these amounts are also for debt, *inter alia*, older than three years. This entity has managed to draft a summary detailing how its indebtedness is made up. I annex same as Annexure "**FA47**". It clearly shows that the major component of the alleged debts is older than 3 years. During a meeting with the Department on 15 October 2024 the Department also confirmed to this applicant that debt older than 3 years is claimed from it. A copy of the eighth applicant's confirmatory affidavit is attached hereto as annexure "**FA48**".

GENERAL REMARKS

96 Nothing precluded the Department from enforcing any amount which it claims was due. Nothing also currently prohibits the Department from commencing legal action. It is likely delaying this because it realises that there may be prescription issues. It is a much safer route for them to merely try and extort payment.

97 The respondents are under a legal duty to provide accurate invoicing and statements. This will enable the applicants and water users in general to accurately assess their accounts. This may also lead to the amicable resolution of some disputes. If actual liability can be determined, it becomes possible to make sensible arrangements for payment. Currently this can, however, not be done in any sensible manner.

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98 In many instances it will be a matter of impossibility for the water users to pay the entire amounts demanded if same is due or payable, or at the very least it will cause substantial disruptions to these businesses.

99 There is bound to be, at the very least, a decrease in production. This will very likely affect food security. Legal certainty in this scenario is of utmost importance. It will also enable the Department to manage its affairs and to be in a better-informed position when it enters into any form of negotiations with water users in future.

100 The constant and repeated threats need to come to an end. Legal certainty and clarity are required.

CONCLUSION

101 The Applicants respectfully pray that the Honourable Court grant the relief as sought in the Notice of Motion.

DEPONENT

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I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at LOFTUS on this the 30 day of ~~30~~ May 2025, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No. R1648 if 18 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS

I, THE UNDERSIGNED, Thandolwethu Jele
COMMISSIONER OF OATHS
PRACTISING ATTORNEY R.S.A
SGA Law Africa, Loftus Park, Building B
2nd Floor, 416 Kirkness Street
Pretoria, 0083
HEREBY CERTIFY THAT THIS DOCUMENT
IS A TRUE COPY OF THE ORIGINAL
SIGNED AT PRETORIA ON THE 30th DAY
OF MAY 20 25