



SEVENTH-DAY
ADVENTIST
CHURCH

*Trans-Orange
Conference*

Secretariat

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Orchards 2192
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Orange Grove 2119
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06 June 2014

Dear Pastors, Elders, Church Clerks and Members

Re: GC SANCTIONED APPLICATION TO STOP THE USAGE OF THE SDA NAME AND LOGO BY THE SO CALLED ALBERTON OFFICE.

The TOC Family will remember that in December last year we indicated that the group that operates from Alberton was, in line with the spirit of Matthew 18, asked to stop using the name and logo of the SDA church to advance their divisive and subversive activities against the denomination. Instead of this happening, we saw some brethren register a company bearing the official name of the church and becoming directors thereto. The same company they registered bore the name of a Conference that had built its reputation over a period of 34 years.

The activities of this group - including the act of registering the name of the church with directors who are all non-denominational employees, who were not acting on behalf of any denominational structure, and who did this in violation of the clear policy guidelines on usage of the name and logo of the Church- left the worldwide church with no other option but to protect the trademarks of the Seventh-day Adventist Church from the Albertonians.

The SID on behalf of the General Conference deposed the attached founding affidavit. We hasten to add that the GC, the GC Corporation, the SID, the SAU and the TOC are all applicants on this matter. What the GC has decided upon is that the brethren are no longer allowed to use the good name of the church. They are accordingly with this application being stopped from using the name Trans-Orange Conference, Seventh-day Adventist, Adventist, SDA or any of the abbreviated or derivatives of the name of the Church.

They are also being stopped from conducting any activities in the name of the Seventh-day Adventist Church. These activities include but are not limited to baptizing, organizing companies into churches, chairing church business meetings and boards of Seventh-day Adventist churches, they are also being stopped from passing off as leaders in the Seventh-day Adventist Church, and other such activities. The full details of what they are being stopped to do, are in the attached application

The essence of the application is that the GC will not recognize the rebel faction as part of or allowed to use the name Seventh-day Adventists. Hence they are being stripped off the right to use the name and logo of the Church. We feel this responsible and necessary step on the part of the church could have been avoided if the brethren had listened to the counsel of the Higher

Organizations, instead of stubbornly going around districts trying to render the Conference ungovernable.

The solo grandstanding has not only served to deceive those few who are NOT rooted in Seventh-day Adventism, but also has succeeded in misleading those who are ready to undermine the theology, doctrines, processes, policies, ethos and values of the SDA Church, as well as those who have willingly chosen to blindly follow individuals instead of yielding to the decisions and outcomes of two duly called constituency meetings. We indeed feel especially sorry for the elderly who have not known anything but Seventh-day Adventism, but now have to be known by another name so close to the borders of the heavenly Canaan.

The misuse of the SDA churches' name and logo, as well as the passing off as leaders by the Alberton group, is being challenged by the GC and other levels of the church jointly to demonstrate the unity in purpose of the worldwide church to end this onslaught on the church of God. The GC Corporation, as the custodians of the all trademarks of the church, is seeking an order from court instructing the Albertonians to stop using the name and logo of the Church.

We are sending the full application for the benefit of individual members who may want to read for themselves what the application is all about, and who may also want to share with others the contents of the application and what the application is seeking to achieve.

We encourage members to go through the application and decide for themselves whether they will remain in the only Remnant church of Bible prophecy, or they will leave to join a structure that enjoys no recognition from any of the entities of the church, from the Union up to the GC. The Alberton structure does not reports its activities to any entity, and it is a structure that does not remit tithes and tithe percentages to any higher organization of the church as per policies of the SDA Church. It is a structure that violates and causes churches and individuals to violate the financial policies of the SDA church, a structure that also violates policies governing membership in the local church in that it is being led by and uses individuals who were removed from membership in their local churches.

Members need to be aware that supporting or aligning oneself with the Alberton office, as has been seen on the part of some churches and regrettably some pastors, could inevitably lead to possible disciplinary measures as outlined in the Church Manual. Rebellion is clearly given as one of the reasons that could lead church discipline.

We are calling on all members and churches that want to remain Seventh-day Adventists and who want to remain in the sisterhood of churches, to reconsider their actions and participation in the agenda of sowing divisions by the Alberton office. Those members who wish to move to other SDA congregations due to some rebellious activities in their current churches (so that they can continue enjoying their church privileges and remain Seventh-day Adventist), are encouraged to bring this to the attention of pastors servicing the Conference in their local areas. They can also direct their requests to the Conference Secretariat's office.

Though we expect that the breakaway group will intensify its attacks on the church and its leaders, we are nevertheless hopeful that this application will give the church the needed healing and unity when it becomes clear to all members that those who have chosen to break away, are going about their business and agenda as a rebellious group which is no longer part of the Seventh-day Adventist church.

We are also hopeful that this action on the part of the GC and other entities of the church, will afford us, as a faith community in this territory of the worldwide church, the chance to be busy with

what the church was organized to the busy with, namely the mission to save the dying world and to proclaim the everlasting gospel of Jesus Christ in the context of the Three Angels' message.

Our heartfelt gratitude goes out to those churches and members who have been standing on their knees on behalf of their Church.

We solicit more prayers for the outpouring of the Holy Spirit so we can see a big harvest in the upcoming mission to the cities initiative of the worldwide church.

Regards



Thami Danxa, Ps

EXECUTIVE SECRETARY: TOC

Cc TOC PRESIDENT

TOC CFO

PETZER, DU TOIT
& RAMULIFHO
138A
DOCEX 9, HATFIELD
012 342 9895

IN THE HIGH COURT OF SOUTH AFRICA

[GAUTENG DIVISION, PRETORIA]

REGISTRAR OF THE HIGH COURT OF
SOUTH AFRICA, PRETORIA
PRIVATE BAG/PRIVAATSAK X67
CASE NUMBER:
2014-05-28
B. I. ANKOWITZ
PRETORIA 0001
GRIFPER VAN DIE NOORD GAUTENG
HOE HOE, PRETORIA

28208/14

IN THE MATTER BETWEEN:-

GENERAL CONFERENCE OF SEVENTH-DAY
ADVENTISTS

1st Applicant

GENERAL CONFERENCE CORPORATION OF
SEVENTH-DAY ADVENTISTS

2nd Applicant

SOUTHERN AFRICA-INDIAN OCEAN DIVISION
OF THE GENERAL CONFERENCE OF SEVENTH-
DAY ADVENTISTS

3rd Applicant

SOUTHERN AFRICA UNION CONFERENCE OF
SEVENTH-DAY ADVENTISTS

4th Applicant

TRANS-ORANGE CONFERENCE OF SEVENTH-
DAY ADVENTISTS

5th Applicant

SEDCOM INCORPORATED

6th Applicant

AND

ABRAM MPAPI SETSIBA

1st Respondent

AMANDA SEGALE

2nd Respondent

JABU SITHOLE

3rd Respondent

MOSES BUSANG KHANYE

4th Respondent

TEBOGO BENJAMIN SEGOPA

5th Respondent

JOHANNES ELIJAH LEKHOANE

6th Respondent

VICTOR NGOAKO MABITSELA

7th Respondent

MABEL GLORIA SEGOTSANE

8th Respondent

LESIBA NORMAN MOABELO

9th Respondent

RICHARD MOTOBI NQHATSETSENG

10th Respondent

MAMACHEU BENARD MULOPE

11th Respondent

TOTO MOLOBYE

12th Respondent

MOSEKIEMANG GREGORY MOROKA	13 th Respondent
DR PAUL PANDELANI MBEDZI	14 th Respondent
BOTHA JEREMIAH NEMARANZHE	15 th Respondent
TRANS ORANGE CONFERENCE OF SEVENTH- DAY ADVENTIST CHURCH NPC	16 th Respondent
THE REGISTRAR OF TRADE MARKS	17 th Respondent
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	18 th Respondent
THE COMPANIES TRIBUNAL	19 th Respondent

<p style="text-align: center;">NOTICE OF MOTION</p>
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PLEASE BE INFORMED that the Applicant intends making application to this Court for an order in the following terms:

1. That it be declared that:
 - 1.1 the 1st – 16th Respondents infringe the 2nd Applicant's registered trade marks in its name and logo;
 - 1.2 the 1st – 16th Respondents pass-off their parallel structures as that of the 5th Applicant or as structures connected with the services, duties and functions of the 5th Applicant is permitted to perform by virtue of the Constitutions of the Seventh-Day

Adventist Church (“the Church”) by using, in regard thereto, the name “TRANS-ORANGE CONFERENCE” or an abbreviation thereof, being “TOC”, which is confusingly or deceptively similar to the 5th Applicant’s trade name;

1.3 the 1st – 15th Respondents are in unlawful breach of the Constitutions of the Church by having incorporated the 16th Respondent as a parallel structure to compete with the 5th Applicant;

2. That an interdict be granted against the 1st – 16th Respondents preventing them from:

2.1.1 infiltrating the organisation structures of the Church, such as Church Boards (CB’s), Church Business Meetings (“CBM’s”) of Local Churches, District Management Boards (“DMB’s”) and any other organisational structure used by the Church;

2.1.2 representing to members of the Local Churches within the 5th Applicant’s jurisdictional area that they or their structures constitute the duly elected officials and structures of the Church;

- 2.1.3 setting up parallel structures competing with the organisational structures of the Church;
 - 2.1.4 collecting tithes and offerings from Local Churches, receiving it into bank account(s) controlled by them;
 - 2.1.5 organising believers and members of the Church into Local Churches;
 - 2.1.6 baptising believers by immersion into membership of the Church;
 - 2.1.7 using the name and logo of the Church;
 - 2.1.8 operating as a Conference of the Church;
 - 2.1.9 purporting to be leaders of the Church; and
 - 2.1.10 appointing and removing pastors of Local Churches;
3. That the 16th Respondent be interdicted from conducting any business activities whatsoever pending an application to be made by

the Applicants to the 19th Respondent for a determination, in terms of section 160(1) of the Companies Act 71 of 2008 (“the Companies Act”), that the name of the 16th Respondent does not satisfy the requirements of section 11 of the Companies Act and/or a directive to be issued by the 19th Respondent directing the 16th Respondent to choose a new name in terms of section 160(3)(b)(ii) of the Companies Act;

4. That the 1st – 16th Respondents be ordered to pay the costs hereof jointly and severally;
5. Further and/or alternative relief.

PLEASE BE INFORMED FURTHER that the accompanying affidavit of **BOYCE MACKESON MKHIZE**, together with all annexures attached thereto, will be used in support thereof.

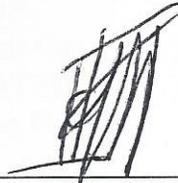
PLEASE BE INFORMED FURTHER that the Applicants have appointed as its address referred to in Rule 6(5)(b) the address of the Applicants’ attorneys appearing at the end hereof at which address it will accept notice and service of all processes in these proceedings.

PLEASE BE INFORMED FURTHER that if you intend opposing this application, you are required to:

- a) notify the Applicants' attorney in writing within 15 (fifteen) days of service upon you of this notice of motion;
- b) within 15 (fifteen) days after you have so given notice of your intention to oppose the application, file your answering affidavit, if any; and
- c) 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.

PLEASE BE INFORMED FURTHER that if no such notice of intention to oppose be given, the application will be made on **FRIDAY 25TH JULY 2014** at **10:00** am or as soon thereafter as the Applicant's counsel may be heard.

SIGNED AT PRETORIA ON THIS 28th DAY OF MAY 2014



ROSSOUWS ATTORNEYS

Attorneys for Applicant
119 President Reitz Ave, Westdene
BLOEMFONTEIN, 9300
P.O. Box 7595 BLOEMFONTEIN 9300
Tel No.: 051 – 506 2500
Fax No.: 051 – 430 6079
Docex 31, Bloemfontein
Ref: JHC/ab/TRA4300/04

c/o PDR ATTORNEYS

(Established in 2004 as Petzer, du Toit & Ramulifho)
Hatfield Bridge Office Park
Cnr Stanza Bopape (Church) & Richard Street
Hatfield, Pretoria
Tel: (012) 342 9895
Fax: (012) 342 9933
Ref: J J Strauss/MAT8296

TO: **THE REGISTRAR**
High Court of South Africa
Gauteng Division, Pretoria

AND TO: **ABRAM MPAPI SETSIBA**
1st Respondent
137 Memoriam Street, Uitsig,
Bloemfontein, Free State Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria, Gauteng Province

BY SHERIFF

BN. R

AND TO: **AMANDA SEGALE**
2nd Respondent
1921 Block U, Mabopane, Pretoria, Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **JABU SITHOLE**
3rd Respondent
32-8th Avenue, Alexandra, Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria, Gauteng Province

BY SHERIFF

AND TO: **MOSES BUSANG KHANYE**
4th Respondent
32B Von Packstroom Street, Standerton, Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria, Gauteng Province

BY SHERIFF

AND TO: **TEBOGO BENJAMIN SEGOPA**
5th Respondent
1290 Moreku Street, Extension 1, KwaThema
Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria, Gauteng Province

BY SHERIFF

AND TO: **JOHANNES ELIJAH LEKHOANE**
6th Respondent
18 Helgaard Street, Kilner Park, Pretoria, Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria, Gauteng Province

BY SHERIFF

AND TO: **VICTOR NGOAKO MABITSELA**
7th Respondent
10 Veldkornet Viljoen Street, Modjadji Street
Modjadjis Kloof, Limpopo Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **MABEL GLORIA SEGOTSANE**
8th Respondent
466 Edward Bambani Street, Retswelele
Kimberley, Northern Cape Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **LESIBA NORMAN MOABELO**
9th Respondent
Erf 877, Hartswater, Northern Cape Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **RICHARD MOTOBI NQHATSETSENG**
10th Respondent
10 Maansteen Street, Bonanne
Vanderbijlpark, Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **MAMACHEU BENARD MULOPA**
11th Respondent
76-16th Avenue, Edenvale, Johannesburg, Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **TOTO MOLOBYE**
12th Respondent
1700 Makhele Road, Mmabatho
Mahikeng, Northern Cape Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **MOSEKIEMANG GREGORY MOROKA**
13th Respondent
23 Christian Jonas Street, Mmesi Park, Dobsonville
Soweto, Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **DR PAUL PANDELANI MBEDZI**
14th Respondent
4 Donaldson Avenue, Strubens Valley
Springs, Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **BOTHA JEREMIAH NEMARANZHE**
15th Respondent
149-4th Avenue, Edenvale, Johannesburg, Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **TRANS ORANGE CONFERENCE OF SEVENTH-DAY
ADVENTIST CHURCH NPC**
16th Respondent
6 Khala Street, Pimville Extension 7, Gauteng Province
c/o **NGCINGWANA INCORPORATED**
Woodpecker Place, Hillcrest Office Park
177 Deyer Street
Hatfield, Pretoria
Gauteng Province

BY SHERIFF

AND TO: **REGISTRAR OF TRADE MARKS**
17th Respondent
DTI Campus, 77 Meintjies Street
Sunnyside, Pretoria, Gauteng Province

BY SHERIFF

AND TO: **THE COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**
18th Respondent
DTI Campus, Visagie Street
Sunnyside, Pretoria, Gauteng Province

BY SHERIFF

AND TO: **THE COMPANIES TRIBUNAL**
19th Respondent
DTI Campus, Visagie Street, Sunnyside
Pretoria, Gauteng Province

BY SHERIFF

IN THE HIGH COURT OF SOUTH AFRICA

[GAUTENG DIVISION, PRETORIA]

CASE NUMBER:

28208/14

IN THE MATTER BETWEEN:

GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS 1st Applicant

GENERAL CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS 2nd Applicant

SOUTHERN AFRICA-INDIAN OCEAN DIVISION OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS 3rd Applicant

SOUTHERN AFRICA UNION CONFERENCE OF SEVENTH-DAY ADVENTISTS 4th Applicant

TRANS-ORANGE CONFERENCE OF SEVENTH-DAY ADVENTISTS 5th Applicant

SEDCOM INCORPORATED 6th Applicant

AND

ABRAM MPAPI SETSIBA 1st Respondent

AMANDA SEGALE 2nd Respondent

JABU SITHOLE 3rd Respondent

MOSES BUSANG KHANYE 4th Respondent

TEBOGO BENJAMIN SEGOPA 5th Respondent

JOHANNES ELIJAH LEKHOANE 6th Respondent

VICTOR NGOAKO MABITSELA 7th Respondent

MABEL GLORIA SEGOTSANE 8th Respondent

LESIBA NORMAN MOABELO 9th Respondent

RICHARD MOTOBI NQHATSETSENG 10th Respondent

MAMACHEU BENARD MULOPA 11th Respondent

TOTO MOLOBYE 12th Respondent

BM.R

MOSEKIEMANG GREGORY MOROKA	13 th Respondent
DR PAUL PANDELANI MBEDZI	14 th Respondent
BOTHA JEREMIAH NEMARANZHE	15 th Respondent
TRANS ORANGE CONFERENCE OF SEVENTH-DAY ADVENTIST CHURCH NPC	16 th Respondent
THE REGISTRAR OF TRADE MARKS	17 th Respondent
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	18 th Respondent
THE COMPANIES TRIBUNAL	19 th Respondent

<p style="text-align: center;">FOUNDING AFFIDAVIT</p>
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I, the undersigned,

BOYCE MACKESON MKHIZE

do hereby make oath and say:

1. The content falls within my personal knowledge, save where the context indicates otherwise.
2. The content is true and correct.
3. All legal submissions contained herein, represent legal advice received and accepted:

4. I am an adult person holding the position of Legal Counsel at the 3rd Applicant.

5. I am also a member of the Seventh-day Adventist Church (“the Church” or “the Organisation”).

6. By virtue of my appointment and my membership, I am fully versed in and have an intimate personal knowledge of the content and practical implementation of all Constitutions and documents by which the Organisation was established and by which it is being maintained and managed.

7. **STRUCTURE OF THIS AFFIDAVIT**

7.1 For ease of reference, I wish to indicate hereunder the structure in which this affidavit will be presented.

7.2 I will make use of the following captions, each dealing with the issues raised under the following captions:

- Parties;

- Purpose and aim of the application;

- The magnitude of the Applicants' worldwide presence and the Church's beliefs;
- The organisational structure of the Church;
- The various Constitutions;
- Origin of the dispute between the parties;
- The strategies engaged upon by the breakaway group;
- Introduction to the infringements;
- Breach of contract – the setting up of parallel structures which are foreign to the Constitutions of the Church;
- Breach of contract – usurping the responsibilities and duties of those approved organisational structures of the Church;
- Infringement of registered trade marks;
- Passing-off;

- Incorporation of the 16th Respondent;
- The relevant Constitutions; and
- Relief sought.

8. **PARTIES**

8.1 The 1st Applicant is the **GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS** (“the GC”), a voluntary association and an *universitas* with legal capacity governed by a Constitution, being the mother body of the Church, with principal place of business at 12501 Old Columbia Pike, Silver Springs, Maryland, United States of America (“USA”).

8.2 The 2nd Applicant is the **GENERAL CONFERENCE CORPORATION OF SEVENTH-DAY ADVENTISTS** (“the GC Corporation”), a corporate entity, incorporated in the District of Columbia, USA, with principal place of business at the same address as that of the GC.

8.3 The 3rd Applicant is the **SOUTHERN AFRICA-INDIAN OCEAN DIVISION OF THE GENERAL CONFERENCE OF SEVENTH-**

DAY ADVENTISTS (“the SID”), an administrative unit of the GC with commensurate authority to carry out responsibilities in the Africa-India regional territory assigned to it by the Constitution of the GC, with its principal place of business at 27 Regency Drive, Route 21 Corporate Park, Nellmapius Drive, Irene, Gauteng Province.

8.4 The 4th Applicant is the **SOUTHERN AFRICA UNION CONFERENCE OF SEVENTH-DAY ADVENTISTS** (“the SAU”), an association governed by a Constitution and an organisational structure provided for in the Constitution of the GC for the territories specifically assigned to it by the SID, consisting of the Republic of South Africa, Lesotho, Swaziland, Namibia, Helena-, Ascension- and Tristan Da Cunha Islands, with its principal place of business situate at 2 Fairway Street, Bloemfontein, Free State Province.

8.5 The 5th Applicant is the **TRANS-ORANGE CONFERENCE OF SEVENTH-DAY ADVENTISTS** (“the TOC”), an association governed by a Constitution and an organisational structure provided for in the Constitution of the GC, as such being part of the SAU, which in turn is a part of the SID of the GC, with its principal place of business at 17 Louis Road, Orchards, Gauteng

Province.

- 8.6 The 6th Applicant is **SEDCOM INCORPORATED**, a juristic person and association not for gain, incorporated in terms of the laws of the Republic of South Africa, with registration No. 1921/902194/08 and registered address at 2 Fairview Street, Bloemfontein (“SEDCOM”).
- 8.7 The 1st Respondent is **ABRAM MPAPI SETSIBA**, an adult Pastor residing at 137 Memoriam Street, Uitsig, Bloemfontein, Free State Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.
- 8.8 The 2nd Respondent is **AMANDA SEGALE**, an adult person residing at 1921 Block U, Mabopane, Pretoria, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.
- 8.9 The 3rd Respondent is **JABU SITHOLE**, an adult person residing at 32-8th Avenue, Alexandra, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177

Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.10 The 4th Respondent is **MOSES BUSANG KHANYE**, an adult person residing at 32B Von Packstroom Street, Standerton, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.11 The 5th Respondent is **TEBOGO BENJAMIN SEGOPA**, an adult person residing at 1290 Moreku Street, Extension 1, KwaThema, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.12 The 6th Respondent is **JOHANNES ELIJAH LEKHOANE**, an adult person residing at 18 Helgaard Street, Kilner Park, Pretoria, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.13 The 7th Respondent is **VICTOR NGOAKO MABITSELA**, an adult person residing at 10 Veldkornet Viljoen Street, Modjadji Street, Modjadjis Kloof, Limpopo Province c/o Ngcingwana

Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.14 The 8th Respondent is **MABEL GLORIA SEGOTSANE**, an adult person residing at 466 Edward Bambani Street, Retswelele, Kimberley, Northern Cape Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.15 The 9th Respondent is **LESIBA NORMAN MOABELO**, an adult person residing at Erf 877, Hartswater, Northern Cape Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.16 The 10th Respondent is **RICHARD MOTOBI NQHATSETSENG**, an adult person residing at 10 Maansteen Street, Bonanne, Vanderbijlpark, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.17 The 11th Respondent is **MAMACHEU BENARD MULOPA**, an adult person residing at 76-16th Avenue, Edenvale,

Johannesburg, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.18 The 12th Respondent is **TOTO MOLOBYE**, an adult person residing at 1700 Makhele Road, Mmabatho, Mahikeng, Northern Cape Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.19 The 13th Respondent is **MOSEKIEMANG GREGORY MOROKA**, an adult person residing at 23 Christian Jonas Street, Mmesi Park, Dobsonville, Soweto, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.20 The 14th Respondent is **DR PAUL PANDELANI MBEDZI**, an adult person residing at 4 Donaldson Avenue, Strubens Valley, Springs, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.21 The 15th Respondent is **BOTHA JEREMIAH NEMARANZHE**, an

adult person residing at 149-4th Avenue, Edenvale, Johannesburg, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.22 The 16th Respondent is **TRANS ORANGE CONFERENCE OF SEVENTH-DAY ADVENTIST CHURCH NPC**, Registration No. 2014/014484/08, a non-profit company registered in terms of the laws of the Republic of South Africa, with registered address at 6 Khala Street, Pimville Extension 7, Gauteng Province c/o Ngcingwana Incorporated, Woodpecker Place, Hillcrest Office Park, 177 Deyer Street, Hatfield, Pretoria, Gauteng Province.

8.23 The 17th Respondent is the **REGISTRAR OF TRADE MARKS**, appointed in terms of section 6 of the Trade Marks Act 194 of 1993, (“TMA”) of DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng Province. No relief is sought against the 17th Respondent who is cited herein only for the interest he/she may have in this application.

8.24 The 18th Respondent is **THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**, established in terms of Section 185 of the Companies Act 71 of 2008 (“the

Companies Act”), being the functionary and competent authority for purposes of, *inter alia*, registering and deregistering companies and keeping of proper company records, with address at DTI Campus, Visagie Street, Sunnyside, Pretoria, Gauteng Province.

8.25 The 19th Respondent is **THE COMPANIES TRIBUNAL**, established in terms of section 193 of the Companies Act, being the functionary and competent authority for making, *inter alia*, a determination, in terms of section 160 of the Companies Act, as to whether the name of the 16th Respondent satisfies the requirements of the Companies Act, with address at DTI Campus, Visagie Street, Sunnyside, Pretoria, Gauteng Province.

8.26 No relief is sought against the 17th, 18th and 19th Respondents. They are cited for the interest they have in the relief sought.

9. **PURPOSE AND AIM OF THE APPLICATION**

9.1 On 24 February 2013, the:

9.1.1 1st Respondent was removed as President of the TOC;

9.1.2 2nd – 4th Respondents, as well as the 6th – 15th Respondents were removed as members of the Executive Committee of the TOC; and

9.1.3 5th Respondent was removed as the Executive Secretary of the TOC.

9.2 Despite their removal from office as aforesaid, the 1st – 15th Respondents remained members of the Church. They therefore remain “Adventists”.

9.3 I was informed that the 1st Respondent was excommunicated on 11 May 2014 by his Local Church.

9.4 After the removal of the 1st – 15th Respondents from the TOC Executive Committee, they individually and/or collectively, directly and/or indirectly, commenced setting up parallel structures foreign to those structures recognised by the Church, thereby infiltrating the existing structures of the Church contrary to the dictates of the various Constitutions which ensure orderly and harmonious unity and structure within the Church.

9.5 This application is aimed at preserving the organisational

structures of the Church, particularly its structures in South Africa. More specifically, this application seeks to protect the structures by which Local Churches resorting under the TOC's area of jurisdiction, are organised.

9.6 The application also concerns the protection of various trade marks which are registered in South Africa in the name of "Seventh-day Adventists" and in its logo against infringement by the Respondents personally or through corporate entities, such as the 16th Respondent or through associations or groupings of members of the Church organised by them.

9.7 In essence, this application seeks to prevent the members of the dissident group ("the breakaway group"), comprising of the 1st – 15th Respondents, from, either personally or through the 16th Respondent or any other entity or structure:

9.7.1 infiltrating the organisational structures of the Church, such as Church Boards (CB's), Church Business Meetings ("CBM's") of Local Churches, District Management Boards ("DMB's") and any other organisational structure being upheld by the Church;

9.7.2 representing to members of the Church that they or their

structures constitute the duly elected officials and structures of the Church;

9.7.3 setting up parallel structures competing with the organisational structures of the Church;

9.7.4 siphoning off tithes and offerings of Local Churches into bank accounts controlled by them;

9.7.5 organising believers of the Church into Local Churches;

9.7.6 baptising believers by immersion into membership of the Church;

9.7.7 using the name and logo of the Church;

9.7.8 operating as a Conference of the Organisation;

9.7.9 purporting to be leaders of the Organisation; and

9.7.10 appointing and removing pastors of Local Churches.

10. **THE MAGNITUDE OF THE APPLICANTS' WORLDWIDE**

PRESENCE AND THE CHURCH'S BELIEFS

- 10.1 Before advancing to the merits of this application, I interpose to give some indication of the magnitude and worldwide presence of the Church and the unique philosophy it preaches.

- 10.2 The Church as an Organisation originated when former members of the Millerite Movement in the United States of America (“the USA”) during the middle part of the 19th century decided to form their own church denomination.

- 10.3 The Organisation was formally established in Battle Creek, Michigan, USA on 21 May 1863 by the adoption of a Constitution with a membership of 3 500 devotees.

- 10.4 The Organisation today has a worldwide membership of approximately 18,02 million people. As such, the Organisation is the 12th largest religious organisation in the world.

- 10.5 The Organisation has a missionary presence in over 202 countries and territories recognised by the United Nations. The Organisation is thus ethnically and culturally diverse.

- 10.6 Less than 7% of the world membership resides in the USA with large numbers in Africa as well as Central and South America.
- 10.7 The Organisation's activities are being conducted across the world at 71 048 Local Churches through various legal entities, including 65 553 registered companies. It employs 17 272 ministers.
- 10.8 The Organisation operates 5 813 primary schools, 1 823 secondary schools and 111 tertiary institutions. It also operates 173 hospitals and 132 nursing homes, a number of publishing houses worldwide, as well as a humanitarian aid organisation known as the Adventist Development and Relief agency ("ADRA").
- 10.9 The Church is a Protestant Christian denomination distinguished by its observance of Saturday, the original seventh day of the Judeo-Christian week, as the Sabbath, and by its emphasis on the imminent second coming of Jesus Christ.
- 10.10 Distinctive teachings of the Organisation include the unconscious state of the dead and the doctrine of investigative judgment.

10.11 The Organisation is also known for its emphasis on diet and health, its holistic understanding of the person, its promotion of religious liberty and its conservative principles and lifestyle.

10.12 Members of the Organisation must abstain from eating pork, shellfish and other foods prescribed as “unclean”.

10.13 The Organisation practises a set of distinctive doctrines which distinguishes its Organisation from other Christian beliefs. These include:

10.13.1 Fundamental belief 19 – the Law of God is embodied in the Ten Commandments, which continue to be binding upon Christians;

10.13.2 Fundamental belief 20 – the Sabbath should be observed on the seventh day of the week, specifically from Friday sunset to Saturday sunset;

10.13.3 Fundamental beliefs 25 – 28 - Jesus Christ will return visibly to earth after a time of trouble, during which the Sabbath will become a worldwide test. The second coming will be followed by a millennial reign of the Saints in Heaven;

- 10.13.4 Fundamental beliefs 7 and 26 – humans are an indivisible unity of the body, mind and spirit. They do not possess an immortal soul and there is no consciousness after death;
- 10.13.5 Fundamental belief 27 – the wicked will not suffer eternal torment in hell, but instead will be permanently destroyed;
- 10.13.6 Fundamental belief 8 – humanity is involved in a great controversy between Jesus Christ and Satan;
- 10.13.7 Fundamental belief 24 – at His ascension, Jesus Christ commenced an atoning ministry in the heavenly sanctuary;
- 10.13.8 Fundamental belief 24 – a judgment of professed Christians began in 1844, in which the books of record are examined for all the universe to see. The investigative judgment will inform who will receive salvation, and vindicate God in the eyes of the universe as just in his dealings with mankind;
- 10.13.9 Fundamental belief 13 – there will be an end-time remnant who keeps the commandments of God; and
- 10.13.10 Fundamental belief 18 – writings of the Organisation's founders

constitute a continuing and authoritative source of truth, although ultimately subject to the Bible.

10.14 The Organisation has an official theological research centre, being the Biblical Research Institute (“BRI”). The Organisation furthermore has two professional organisations for its theologians, who are affiliated with the Organisation, being the Adventist Society for Religious Studies (“ASRS”) and the American Academy of Religion (“AAR”).

10.15 The primary prerequisite for membership is baptism by immersion, which only occurs after a candidate has undergone proper instruction in the Organisation’s beliefs. Once baptised, a member becomes a “Seventh-day Adventist”, abbreviated as “SDA” or an “Adventist”.

11. **THE ORGANISATIONAL STRUCTURE OF THE CHURCH**

11.1 It follows logically that the Church with such a vast worldwide acclaim, presence and following, has to be extensively managed and controlled.

11.2 The Church has, over the ages, developed an organisational

structure designed to manage its worldwide operations. This organisational structure is entrenched in a number of Constitutions by which the Church's supporting and constituent structures were created and empowered. All these Constitutions need to be read together to understand the concept and the business of the Church.

11.3 I will hereinafter deal with certain extracts from the various Constitutions addressing specific issues raised herein.

11.4 I will for completeness sake attach the full texts of all the Constitutions, not only those extracted herein. This I do for the following reasons:

11.4.1 It will enable the Honourable Court to gain some insight into the time and effort spent on the design of the Organisation;

11.4.2 It will enable the Honourable Court to understand the interconnectedness of the various Constitutions governing the Church throughout all its different levels;

11.4.3 The Constitutions are akin to delegated legislation of which the Honourable Court cannot take judicial notice if not attached to this affidavit; and

11.4.4 I expect that the 1st – 16th Respondents may wish to put into dispute the interpretation of certain of the Constitutions. In such an event, it might be necessary for the Honourable Court to have regard to the context of a particular Constitution relative to all or some of the other Constitutions comprising the mosaic of interrelated Constitutions.

11.4.5 The Applicants thus have no option but to attach the full text of the Constitutions governing the Church.

11.5 The Seventh-day Adventist form of governance is representative. It recognises that the authority of the Church rests in its members, which is expressed through duly elected representatives at each level of organisation, with executive responsibility delegated to representative bodies and officers at each separate level.

11.6 The following organisational levels exist in the Church, each deriving its individual existence from the GC's overarching Constitution, supplemented by separate Constitutions governing each such level, namely:

- 11.6.1 at the foundation level of the Organisation is the public face of the denomination, being local congregations or churches (“Local Churches”). Every baptised Adventist must be a member of a Local Church and has voting powers at his/her Local Church. Each Local Church has a Church Board (“CB”) that regularly holds Church Business Meetings (“CBM’s”);
- 11.6.2 directly above the Local Church level, is the Local Conference (“the Local Conference”). It is responsible for the governance of that number of Local Churches allocated to it within a particular state, province or territory (or part thereof). A Local Conference appoints ministers at Local Churches and organises the distribution of tithes and makes payments to ministers. A Local Conference may organise the different Local Churches resorting under it, into a number of “Districts” and may constitute a “District Management Board” (“DMB”) in respect of each “District” within its jurisdictional area. A Local Church enjoys representation at such a DMB and at meetings, referred to as “sessions” of the relevant Local Conference;
- 11.6.3 above the Local Conference is the Union Conference (“the Union Conference”). As the name suggests it comprises of a union of all Local Conferences” within a particular territory;

11.6.4 above the Union Conference one finds a Division. There are 13 Divisions worldwide, being the representative bodies of the GC in each respective geographical part of the world. A Division, however, does not represent a separate organisational level of the Church. It acts as the representative body of the GC in a particular part of the world; and

11.6.5 the highest level of governance is seated in the GC. The GC represents the authority of the Organisation. It has the final say in matters of conjecture and administration. The GC operates through its 13 Divisions worldwide.

11.7 Each structure within the Organisation holds meetings at certain prescribed intervals. At these meetings administrative and other decisions are taken. For instance, the President of the GC gets elected at the General Conference session (meeting) every 5 years. Delegates to a session (meeting) are appointed by organisations at an immediate lower level. For example, each Local Church appoints delegates to a meeting of a Conference. Delegates to Union meetings, will comprise of Conferences.

11.8 I interpose to indicate to the Honourable Court that membership

to the Church is obtained by a believer in the Church's theology, undergoing baptism by immersion coupled with an expression of the "Commitment". The "Commitment" is an expression by a believer to remain bound to the beliefs of the Church. It is otherwise known as a "vow". One of the vows expressed in the Commitment reads:

"9. I believe in Church organization. ..."

11.9 The "Commitment" is taken up in the "Church Manual", being a manual compiled by the GC in session at regular intervals and which binds all the different organisational levels and structures of the Church together into one unified body.

11.10 Article BA 15 05 of the SID Working Policy 2013 determines that the principles which are contained in the Church Manual pertaining to the administration of Local Churches, both within the Local Church and in its relationship to higher levels of organisation, must be followed. It specifically provides that no attempt should be made to set up standards of membership or to make, or to attempt to enforce rules or regulations for the Church which have not been adopted by the general body of believers of the Church and which are contained in the Church Manual.

11.11 Article B 15 10 of the SID Working Policy 2013 determines that the GC Working Policy shall be strictly adhered to by all organisational structures of the Church in every part of the world and that no departure from its policies shall be made without prior approval from the GC Executive Committee.

11.12 I respectfully submit that the organisational structure of the Church and the unity between such structures are being threatened by the 1st – 15th Respondents who engage in conduct which disregards the Church's organisational structure, by, *inter alia*, setting up their own parallel structure to compete with the TOC for organising Local Churches within the TOC's jurisdictional area. I will expand on this issue later.

12. **THE VARIOUS CONSTITUTIONS**

12.1 The Church, as the mother body of the Organisation, comprises of the organs (structures) referred to above. All these structures are connected through a suite of well-designed, carefully crafted, interwoven and interdependent written Constitutions and the Church Manual

- 12.2 At the upper hierarchical level, the GC is governed by a Constitution which was revised at the 59th session held in Atlanta, United States of America (“USA”) between 24 June and 3 July 2010 (“the GC Constitution 2010”).
- 12.3 The GC, at regular intervals, adopts so-called “Bylaws”. The latest version thereof is also dated 2010 (“the GC Bylaws 2010”).
- 12.4 In terms of Article III of the GC Constitution 2010, the GC conducts its work through its Divisions. Article I of the GC Bylaws 2010 on its part confirms this arrangement.
- 12.5 The GC also adopts a “Working Policy” from time to time.
- 12.6 It has become practice for the GC to, once it updates its “Working Policy”, to publish same in a comprehensive publication, which contains the latest version of the:
- 12.6.1 GC Constitution;
 - 12.6.2 GC Bylaws;
 - 12.6.3 GC Mission and Value Statements;

12.6.4 Total Commitment to God;

12.6.5 Mission to the World; and

12.6.6 GC Working Policy.

12.7 The latest version of the GC Working Policy is titled the “GC Working Policy 2013 – 2014 (‘the GC Working Policy 2013 – 2014’).

12.8 The GC, at regular intervals, also publishes the “Church Manual”, which applies throughout all the organisational levels and structures of the Organisation. The latest version thereof is titled “Seventh-day Adventist Church Manual, 2010” (“the Church Manual 2010”). The Church Manual 2010 is divided into the following 14 chapters:

12.8.1 Chapter 1 – Why a Church Manual;

12.8.2 Chapter 2 – Church of the Living God;

12.8.3 Chapter 3 – Organisation and Authority;

- 12.8.4 Chapter 4 – Pastors and Other Church Employees;
- 12.8.5 Chapter 5 – Organising, Uniting and Dissolving Churches and Companies;
- 12.8.6 Chapter 6 – Membership;
- 12.8.7 Chapter 7 – Discipline;
- 12.8.8 Chapter 8 – Local Church Offices and Organisations;
- 12.8.9 Chapter 9 – Elections;
- 12.8.10 Chapter 10 – Services and Other Meetings;
- 12.8.11 Chapter 11 – Finance;
- 12.8.12 Chapter 12 – Standards of Christian Living;
- 12.8.13 Chapter 13 – Marriage, Divorce and Remarriage; and
- 12.8.14 Chapter 14 – Fundamental Beliefs of Seventh-day Adventists;

and

12.8.15 A final Chapter which contains explanatory notes on the content of the aforesaid Chapters.

12.9 There are currently 13 Divisions of the GC worldwide and two attached fields.

12.10 The Divisions of the GC are:

12.10.1 The East-Central Africa Division, which comprises of 11 countries. Amid a population of approximately 307 million people, the Church counts more than 2,5 million members worshipping at more than 11 000 churches in the ECD;

12.10.2 The Euro-Asia Division, which spans 11 time zones across Northern Asia. Adventists worship at almost 2 000 churches across this region, comprised of 13 countries;

12.10.3 The Middle East and North Africa Division, which comprises of 20 countries. The region is bordered by Morocco to the west, Iran to the east, Turkey to the north and Sudan to the south;

- 12.10.4 The Inter-American Division, which comprises of Mexico, the Caribbean, Central America and five northernmost countries in South America. This Division reports more than 3,5 million members, making this Division the Church's most popular region;
- 12.10.5 The Inter-European Division, which oversees the work of the Church in 20 countries across central, western, southern and eastern Europe. Its headquarters is located in Berne, Switzerland;
- 12.10.6 The Israel field reports a membership of nearly 900 members amid a population of 7,7 million. There are 13 Adventist congregations in this country;
- 12.10.7 The North American Division, was the first Division created to serve as an administrative of the GC. It operates in the USA, Canada, Bermuda, St. Pierre- and Miquelon Islands, US territories of the Pacific of Guam, Wake Island, and 3 states in free association with the USA, being Palau, the Marshall Islands and the Federated States of Micronesia;
- 12.10.8 The Northern Asia-Pacific Division, which is the largest Division

in the worldwide population. About 1/4th of the world's population – roughly 1,5 billion – reside in this territory;

12.10.9 The Southern Africa-Indian Ocean Division (“SID”), being the 3rd Applicant, is the newest Division, covering much of Africa and island nations in the Indian Ocean. More than 150 million people live in this Division and there are approximately 2,1 million Church members resident in this region;

12.10.10 The South American Division has more than 2 million members and 10 600 churches. It operates in Argentina, Bolivia, Brazil, Chilli, Ecuador, Falkland Islands, Paraguay, Peru and Uruguay;

12.10.11 The South Pacific Division comprises of Australia, New Zealand, Papua New Guinea and numerous islands through the South Pacific Ocean. The Church counts about 423 000 members worshipping in nearly 2 000 churches under this Division;

12.10.12 The Southern Asia Division comprises of five countries: Bhutan, Indian, the Maldives and Nepal. It has more than 4 000 churches in a population of about 1,2 billion people;

12.10.13 The Southern-Asia Pacific Division includes the Southeast Asian

countries of Bangladesh, Brunei, Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Sri Lanka, Thailand, Timor-Leste, Vietnam and Pakistan. The region has a population of more than 950 million people;

12.10.14 The Trans-European Division, which encompasses 22 countries, was first organised in 1928, and last reorganised in 2012. Europe is the world's second smallest continent by land mass, covering only about 2% of the earth's surface; and

12.10.15 The West-Central Africa Division comprises of 22 countries situated between Mauritania in the north west, Democratic Republic of Congo to the south and Chad in the north east.

12.11 Relevant to this application is the Southern African-Indian Ocean Division ("SID"), being the 3rd Applicant.

12.12 Article III of the GC Constitution 2010 determines that a Division, such as the SID:

12.12.1 operates as an administrative unit of the GC with commensurate authority to carry out the GC's responsibilities in the territory assigned to it;

- 12.12.2 is not a separate constituent level of the organisation;
- 12.12.3 shall act in full harmony with the GC Constitution and Bylaws, the GC Working Policy and actions of the Executive Committee of the GC; and
- 12.12.4 in order to carry the authority of the GC, the actions of “Division Committees” shall, of necessity, be in harmony with and complimentary to the decisions of the GC in session, and the actions of the Executive Committee between sessions.
- 12.13 By virtue of Article III of the GC Constitution 2010, the SID (3rd Applicant) is empowered to engage in this application since it affects the GC’s contractual rights *vis-à-vis* members of the Church, in this instance the 1st – 15th Respondents.
- 12.14 The SID, because of it being designed to only fulfil the GC’s functions within the territory assigned to it, has no independent existence and operates by virtue of the obligation being imposed upon it to enforce the Constitution, Bylaws, Working Policy and Church Manual of the GC.

12.15 The SID, from time to time reproduces the GC'S Constitution, Bylaws, Working Policy and Church Manual into a single publication, the latest being titled: "Southern Africa-Indian Ocean Division WORKING POLICY 2013 Edition" ("the SID Working Policy 2013).

12.16 Section 1 of Article XIV of the GC Bylaws 2010 determines that a Division may for the use, benefit, and purpose of the Church in countries of that Division, establish various legal entities and may entrust to it full responsibility for property, governance or other functions, provided such responsibility is exercised in harmony with denominational policies and values.

12.17 Article III of the GC Constitution 2010 determines that each of the 13 worldwide Divisions in turn comprises of a number of "Union Conferences".

12.18 In South Africa, the relevant Union Conference is the Southern Africa Union Conference ("SAU"), being the 4th Applicant.

12.19 The SAU is governed by the GC's Constitution, Bylaws, Working Policy and Church Manual as well as by its own Constitution, the latest being adopted on 21 November 2010 ("the SAU

Constitution, 2010”).

12.20 The SAU is also governed by a “Working Policy”. The latest version thereof is known as the “South African Union Conference Working Policy 2011 – 2013 Edition” (“SAU Working Policy, 2011 – 2013”).

12.21 The SAU, being a “Union of Conferences” on its part, comprises of 7 different Conferences, being the:

12.21.1 Lesotho Conference (“LC”);

12.21.2 Swaziland Conference (“SC”);

12.21.3 Namibia Conference (“NC”);

12.21.4 KZN-Free State Conference (“KZNFC”);

12.21.5 Northern Conference (“NCA”);

12.21.6 Trans-Orange Conference (“TOC”); and

12.21.7 Cape Conference (“CC”).

12.22 Each of the seven Conferences in South Africa controls an allocated number of Local Churches situated throughout the South African territory. Relevant to this application is the TOC, being the 5th Applicant.

12.23 The 1st – 15th Respondents focus their efforts at setting up parallel structures to compete with the TOC in order to gain organisational control over the Local Churches within the TOC's jurisdictional area.

12.24 There are currently 313 Local Churches within the TOC's jurisdictional area, some of which are being targeted by the breakaway group.

12.25 Each Local Conference, such as the TOC, is governed by all the Constitutions, of the higher structures mentioned above, as well as by its own Constitution. The latest Constitution adopted by the TOC was revised during 2011 ("the TOC Constitution 2011").

12.26 Local Churches do not have their own Constitutions. They derive their functions from all the aforementioned Constitutions, Bylaws, and Working Policies collectively.

12.27 The General Conference Corporation (“the GC Corporation”), being the 2nd Applicant, is, by virtue of Article XI, section 2 of the GC Constitution 2010, a legal entity formed to serve the GC in carrying out its purposes.

12.28 In terms of Article BA 40 40 of the GC Working Policy 2013 – 2014, the GC Corporation is the registered proprietor of various registered trade marks in South Africa in terms of the Trade Marks Act, 194 of 1993 (“the TMA”) in name “SEVENTH-DAY ADVENTIST” and a logo associated therewith, which trade marks may only be used strictly in accordance with the provisions of the said GC Working Policy.

12.29 All immovable property, mostly comprising church buildings, belonging to the Organisation, regardless of where it may be situated within South Africa, are registered in the name of SEDCOM, being the 6th Applicant. SEDCOM derived its powers from its memorandum and articles of association, as well as from all the Church’s Constitutions, Bylaws, Working Policies and subject to the Church Manual.

12.30 In order to ease reading this application, the Applicants have

elected to attach all the Constitutions governing the Church at the end hereof, instead of attaching each extract as a separate annexure hereto. I repeat what I have stated above as the reasons for attaching the full text of all the Constitutions instead of only selective extracts thereof.

12.31 The 1st – 15th Respondents do have copies of all the Constitutions since they have for many years been members of the Church. They also served on the Executive Committee of the TOC, which required of them to have an in-depth knowledge of the said Constitutions. It is not expected that the 1st – 15th Respondents will contest the existence and/or content of the said documents. For this reason the copies of the application to be served upon the 1st – 16th Respondents will not contain the Constitutions. Such Respondents can, however, obtain copies of the Constitutions from the Applicants' attorney should they so wish.

13. **ORIGIN OF THE DISPUTE BETWEEN THE PARTIES**

13.1 As I referred to above, immovable properties belonging to the Organisation which are located within the Republic, must be registered in the name of SEDCOM. This is so by virtue of, *inter*

alia:

13.1.1 section 70 05 of the SID Working Policy, 2013, which determines that church properties and other assets shall be held in the name of an appropriate denominational corporate entity, being in this instance SEDCOM and not by individuals, trustees or local congregations;

13.1.2 article 18.1 of the SAU Constitution determines:

“Any immovable property bequeathed to or acquired by or on behalf of the SAU shall be held in trust for the SAU by SEDCOM (Incorporated Association Not for Gain) in its capacity as trustee for the SAU.”

13.1.3 Article XIII of the TOC Constitution, which determines that any immovable property bequeathed to, or acquired by, or on behalf of the TOC, shall be held in trust for it by an asset holding company established by the TOC;

13.1.4 clause 5(l) of the 6th Applicant’s memorandum of association, dated 19 July 1920, which states as one of its objects: *“[T]o acquire, hold and secure title to landed property”*.

13.2 On 20 May 1987, certain immovable property were registered in

the name of SEDCOM, namely Holdings 8 and 15, Diswilmar Agricultural Holdings, Registration Division I.Q., Gauteng Province, both in extent 2,0215 hectares each (“the properties” or “Diswilmar Farm”).

13.3 The properties were transferred into the name of SEDCOM on 20 May 1987 by virtue of Deed of Transfer T22252/87.

13.4 During or about 2006, the West Rand District decided to sell the properties to Prestige Park.

13.5 On or about 19 December 2006, a company by the name of Prestige Park (Pty) Ltd (“Prestige Park”) bought the properties for a purchase consideration of R9,6 million.

13.6 SEDCOM, in its aforesaid capacity and by virtue of the Constitutions referred to above, in accordance with the wishes of the West Rand District then disposed of the properties to Prestige Park by virtue of a written deed of sale signed on 19 December 2006.

13.7 During 2007/2008 two addenda were added to the purchase agreement, which are not relevant for purposes of this

application.

13.8 During or about 2008, members of the West Rand District resolved that the sale agreement in respect of the properties be cancelled due to the alleged non-timeous payment of the initial deposit of R500,000.00 by Prestige Park.

13.9 The decision by the West Rand District purporting to cancel the purchase agreement was communicated to the TOC in a letter dated 28 July 2009.

13.10 The TOC on its part communicated the cancellation of the purchase agreement to SEDCOM in a letter dated 11 December 2009.

13.11 SEDCOM, however, refused to inform Prestige Park of the purported cancellation by the West Rand District, since it believed that it was not legally competent for the West Rand District to cancel the agreement in circumstances where the alleged breach by the purchaser had not been established and where the purported cancellation could in itself be regarded as repudiation.

13.12 Frustrated with the lack of progress in finalising the transfer of the properties to Prestige Park as a result of the West Rand District's persistence that the sale agreement be cancelled, Prestige Park on 25 February 2011 issued summons out of the then South Gauteng High Court, Johannesburg, under case no. 8503/2011, claiming specific performance and damages on grounds of an alleged repudiation, *alternatively* breach of contract by SEDCOM in refusing:

13.12.1 to cause registration of the properties into the name of Prestige Park;

13.12.2 to give occupation of the properties to Prestige Park; and

13.12.3 compliance with warranties as was stated in the contract itself.

13.13 Upon having been served with the summons, SEDCOM sought legal advice. It was advised that the Prestige Park had a valid claim for specific performance and will, in all probability, succeed in its action against SEDCOM. Prestige Park's claim for damages was founded upon SEDCOM's failure to transfer the properties. This delay was caused by the West Rand District's refusal to accept that the sale could not be unilaterally cancelled

at its whim and the failure by the Executive Committee of the TOC to resolve the conflict by simply informing the West Rand District that its delay will result in a claim for substantial damages against SEDCOM.

13.14 On 24 February 2013 a special constituency meeting of the TOC was held (“the February 2013 meeting”).

13.15 At the February 2013 meeting, it was, *inter alia*, resolved:

13.15.1 to approve the transfer of the properties to Prestige Park;

13.15.2 to mandate SEDCOM to negotiate a proper out-of-court settlement with Prestige Park;

13.15.3 that Prestige Park, notwithstanding its claim for damages, must pay the full purchase price stated in the sale agreement;

13.15.4 to remove, *inter alia*:

13.15.4.1 the 1st Respondent as president of the TOC;

13.15.4.2 the 5th Respondent as Executive Secretary of the TOC;

- 13.15.4.3 Mr Elliot Sibanyoni (“Mr Sibanyoni”) as the Chief Financial Officer of the TOC; and
- 13.15.4.4 the entire Executive Committee of the TOC, comprising the 2nd – 4th and 6th – 15th Respondents; and
- 13.15.5 to elect a new Executive Committee for the TOC comprising of a new President, being Pastor Justice Mongwe, a new Executive Secretary, being Pastor Thamsanqa Danxa and a new Chief Financial Officer, being Pastor Bongani Meshak Khanyile and an entire new Executive Committee.

13.16 It is important to note that the cause for the removal of the Executive Committee of the TOC was recorded in the minutes of the February 2013 meeting, as follows:

***“AND WHEREAS** the TOC administration, notwithstanding the fact that the TOC is the second defendant in the Diswilmar farm court case, decided not to attend this special constituency meeting of 24 February 2013;*

***AND WHEREAS** the TOC administration and EXCOM sought to insight and unduly influence pastors and churches not to attend a duly called special constituency meeting;*

***AND WHEREAS** the conduct of the TOC administration in relation to the special session raised serious concerns with*

the constituency regarding the credibility and responsibility of the TOC administration and EXCOM;

AND WHEREAS *the report presented by the SEDCOM Director on the Diswilmar Farm court case clearly indicated a lack of responsibility, lack of co-operation with the SAU and SEDCOM, indifference, carelessness and insubordination of the Trans-Orange Conference Administration;*

AND WHEREAS *the report of the said director clearly indicated the serious financial impact and catastrophic consequences that the farm court case can have on the whole of the SAU in that the SAU and SEDCOM face the claim for damages to the amount of more than R38 000 000.00 (thirty eight million Rand);*

AND WHEREAS *the Trans-Orange Conference Administration took an apathic and careless approach towards this highly sensitive and serious matter;*

AND WHEREAS *the Trans-Orange Conference Administration had a fiduciary duty to protect the interest of the conference and the church at large, but neglected to perform accordingly;*

AND WHEREAS *the constituency, after receiving the said report, concluded that the Trans-Orange Conference Administration Executive Committee members demonstrated gross negligence, unreliability, incompetency and lack of accountability;*

THEREFORE VOTED ...”

13.17 On 4 March 2013, Patrick Phalang Tlhagwane (“Mr Tlhagwane”), a member of the West Rand District, issued an urgent application out of this Honourable Court under case no. 13726/2013, which was set down to be heard on 5 March 2013, as is evidenced by a copy of the notice of motion attached hereto marked **Annexure**

“**A1**” (“the Tlhagwane application”).

13.18 The gist of the orders prayed for in the Tlhagwane application was to interdict SEDCOM from proceeding with the transfer of the properties to Prestige Park.

13.19 An agreement was reached between the legal representatives of the parties in the Tlhagwane application for the filing of answering and replying affidavits resulting in the Tlhagwane application being postponed.

13.20 Whilst answering papers were being prepared in the Tlhagwane application, it was discovered by members of the new Executive Committee of the TOC 2013, that an amount of R470,000.00 had been transferred from the bank account of TOC into the trust account of Ngcingwana Inc, being a firm of attorneys who also acts on behalf of the 1st – 16th Respondents herein.

13.21 It was discovered that the transfer of the R470,000.00 from the TOC’s bank account was made a day after Mr Sibanyoni was replaced as Chief Financial Officer of the TOC at the February 2013 meeting.

13.22 Upon realising that Mr Sibanyoni siphoned off the TOC's moneys into the trust account of Nqcingwana Inc, the TOC immediately issued an urgent application out of this Court under case no. 22469/2013, wherein two part relief was sought ("the TOC urgent application"). In the first part thereof, an order was sought for the preservation of the R470,000.00 from Ngcingwana Inc's trust account, pending the second part thereof, which was for an order for the return of the said moneys to the TOC.

13.23 Part A of the TOC urgent application was decided in favour of the TOC by the Honourable Mr Justice Makgoka of this Court on 20 May 2013, as is evidenced by a copy of the judgment attached hereto marked **Annexure "A2"**.

13.24 The most important findings made by Makgoka J in the TOC urgent application were the following:

"[14] In my view, there are two crisp questions. Firstly, the ownership of the money, and secondly, the position of the first respondent vis-à-vis the money. With regard to the first, there can be no doubt that the money belongs to the applicant. The money was transferred from the bank account of the applicant and there can be no question that it is money belonging to the applicant. The second respondent's grim denial that the money is that of the applicant is spurious and without any foundation.

[15] *Even if one accepts the second respondent's assertion that the payment of money was made pursuant to a resolution validly taken by the applicant's executive committee on 24 February 2013, it is clear that that decision had been subsequently recalled by the new executive committee. This is clear from the applicant's letter to the first respondent on 1 April 2013. The money remains the property of the applicant, irrespective of who constitutes its executive committee. The applicant, and not individual members of the executive committee, is the trust creditor of the first respondent, who is obliged to deal with the money only on the instructions of its trust creditor, the applicant. That answers the second question, and that should be the end of the matter.*

[16] ...

[17] *Before I conclude, one worrying aspect needs to be mentioned. It relates to the first respondent's stance when the applicant first requested that the money be returned to it. I have quoted the relevant paragraph of its letter in para [6] above. By refusing to accede to the trust creditor's instructions to return the money to it, it demonstrates, in my view, that practitioner's lack of insight into the nature of the trust account and the funds held in it on behalf of a trust creditor. It was certainly unwise of the attorney to involve himself in the factionalism besetting the applicant's members. His obstinate refusal to comply with his client creditor's instruction, led directly to this unnecessary application."*

13.25 The above reasoning informed the order of Makgoka J leading to the preservation of R214,000.00 of the original R470,000.00, which was at the time still left in the trust account of Ngcingwana Inc. It also led to an order that the Law Society of the Northern Provinces be requested to investigate the conduct of its member, Mr Siza Sizilizwe Ngcingwana, the 1st – 16th Respondents'

attorney herein, for the role that he had played in the matter, in the light of what was stated in the judgment.

13.26 The moneys of the TOC were transferred by Mr Sibanyoni in order to provide for legal costs the 1st – 15th Respondents anticipated to expend in an application they threatened to bring in order to contest their removal from the Executive Committee of the TOC at the February 2013 meeting. This threatened application has, incidentally, only seen the light on 21 February 2014, in another Court, being in the Gauteng Local Division, as is evidenced by a copy of the notice of motion attached hereto marked **Annexure “A3”** (“the Johannesburg application”). More about that application later.

13.27 Suffice to state that Mr Sibanyoni attempted to fund future litigation against the TOC with the TOC’s own moneys by transferring TOC moneys to his attorney. Ngcingwana was instrumental in making his trust account available to facilitate that scheme, hence his conduct being referred to the relevant Law Society.

13.28 On 22 August 2013, Ngcingwana came to his senses and repaid the full R470,000.00 to the Applicants. This rendered Part B of

the TOC urgent application academic, save for interest and costs.

13.29 Part B of the TOC urgent application was then enrolled for hearing on 3 September 2013 for costs and interest. Mr Sibanyoni was ordered to pay the interest on the amount of R470,000.00 *a tempore morae* from 25 February 2013 until 22 August 2013 and to pay the costs of both Parts A and B of the TOC urgent application, as is evidenced by the order attached hereto as **Annexure “A4”**.

13.30 Whilst the TOC urgent application was being finalised, the Tlhagwane urgent application under case no. 13726/2013 was being set down for hearing on the normal opposed motion court of this Honourable Court on 5 September 2013. It will be remembered that in that application Mr Tlhagwane sought to interdict the transfer of the properties to Prestige Park and to refrain SEDCOM from doing anything that may have an adverse effect on Mr Tlhagwane’s alleged interest in the properties.

13.31 The Tlhagwane application was dismissed with costs, as is evidenced by a copy of the judgment attached hereto marked **Annexure “A5”**.

13.32 What is important to take from the Baqwa J judgment in the Tlhagwane application is that it was brought by Tlhagwane on the assumption that that the properties would be transferred to Prestige Park without the payment of any compensation to SEDCOM. The Court rejected this notion on strength of the express wording of the resolutions taken during at the February 2013 meeting and on strength of the fact that Prestige Park already paid the R500,000.00 deposit and already delivered guarantees for the balance of the purchase consideration in the amount of R9,1 million.

13.33 The 1st – 15th Respondents were instrumental in all of these litigious attempts.

13.34 On 23 October 2013, the 1st – 15th Respondents regrouped. They issued a second urgent application out of this Court under case no. 67436/2013, a copy of which notice of motion is attached hereto marked **Annexure “A6”** (“the Setsiba urgent application”). Therein they, under the leadership of the 1st Respondent herein, brought an urgent application, set down for hearing on Thursday, 24 October 2013, wherein they had sought to interdict the SAU, the TOC, the SID and the GC from

enforcing or giving effect to any resolutions taken at the February 2013 meeting and from interdicting the said entities from organising a regular session on 25 – 27 October 2013, pending finalisation of Part B thereof.

13.35 Under Part B of the Setsiba urgent application, the breakaway group sought the setting aside of the decisions taken at the February 2013 meeting and for an order declaring that the Executive Committee of the TOC shall function as it functioned prior to the February 2013 meeting, therein attempting to reverse the 1st – 15th Respondents' removal from the Executive Committee of the TOC with retrospective effect.

13.36 The 1st Respondent and his fellow breakaway members then, for reasons unknown to the Applicants, withdrew that application and tendered costs thereof.

13.37 It has only now become evident why they did this. They have opted to bring a fresh application, issued on 21 February 2014, in the Gauteng Local Division, Johannesburg for the same very relief. This appears from a copy of the notice of motion already attached hereto marked Annexure "A3", in which they seek five declaratory orders with the effect that:

- 13.37.1 their removal from the TOC's Executive Committee on 24 February 2013 be declared null and void and of no force and effect and be set aside;
- 13.37.2 that the election of a new Executive Committee by the TOC on 24 February 2013 be declared null and void and of no force and effect and be set aside;
- 13.37.3 that the convening of a regular business session of the TOC for the period 24 – 27 October 2013 be declared null and void and of no force and effect and be set aside;
- 13.37.4 that the election of a new Executive Committee at the regular business session of the TOC held on 24 – 27 October 2013 be declared null and void and of no force and effect and be set aside; and
- 13.37.5 that the Executive Committee of the TOC, which existed prior to 24 February 2013, be declared to be the only legitimate Executive Committee of the TOC.

13.38 In addition to the said relief, the 1st – 15th Respondents also seek

an order directing the TOC to convene a regular business session within 4 months for the election of a new Executive Committee.

13.39 The TOC has already filed its answering affidavit in the Johannesburg application. The applicants therein may now file a reply. The TOC was advised that the Johannesburg application is devoid of any merit. It, *inter alia*, seeks the setting aside of the constitutionally and democratically election of two successive Executive Committees of the TOC, in circumstances where they unduly delayed the bringing of that application.

13.40 Subsequent to the issuing of the Johannesburg application, it was discovered by members of the Executive Committee of the TOC that the Local Church in Mahikeng was being targeted by the breakaway group who sought to transfer tithes deposited in the bank account of the said Local Church to a bank account of an entity controlled by them. This resulted in an urgent application being brought in the Mahikeng High Court for the relief set out in the notice of motion attached as **Annexure "A7"** and a rule *nisi* being granted on 6 March 2014, as appears from a copy thereof attached hereto as **Annexure "A8"** ("the Mahikeng application").

13.41 On the return day of the rule *nisi* in the Mahikeng application, the rule was discharged for procedural reasons relating to Rule 7 of the Uniform Rules of Court. I have no doubt that the 1st – 15th Respondent would grasp at the opportunity of suggesting the *rule nisi* was discharged on its merits in order to suit their cause of setting up unlawful, if not illegal, parallel structures to compete with the TOC and to further sow division within the Church. The happenings at Mahikeng remain relevant since the strategy of syphoning off tithes from the TOC has become one of the main offensives of the breakaway group.

14. **THE STRATEGIES ENGAGED UPON BY THE BREAKAWAY GROUP**

14.1 Instead of approaching a Court of law to urgently set aside their removal from the Executive Committee of the TOC, as is demanded by the rule of law and the principle that administrative action remains in force until set aside no matter how unlawful or procedurally unfair it may appear, the 1st – 5th Respondents chose to ignore their removal and, instead, advocated to the whole world that they in fact comprise the “legitimate TOC”.

14.2 They simply went into a state of denial of the events which transpired at the February 2013 meeting. Coupled with that they engaged in a campaign of parasiting upon the identity of the TOC by purporting to be the TOC and to thereby influence Local Churches and members of the Church to recognise them as the “true TOC” and to forward their tithes to their parallel structures.

14.3 I interpose to indicate that the 1st Respondent is himself legally qualified. I believe he holds a legal qualification. He is therefore assumed to understand the principles governing the rule of law and the administrative law, which renders his conduct of misleading members of the Church into believing that the breakaway group constitutes the TOC and that Local Churches are by virtue of that fallacy entitled to organise themselves within the organisational structures of the Church, inexcusable.

14.4 Shortly after the February 2013 meeting, a letter dated 1 March 2013, a copy of which is attached hereto marked **Annexure “A9”**, was dispatched by the TOC to the 1st Respondent, confirming his removal as President of the TOC for cause.

14.5 In paragraph 3 of the said letter, the 1st Respondent was

informed that he was not entitled to remove or cause to be removed from the TOC offices, in whatever form, any information, documents, equipment, supplies and/or other property belonging to the TOC or to any person or entity associated with the TOC, without the authorisation of the TOC's new Secretary, being Pastor Tami Danxa ("Pastor Danxa").

14.6 In paragraph 4 of the letter, the 1st Respondent was specifically requested not to make use of the letterhead of the TOC for his personal endeavours, informing the 1st Respondent that such activities will be regarded as fraud and treated with the necessary severity.

14.7 Despite the aforesaid warning, the breakaway group, under leadership of the 1st Respondent, then engaged upon a strategy of:

14.7.1 infiltrating Local Churches within the TOC's jurisdiction during church services and during sessions of Local Churches' Church Business Meetings ("CBM's");

14.7.2 presenting to members of Local Churches within the TOC jurisdiction that they are the "real and legitimate TOC";

- 14.7.3 holding CBM's at Local Churches;
 - 14.7.4 convincing local treasurers to transfer tithes to bank accounts of entities in which they hold an interest;
 - 14.7.5 arranging conventions for members of the Church;
 - 14.7.6 utilizing the registered trade marks in the name and logo of the Church;
 - 14.7.7 seconding pastors, appointed by themselves, to Local Churches;
 - 14.7.8 generally sowing division within the Church; and
 - 14.7.9 setting up a parallel administrative office in Alberton for the breakaway group purporting to be the "real and legitimate TOC".
- 14.8 Soon after the February 2013 meeting, the breakaway group, comprising the 1st – 15th Respondents, engaged upon campaigns labelled by themselves as "Information Sharing Sessions" or "Conventions" whereby Local Churches, falling under the TOC's jurisdiction, were invited to attend. At these information sharing

sessions or conventions, Local Churches were then motivated to show their support to the 1st – 15th Respondents and to align themselves with a parallel structure set up by the 1st – 15th Respondents, known at the time as “TOC Alberton”.

14.9 I attach hereto as **Annexure “A10”** an e-mail dated 21 May 2013 containing an invitation to a convention to be held on 25 and 26 May 2013 at the Orlando Community Hall in Soweto with the theme *“We want our church back”*. This theme was carefully selected so as to create the impression that the 1st – 15th Respondents aims to take the Church back from the new Executive Committee of the TOC.

14.10 I also attach hereto as **Annexure “A11”**, an invitation to the said convention which accompanied the said e-mail. It clearly describes the 1st Respondent therein as the “TOC President”, in circumstances where he was removed from that office by virtue of the resolutions taken at the February 2013 meeting.

14.11 The said e-mail also further informs that at the intended convention, input will be invited from the Local Churches attending the said convention on:

14.11.1 “... preventing the force-full dispossession of the West Rand District of it's Farm ...”

14.11.2 “... the unfortunate removal of the TOC Leadership, who were removed for carrying out a Mandate to protect their Farm from being taken without (even a sent being paid), as requested by the West Rand District.”

14.12 The said e-mail also informs that at the intended convention feedback will be provided on the progress of the litigation with regards to the properties.

14.13 Some emotive tones are also contained in the said e-mail, probably in an attempt of ensuring a good attendance at the planned convention. It is in the form of a call to members of the West Rand District to protect their land, being an obvious reference to the properties. In this regard the e-mail informed members of the West Rand District, *inter alia*:

“The reason is that you know that the children of those Pensioners you are Dispossessing of Their Hard Earned Land will come back and claim their Parents’ toil even if you will be old.

...

You will be able to ask questions and share in the deliberations to prevent Land Dispossession from poor Africans who are trying to develop themselves ...”

14.14 I interpose to indicate that the invitation to the Soweto Convention on 25 and 26 May 2013 creates the impression that it was being organised by the TOC or its President, whilst in fact it was organised by the breakaway group of which the 1st Respondent professes to be the “President”.

14.15 I will hereunder deal with the prescripts of the various Constitutions governing the election of the Executive Committee of the TOC and of its President, as well as the prescripts of the relevant Constitutions confirming that it remains the prerogative of the TOC to organise conventions for Local Churches. Suffice to state that the 1st – 15th Respondents simply assumed or adopted the identity of the TOC and under that false identity arranged the said convention.

14.16 I will also refer the Honourable Court hereunder to the prescripts contained in the various Constitutions which strictly regulate the formation of any new organisational structure within the Church. Even in the event of the establishment of a new structure being authorised, which is denied, the Church will never provide a

name to such a new structure which can cause confusion amongst its members by giving it a name which is identical to that of one of its existing structures.

14.17 The 1st – 15th Respondents seem to have established their own parallel “Conference” without having followed the prescripts of the various Constitutions, which will be discussed hereunder, which strictly regulate the formation of new Conferences.

14.18 The question that begs to be answered is who elected them into those positions that they claim to hold. Only the 1st – 15th Respondents will be able to answer this vexing question. Save to state at this point that even if members of Local Churches or representatives of Local Churches elected to appoint the 1st – 15th Respondents to the Executive Committee of a parallel Conference, such elections would be invalid and unlawful for want of compliance with the prescripts of the Constitutions of the Church. These election, if they occurred, which is denied, were not organised by the TOC as the relevant Constitutions dictate should happen and were definitely not sanctioned by any of the 1st – 4th Applicants.

14.19 Attached hereto as **Annexure “A12”** is a programme advertising

an event to be held on 28 September 2013 at the Nelmapius Community Hall in Pretoria, also bearing the name and logo of the Church.

14.20 Attached hereto as **Annexure “A13”** is an agenda for the West Rand District Management Board Meeting of 3 November 2013 at Norwood, also bearing the name and logo of the Church. The following items, *inter alia*, appear on the said agenda:

14.20.1 An overview of the current status of the Church “in TOC since after 24 February 2013”;

14.20.2 An update on the Mahikeng and IDC meetings;

14.20.3 The allocation of pastors; and

14.20.4 “TOC offices and bank accounts”.

14.21 From the said agenda it is clear that the breakaway group kept Local Churches and DBM’s informed as to the progress they had made with setting up their own parallel structures. It also informs that they had opened bank accounts and appointed pastors, being the strict reserve of the TOC, i.e. the 5th Applicant.

14.22 The breakaway group has apparently also established an Executive Committee for “their Conference”. This purported Executive Committee held a meeting on 10 November 2013 at Alberton as is evidenced by the minutes of that meeting, attached hereto marked **Annexure “A14”**, and from which it appears that:

- 14.22.1 the 1st Respondent is referred to as “President TOC”;
- 14.22.2 the 1st Respondent opened the meeting;
- 14.22.3 Pastor Kubeka was appointed as “Acting Youth Director”;
- 14.22.4 the breakaway planned a youth camp in December 2013 for members of the Church;
- 14.22.5 a number of pastors support the breakaway group’s cause;
- 14.22.6 Pastor Nemaranzhe (the 15th Respondent), Pastor Mulopa (the 11th Respondent) and Musa Mkasi opened a bank account at the East Gate Branch of Standard Bank of SA Ltd (“Standard Bank”), which account reflected a positive balance of R1,4

million;

14.22.7 Local Churches outside the Gauteng area deposited their moneys into the said account;

14.22.8 the “Trans Orange Conference” will operate from an address at 1st Floor, Bracken Villa Centre, cor. Vermooten and Atmore Street, Brackenhurst, Alberton;

14.22.9 “a trust” referred to as “The Trans Orange Conference Church” has been registered with *“DTI and that it is under the name of that trust that the bank account aforesaid was opened and the organisation”*;

14.22.10 the following districts seem to support the breakaway group: Mafikeng, part of Diamond Heritage, most of Vaal District and some parts of East and West Rand;

14.22.11 they needed more support and in order to get such support, they decided that they had to provide services to those that may possibly join;

14.22.12 a budget was approved, providing for the administration of 150

Local Churches, 15 pastors, as well as support staff;

14.22.13 they will even considered affiliating to the Union and then to the Division, being obvious references to the SAU and SID, being the 4th and 3rd Applicants respectively.

14.23 I also attach hereto as **Annexure "A15"** the budget which was approved at the aforesaid meeting and which clearly shows that the breakaway group:

14.23.1 runs a parallel Conference which functions exactly as one established by means of the various Constitutions of the Organisation;

14.23.2 derives income from Local Churches;

14.23.3 employs pastors and pay them allowances;

14.23.4 employs support staff and pay them salaries; and

14.23.5 commits to expenses, including the payment of rent and the purchasing of office equipment.

14.24 All these functions are the preserve of a legitimately formed Conference in terms of the Constitutions of the Church.

14.25 The minutes of the said meeting informs that the meeting was attended to by, amongst others, the 1st, 2nd, 3rd, 4th, 6th, 7th, 9th, 10th, 11th, 12th, 13th, 14th and 15th Respondents.

14.26 The said minutes also, at the end thereof, indicate the 1st Respondent as “President TOC” and the particulars of the 14th Respondent as “Acting Executive Secretary Trans-Orange Conference Alberton Office”.

14.27 The 14th Respondent purporting to be the “Acting Executive Secretary Trans-Orange Conference Alberton Office” then in a letter attached hereto marked **Annexure “A16”**, invited the elders and church clerks of the Local Churches within the TOC’s jurisdiction to attend a conference in Mafikeng on 7 December 2013. The letter was accompanied by an invitation, a copy of which is attached as **Annexure “A17”**.

14.28 From the letter it is evident that the breakaway group:

14.28.1 uses the name “Seventh-day Adventist” as well as a logo

thereupon, being registered trade marks of the 2nd Applicant;
and

14.28.2 also makes use of the name “Trans-Orange Conference” on the said letterhead, being the 5th Applicant’s name.

14.29 There can be no doubt that the name “Trans-Orange Conference” was used by the breakaway group on the said letterhead to deceive or confuse ordinary members of Local Churches and to cause confusion and damage to the goodwill of the 2nd and 5th Applicants in the process.

14.30 The breakaway group then continued to arrange a youth camp, which was held from 20 December until 2 January 2014. It labelled the said youth camp as “TOC YOUTH CAMP 2013”, thereby implying that it was arranged by the TOC, which it was not. This is evident from a copy of the pamphlet attached hereto as **Annexure “A18”**.

14.31 I also attach hereto various advertisements and web pages that were published by the breakaway group to organise events, such as conferences, for Local Churches falling under the TOC’s jurisdiction through their parallel structures:

- 14.31.1 **Annexure “A19”**, being an advertisement which appeared in “The Advent Herald”, advertising a “REVIVAL SABBATH” on 25 January 2014 bearing the name “SEVENTH-DAY ADVENTIST CHURCH TRANS-ORANGE CONFERENCE”, as well as the registered logo of the Church. It also informs that the 1st Respondent is the “TOC President”;
- 14.31.2 **Annexure “A20”**, depicting a similar advertisement advertising the same event and informing that the main service will be held by the 1st Respondent, being the “TOC President”. It again bears the trade name and logo of the Church, as well as a reference to the 5th Applicant’s trade name;
- 14.31.3 **Annexure “A21”**, being an advertisement advertising the same event again bearing the name and logo of the Church, as well as the trade name of the 5th Applicant. The theme carried forward in the advertisement is “Open Mic No Lies”, being an obvious reference to the attempts by the 1st – 15th Respondents to establish themselves as the “true TOC”;
- 14.31.4 **Annexure “A22”**, being an advertisement advertising an event on 1 February 2014 at the Kopano Community Hall in

Soshanguve Extension 5. It bears the trade name and logo of the Church, as well as the trade name of the 5th Applicant. It also informs that the 1st Respondent as the “TOC President” will address the main service;

14.31.5 **Annexure “A23”**, being an advertisement for an information sharing afternoon to be held on 1 March 2014 at Taba Nchu with the theme “IS TOC ALBERTON A NEW CONFERENCE?”. It bears the trade name and logo of the Church, as well as the trade name of the 5th Applicant;

14.31.6 **Annexure “A24”**, being an advertisement carrying the name and logo of the Church, informing that a “TOC YOUTH CAMPAIGN” will be held on 15 March 2014 at Taba Nchu and Botshabela where food parcels will be handed to the needy;

14.31.7 **Annexure “A25”**, being an advertisement for a “TOC YOUTH CONVENTION 2014”, also displaying the trade name and logo of the Church, as well as the trade name of the 5th Applicant;

14.31.8 **Annexure “A26”**, advertising “THE TOC YOUTH CAMP 2013” to be held on 23 December – 1 January 2014 at the Blue Hills College in Midrand, Johannesburg, creating the impression that

the said youth camp is being organised by the 5th Applicant. It also requests that camp fees be paid into an account held at Standard Bank, bearing the name "TOC SDA Church", informing that the breakaway group has opened a bank account using the 5th Applicant's trade name, as well as the abbreviation "SDA", being an abbreviation of the registered trade name "Seventh-day Adventist" of the Church; and

14.31.9 **Annexure "A27"**, being an advertisement which appeared in the Citizen newspaper of 12 March 2014, informing that "SEVENTH-DAY ADVENTIST CHURCH TRANS-ORANGE CONFERENCE" has a post for a permanent Priest/Pastor for Johannesburg and Alberton for congregations with a fax number depicted thereon as "(011) 485-1447". This fax number in fact belongs to the 5th Applicant.

14.32 On 22 January 2014, the breakaway group again changed tact. They opted to register a non-profit organisation with the 18th Respondent under the name "TRANS ORANGE CONFERENCE OF SEVENTH DAY ADVENTIST CHURCH", with Registration No. 2014/014484/08, as is evidenced by the relevant company search attached hereto marked **Annexure "A28"**.

14.33 On 11 March 2014, the 14th Respondent in his purported capacity as “Acting Executive Secretary” on a letterhead bearing the name and logo of the Church, the name of the 5th Applicant, an inscription “NPC 2014/014484/08”, and a reference to the TOC as “The illegal TOC Orange Grove”, a copy of which is attached hereto as **Annexure “A29”**, also informed further that:

“... there is only one true TOC and that Organisation is based in Alberton due to the unfortunate mishappenings of the 24 February 2013. TOC in Alberton is a legal persona and hence all communications from henceforth will reflect the registration status as noted above. The registration no of TOC Alberton is NPC 2014/014484.08;

... avoid being scammed by the illegal TOC in Orange Grove. The operations of all TOC in Orange Grove are illegal and they impersonate TOC Alberton as they do not have the right to use the name.

... Our Lord has already defended TOC in Alberton from legal threats that were aimed:

- 1. At stopping us from legally operating the Seventh-day Adventist Church and TOC, which are a legal TOC.*
- 2. At freezing our legitimate banking account and taking over all your tithe and offerings donations*
- 3. At prosecuting individuals that were responsible with continual usage of the legal status of the Seventh-day Adventist in Alberton.*

...

We thank God for continually frustrating their efforts to scam church members despite their campaign of disinformation and false propaganda that they spread throughout the conference.

We would like to assure you that as long as you align yourself with the Alberton Office, no legal threat should frustrate you.

Be kindly informed that if you are being harassed by the illegal TOC of Orange Grove in the form of freezing of bank accounts and court summons of whatever kind to kindly route all those criminal activities to the office of the Secretary Dr. P.P. Mbedzi in Alberton so that they can be handled by our legal representatives accordingly."

14.34 On 16 May 2014, the 15th Respondent appended his signature on the 16th Respondent's letterhead, a copy of which is attached hereto as **Annexure "A30"**, advising all treasurers and clerks of Local Churches within the TOC's jurisdiction of the bank account details of the 16th Respondent.

14.35 I repeat that during February 2014, the 5th Applicant received information that the 1st – 15th Respondents were targeting the moneys held at the Montshiwa Local Church in Mahikeng, requesting of the local treasurer to transfer the moneys to a bank account not related with the TOC, but related to the breakaway group's parallel structure.

14.36 This necessitated the launching of an urgent application by the 5th Applicant to the North-West Division of the High Court under case no. M78/14 on Thursday, 6 March 2014 for an urgent interdict appearing from the notice of motion, a copy of which has

already been attached hereto marked **Annexure “A7”**. A rule *nisi* was issued on 6 March 2014 (**Annexure “A8”**).

14.37 The rule *nisi* was unfortunately discharged by the North West Division of the High Court on 3 April 2014 on procedural grounds as was stated above.

15. **INTRODUCTION TO THE INFRINGEMENTS**

15.1 For the remaining part of this affidavit, I will:

15.1.1 first, categorise the infringements being committed by the 1st – 16th Respondents;

15.1.2 secondly, provide the sources of the Applicants’ rights being infringed upon in respect of each category so identified; and

15.1.3 thirdly, address the legal requirements for the relief sought in preventing such infringements from continuing.

15.2 The infringements being committed by the 1st – 16th Respondents can be classified into four broad categories, namely:

- 15.2.1 breach of contract by setting up parallel structures, which are foreign to the Constitutions of the Church;
- 15.2.2 breach of contract by usurping the responsibilities and duties of those approved organisational structures of the Church;
- 15.2.3 infringements upon the Church's registered trade marks in its name and logo; and
- 15.2.4 passing-off.

15.3 It is the Applicants' case that should the 1st – 16th Respondents wish to establish a new religious movement, they must do so:

- 15.3.1 outside the Church's structures;
- 15.3.2 without infringing upon the trade name and logo of the Church;
and
- 15.3.3 without conducting any passing-off activities.

16. **BREACH OF CONTRACT – THE SETTING UP OF PARALLEL**

STRUCTURES WHICH ARE FOREIGN TO THE CONSTITUTIONS OF THE CHURCH

16.1 Before advancing further, I wish to indicate that where reference is made to the word “Constitutions” herein, it refers to the whole suite of contractual arrangements by which the entire Organisation and all its component structures became established and are being maintained and governed as one unified body. Such a word refers collectively to all the Constitutions, Working Policies, Bylaws, the Church Manual and all related documents.

16.2 The SID Working Policy, 2013, which applies to all structures of the Organisation relevant to this application, comprises of a duplication of the GC Constitution, the GC Bylaws and the GC Working Policy. A reference to the SID Working Policy, 2013 therefore constitutes a reference to the GC Constitution, the GC Bylaws and the GC Working Policy. This is so because the SID is not a separate organisational level of the Church, but an administrative unit of the GC.

16.3 In the introduction to the SID Working Policy, 2013, it is specifically stated that the said policy “... *is to be adhered to by all denominational organisations in that territory*”, the “territory”

obviously being the Southern African and Indian regions.

16.4 In terms of Article B 05 of the SID Working Policy, 2013, organisational life and procedures in the Church are based upon a number of principles, namely:

- 16.4.1 that the Church is a worldwide community of believers;
- 16.4.2 that the Church defines its internal governance as representative in form with executive responsibility and authority assigned to a variety of entities and institutions and their respective constituencies, boards and offices through Constitutions or articles of incorporation, by-laws and operating policies and guidelines;
- 16.4.3 the primary building blocks of global organisations are the Local Church, the Local Conference, the Union Conference and the GC (collectively referred to as the “organisational units” or “organisational structures”);
- 16.4.4 each of the organisational units described above has a defined membership, also known as a constituency;

- 16.4.5 being part of a constituency carries the privilege of participation in the deliberations and decision-making of that particular organisational unit;
- 16.4.6 Divisions are regarded as additional units of denominational structure being established as regional offices of the GC serving a defined geographical area;
- 16.4.7 Divisions are not considered as constituency-based organisations.
- 16.4.8 organisational status is granted to a constituency as a trust;
- 16.4.9 official recognition as a Local Church, Local Conference, or Union Conference is not self-generated, automatic, or perpetual. It is the result of a formal decision by an executive committee or a constituency session at higher levels of denominational organisation;
- 16.4.10 organisational membership and status are entrusted to entities that meet certain qualifications, including faithfulness to the Seventh-day Adventist doctrines, compliance with denominational practices and policies, demonstration of

adequate leadership and financial capacity, and responsiveness to mission challenges and opportunities;

16.4.11 membership and status can be reviewed, revised, amended, or withdrawn by the level of organisation that granted membership in the first instance;

16.4.12 different elements of organisation authority and the responsibility are distributed amongst the various levels of denominational organisation. For example, the decision as to whom may/may not be a member of a local Seventh-day Adventist Church is entrusted to the members of the Local Church concerned;

16.4.13 decisions as to the employment of Local Church pastors is entrusted to the Local Conference, in this instance to the TOC;

16.4.14 decisions regarding the ordination of ministers is entrusted to the Union Conference, in this instance being the SAU;

16.4.15 the definition of denominational beliefs is entrusted to the GC in Session;

16.4.16 each level of organisation exercises a realm of final authority

and responsibility that may have implications for other levels of organisation. In a similar manner, each organisation is dependent to some extent on the realm of authority exercised by other levels of organisation;

16.4.17 denominational entities may establish, in harmony with the GC and/or Division policies, affiliated organisations such as educational, healthcare and publishing institutions, food industries, media centres, radio and television stations, that are integral parts of the Church's Christian witness, but each affiliated organisation so establishing will operate with its own authority and responsibility under its own organisational documents, board of directors, and administrative offices, but in harmony with Church Working Policies;

16.4.18 the Church has both a local and global identity. The Local Church is indeed a genuine expression of the Church, but its identity cannot be fully defined or viewed in isolation from its relationships with other Local Churches and other levels of denominational organisation;

16.4.19 the local and global elements of the Church's identity are expressed in documents such as the Church Manual and the GC

Working Policy reflecting aspects of self-governance and inter-relationship; and

16.4.20 the Church Manual and GC Working Policy represent the collective voice of Seventh-day Adventists regarding beliefs, denominational structure, relationships, and operational procedures.

16.5 Article B 10 25 of the SID Working Policy, 2013 determines that:

16.5.1 Local Churches, Local Conferences, Union Conferences, Unions of Churches and Institutions are, by vote of the appropriate constituency and by actions of properly authorised executive committees, a part of the worldwide organisation of the Church; and

16.5.2 whereas each has accepted the privilege and responsibility of representing the Church in its part of the world, each is therefore required to operate and minister in harmony with the teachings and policies of the Church, and the actions of the World Church in the GC Executive Committee or in GC Session.

16.6 Article B 10 25 of the SID Working Policy, 2013 specifically

forbids the 1st – 16th Respondents' conduct by determining that whilst individual units of the Church are given freedom to function in ways appropriate to their role and culture, no part of the worldwide organisation of the Church has a unilateral right to secede.

16.7 Article B 10 27 of the SID Working Policy, 2013 determines that:

16.7.1 any modification of structural design at units of organisation between the Local Church and the GC/Division as compared with the historical pattern, modification of staffing patterns, realignment of how services are provided between various existing or new organisations, establishment of new regional structures resulting from consolidation of existing organisational units, the reclassification of entities, or reduction of constituency-based units of organisation, is only allowed after appropriate approvals;

16.7.2 decisions to implement flexibility in organisational structures, staffing, procedures and relationships shall preserve dynamic and formal linkage to the World Church and sister organisations in harmony with denominational policies; and

16.7.3 decisions requiring structural flexibility will involve consultations with organisations affected by proposed structuring and must be in accordance with the defined approval processes that apply to organisational changes as is contained in the Organisational Policies.

16.8 The setting up of parallel structures by the 1st – 16th Respondents which competes with the TOC, is totally foreign to and in breach of the aforesaid prescripts.

16.9 Article B 10 28 of the SID Working Policy, 2013 prescribes that a denominational structure in one geographic area may comprise, one of only 6 possible models, being either:

16.9.1 a four constituency-based unit model comprising of Local Churches, Local Conferences, a Union Conference, in this instance the SAU, and the GC, being the model which applies to the African continent;

16.9.2 a complimentary staffing model which retains the four constituency-based units of organisation and addition thereto the staffing pattern at a local conference does not parallel that of the union conference. Each organisation in this model has a

multiple officer leadership keen with department directors which may be located at either or both Local Conference and Union Conference;

16.9.3 a shared administration and/or administrative services model which introduces differentiation from the four constituency-based unit models in the staffing of administration. At the Local Conference in such a model may be only one full-time officer, the president. The union treasurer/chief financial officer may serve simultaneously as the Local Conference treasurer/chief financial officer in such situations;

16.9.4 a three constituency-based model. This model has three constituency-based units of organisation, being Local Churches, a "Union of Churches Conference" and the GC;

16.9.5 a three constituency-based unit model with delegated roles to district leaders. This model continues the three constituency-based model described above, but differs from it in that a non-constituency-based co-ordinating function is inserted for a group of district of Local Churches; and

16.9.6 a special alternative organisation. The Executive Committee of

the GC has adopted guidelines for establishing alternative structures to initiate Seventh-day Adventist missions in areas where traditional church structures are not present and/or permitted.

16.10 From the above it is clear that the setting up of parallel structures outside of the 6 approved denominational structure models discussed, is not permissible. Neither is it permissible to set up any constituent part of any of the 6 models without the prior approval of the GC and of any existing structure possibly affected thereby, such as the TOC.

16.11 Article B 10 30 of the SID Working Policy, 2013 determines that innovations in organisational structure and administrative relationships must be approved by the respective “Division Committees” and the Executive Committee of the GC.

16.12 Article B 15 05 of the SID determines that the GC Working Policy, 2013, which is a replica of the Constitution and Bylaws of the GC, the Mission Statement and the accumulated or revised policies adopted by GC Session and Annual Councils of the GC Executive Committee, is the authoritative voice of the Church in all matters pertaining to the mission and to the administration of

the work of the Seventh-day Adventist denomination in all parts of the world.

16.13 Article B 15 10 of the SID Working Policy, 2013 determines that:

16.13.1 the GC Working Policy shall be strictly adhered to by all organisations in every part of the world field;

16.13.2 work in every organisation shall be administered in full harmony with the policies of the GC and of the Divisions respectively;

16.13.3 no departure from these policies shall be made without prior approval from the GC Executive Committee, except as stated in the SID Working Policy, 2013;

16.13.4 the "Division Committee" is the authorised body which acts for the GC Executive Committee in the respective Divisions; and

16.13.5 all conference, mission, or institutional administrators shall cooperate in maintaining these policies as they affect the work of their respective organisations.

16.14 Article B 15 15 of the SID Working Policy, 2013 determines that

officers and administrators are expected to work in harmony with the GC Working Policy. Those who show inability or unwillingness to administer their work in harmony with policy should not be continued in executive leadership by their respective constituencies or governing boards/committees.

16.15 Article B 15 20 of the SID Working Policy, 2013 determines that an individual shall only be said to have been elected to a particular position, when the process by which that individual was chosen involved a decision by the constituency of the Organisation to be served as set out within the GC Constitution and Bylaws and the GC Working Policy.

16.16 Article B 50 10 of the SID Working Policy, 2013 determines that:

16.16.1 Local Churches belong to a sisterhood of churches, but forms the constituency of a Local Conference;

16.16.2 Local Churches appoint delegates who are duly authorised to represent them at constituency sessions of the Local Conference, being the TOC in this instance;

16.16.3 the Executive Committee of a Local Conference is vested with

delegated authority of all the churches within the conference of churches.

16.17 Article B 65 15 of the SID Working Policy, 2013 determines that:

- 16.17.1 if it is proposed to organise a new Conference from within the territory of an existing conference, such as the TOC, the proposal shall be considered by the respective Union Executive Committees at a time when a full representation of the Conference, and institutions in the Union is present. Proposals to organise groups of churches into a new Conference may be initiated by the executive committee or constituency session of the currently existing Conference, by a group of churches, by the Union or by the Division;
- 16.17.2 only in the event of the Union Executive Committee favouring the proposal, shall it request the Local Conference Executive Committee to consider the proposal. In the event of a positive decision by the Local Conference Executive Committee, the Union shall appoint a study committee to assess the readiness for conference status of organisations involved in the proposal;
- 16.17.3 the study committee, in addition to its assessment role, or a

team appointed by the Union Executive Committee, including Division and Union Personnel, shall conduct area meetings in the territory for the new organisation to educate the constituency regarding the process of attaining conference status;

16.17.4 when the Union is satisfied that the proposed organisation is ready for conference status, its Executive Committee shall call a constituency meeting of the current Conference to consider the report and recommendations of the study committee. In the event of an action by the constituency in favour of proceeding with the organisation of a new Conference, the Union shall submit a request to the Division for an on-site evaluation of the proposed new Conference;

16.17.5 a survey team appointed by the Division Executive Committee, comprised of Union and Division personnel, shall make an on-site evaluation. If the survey team is satisfied that the request is appropriate, it shall recommend conference status for the new organisation to the Division executive committee. In the event the organisation is not ready for Conference status at the time of the Division's evaluation, recommendations will be made and, after a suitable passage of time, a further evaluation will be conducted;

16.17.6 upon the recommendation of the survey team, the Division Council or the Division Executive Committee at its midyear or yearend meeting shall determine whether or not to grant Conference status;

16.17.7 upon the approval of the Division Executive Committee, the Union shall call a constituency meeting of the new organisation as soon as possible in order to organise the Conference. At this meeting, a Conference Constitution and Bylaws patterned after the model of the GC and Division working policies shall be adopted. Officers, departmental directors/secretaries, and the members of the executive committee shall be elected according to the provisions of the newly adopted Constitution; and

16.17.8 when a new Conference has been organised, it shall be received into the sisterhood of Conferences at the next Union constituency meeting, and recorded at the next midyear or yearend meeting of the Division executive committee or a Division council.

16.18 Article B 65 22 of the SID Working Policy, 2013 prescribes a similar process for the organising of new Unions of churches

whereas, Article B 65 25 of the SID Working Policy, 2013 prescribes a similar procedure for the organising of new “Union Conferences”. B70 05 of the SID Working Policy, 2013 on its part prescribes the process to be followed when organising new Divisions.

16.19 The 1st – 15th Respondents simply disregarded the entire prescribed procedure for the establishment of a new Conference by having self-proclaimed their parallel and competing Conference.

16.20 Article B 75 of the SID Working Policy, 2013 meticulously prescribes the criteria which has to be fulfilled before a local mission/field obtains Conference status and before a local mission/field obtains Local Conference status. The 1st – 15th Respondents disregarded that procedure in having granted Conference status to the Local Churches allegedly supporting them.

16.21 Article B 80 of the SID Working Policy, 2013 contains strict prescripts before territorial adjustments to existing organisations, such as the TOC, is made or before a territorial unit, such as the TOC, is resided. Suffice to state that the 1st – 15th Respondents

also failed to follow these prescripts, which in essence demanded that the Executive Council of the TOC had to consent to its resizing and territorial adjustment resulting from the establishment of a competing Conference by the 1st – 15th Respondents, whereafter such resizing and territorial adjustment also had to be approved by the SAU and thereafter by the SID. This never happened.

16.22 None of the above prescripts, to which the 1st – 15th Respondents remain bound by virtue of them being Adventists, were thus followed by the 1st – 15th Respondents in setting up either the 16th Respondent as an organisation parallel to the TOC or any other entities or structures they utilise for such purpose.

16.23 The Church Manual, to which the 1st – 15th Respondents remain bound specifically prohibits the kind of conduct the 1st – 15th Respondents are engaging upon by under the caption **“Safeguarding Unity of the Church”**, which is contained on page 59 of the Church Manual, directing all members of the Church as follows:

“Although all members have equal rights within the church, no

individual member or group should start a movement or form an organization or seek to encourage a following for the attainment of any objective or for the teaching of any doctrine or message not in harmony with the fundamental religious objectives and teachings of the Church. Such a cause would result in the fostering of a divisive spirit, the fragmentation of the witness of the Church, and thus in hindering of the Church's discharge of its obligations to the Lord and the world."

16.24 I also repeat that when the 1st – 15th Respondents exchanged their vows as part of expressing the "Commitment" when they became members of the Church, they undertook to honour the organisational structures through which the Church operate worldwide.

16.25 In stark contrast to all of the above prescripts, the 1st – 15th Respondents, either through the 16th Respondent or other entities foreign to the Constitutions referred to above, forged ahead in establishing a parallel Conference within the TOC's jurisdictional area.

16.26 In the premises, the 1st, 3rd, 4th and 5th Applicants have a clear contractual right of enforcing the Constitutions of the Church, which right has clearly been interfered with and/or infringed upon by the 1st – 15th Respondents and in respect of which conduct no other satisfactory remedy avails the said Applicants, but to seek

a final interdict.

17. **BREACH OF CONTRACT – USURPING THE RESPONSIBILITIES AND DUTIES OF THOSE APPROVED ORGANISATIONAL STRUCTURES OF THE CHURCH**

17.1 From the discussion above dealing with the conduct of the 1st – 15th Respondents in setting up a parallel structure to the TOC, they also seem to be performing functions and duties which, by contractual arrangement through the various Constitutions, are strictly reserved for that of the TOC, the SAU and the SID respectively.

17.2 I refer the Honourable Court to paragraph 7 above and from which it is clear that the 1st – 15th Respondents either through the 16th Respondent or a “trust” or an entity by the name “Trans Orange Conference Alberton Office” or an entity with similar description purports to be establish a Conference, which

17.2.1 opens and holds a bank account(s);

17.2.2 rents buildings;

17.2.3 appoints employees;

- 17.2.4 appoints its own Executive Committee;
 - 17.2.5 appoints pastors to Local Churches;
 - 17.2.6 arranges conventions for Local Churches.
- 17.3 These functions being performed by the 1st – 15th Respondents' Conference are being performed in clear contravention of the Constitutions of the Church.
- 17.4 As far as the opening of a bank account is concerned in which tithes are collected from Local Churches, it offends:
- 17.4.1 V 05 05 of the SID Working Policy, 2013 determines that tithe is to be held sacred for the work of the ministry and Bible teaching, including "Conference Administration" in the care of churches and field outreach operations. It is not to be expended on other lines of work such as Church or institutional debt paying or building operations;
 - 17.4.2 V 05 20 of the SID Working Policy, 2013 determines that the tithe is to be turned into the Local Church in which membership

is held. It is therefore collected at the foundational level of the Organisation;

17.4.3 V 10 05 of the SID Working Policy, 2013 determines that the Conference (the TOC) shall receive from Local Churches and individuals within its territory 100% of tithe receipts. The Union Conference (the SAU) shall on its part receive 10% of the tithe received by a Conference. The SID shall arrange for Conferences within its territory to contribute a percentage of their tithe to it, as determined by the SID's Executive Committee. In the SID, the basis for sharing Conference tithe between the SID and its Unions shall be determined by the previous year's tithe income of the Conference. The GC, on its part, shall receive percentages of the growth tithe remitted by the Unions to the world Divisions;

17.4.4 V 15 05 of the SID Working Policy, 2013 determines that tithe is the main source of funding for the total proclamation of the gospel to the entire world by the Seventh-day Adventist Church;

17.4.5 V 15 05(4) of the SID Working Policy, 2013 determines that only Conference organisations are authorised to make allocations from the tithe fund. The tithe is the Lord's and should be

returned to the storehouse, being the treasury of the Conference, in this instance being the TOC;

17.4.6 V 15 15 of the SID Working Policy, 2013 determines that tithes may be used only for the purposes:

17.4.6.1 to support salary personnel, including pastors, evangelists and ministers;

17.4.6.2 to sustain other personnel, including departmental directors and their staff, who are engaged in evangelistic and nurturing ministries;

17.4.6.3 to pay the operating expenses of a Conference;

17.4.6.4 to contribute to the Literature Evangelistic Benefit Fund;

17.4.6.5 as operating subsidies for programmes such as youth camps and camp meetings;

17.4.6.6 for the purchase of evangelistic equipment and Conference office equipment;

17.4.6.7 Bible/religion teaching and Support Personnel in Schools;
and

17.4.6.8 retirement benefits of denominational employees.

17.4.7 V 15 25 of the SID Working Policy, 2013 determines that tithes
may not be used for:

17.4.7.1 capital expenditure for buildings and facilities;

17.4.7.2 equipment not being classified as evangelistic and
Conference office equipment;

17.4.7.3 the maintenance and operating expenses, including
salaries of employees of Local Churches; and

17.4.7.4 the maintenance and other operating expenses of
elementary, secondary and higher education institutions.

17.4.8 V 30 of the SID Working Policy, 2013 determines that tithes are
trust funds which, at the close of each month, or more often if
required by the Conference must be sent to the Treasurer of the
Conference. A Local Church may not borrow, use or withhold

such funds for any purpose.

- 17.5 Tithes being collected at Local Churches within the TOC's jurisdiction must therefore be transferred by the treasurer of each and every Local Church within the TOC's jurisdiction at a regular interval into the bank account held by the TOC.
- 17.6 From the evidence presented above, it appears that the 1st – 15th Respondents are setting up bank accounts making use of the TOC's name in order to siphon off tithes deposited at Local Churches within the TOC's jurisdiction.
- 17.7 The appointment of pastors and the transfer of pastors from one Local Church to another, is the strict preserve of the TOC. Funds so siphoned off is obviously being used to fund litigation against the Church, as was already found to have been the case when regard is had to the litigation mentioned above. It is in all probability also being used to fund the Johannesburg application.
- 17.8 The siphoning off of trust funds by re-directing tithes from the bank account of a Local Church to a parallel organisation is foreign to the prescripts of the Constitutions of the Church.

- 17.9 In Chapter 11 of the Church Manual dealing with “**FINANCE**”, sub-caption “**TITHE**”, it specifically states that:
- 17.9.1 tithe shall not be used in any way by the Local Church, but be held in trust and remitted to the Conference Treasurer.
- 17.9.2 tithes from all the Local Churches flow into the Conference treasury, and percentages are forwarded to the next-higher level in accordance with the GC and Division Working Policies to meet the expenses of conducting the word of God in their respective spheres of responsibility an activity;
- 17.9.3 these policies have been developed for the gathering and distribution of funds in all the world and for the conducting of the business affairs of the cause. The financial and business aspects of the work are of great importance. They cannot be separated from the proclamation of the message of salvation. They are indeed an integral part of it; and
- 17.9.4 under the heading “**Handling and Accounting for Fund**” on page 135 of the Church Manual it is confirmed that the treasurer of a Local Church holds in trust and passing on to the Conference treasurer funds intended for Conference or general

purposes. Treasurers at any level, whether that be at Local Church level, Conference level, Union level or Division level, they do not act independently.

17.10 In terms of Article V, section 5 of the TOC Bylaws 2011, the authority to employ pastors, secretaries, teachers and other employees vests in the Executive Committee of the TOC.

17.11 In terms of Article III, section 1 of the TOC Bylaws, 2011, the authority to appoint an Executive Committee of the TOC vests in the Constituency of the TOC.

17.12 In the premises, the 1st, 3rd, 4th and 5th Applicants have a clear contractual right of enforcing the Constitutions of the Church, which right has clearly been interfered with and/or infringed upon by the 1st – 15th Respondents and in respect of which conduct no other satisfactory remedy avails the said Applicants, but to seek a final interdict.

18. **INFRINGEMENTS OF REGISTERED TRADE MARKS**

18.1 The 2nd Applicant is the proprietor of various trade marks in the name “SEVENTH-DAY ADVENTIST”, registered by the 17th

Respondent under numbers 2007/10702, 2007/10703, 2007/10704, 2007/10705 and 2007/10706, copies of which are attached hereto as **Annexures “A31”, “A32”, “A33”, “A34”** and **“A35”**, which remain valid until 21 May 2017.

18.2 The trade marks in the name “SEVENTH-DAY ADVENTIST” which are registered in the Trade Marks Office, pertain to the following classes of registration, namely:

18.2.1 Class 16 – being in respect of paper, cardboard and goods made from these materials, not included in other classes, printed matter, religious books, magazines, pamphlets, newsletters, brochures, encyclopaedias, dictionaries, commentaries, fliers, bulletins, yearbooks, booklets, Bibles, bookbinding material, photography, stationery, instructional and teaching materials, except apparatus;

18.2.2 Class 36 – being insurance, establishment and administration of employee healthcare and benefit programmes, medical insurance programmes, financial affairs, monetary affairs, real estate affairs, services ancillary and related to all of the foregoing;

- 18.2.3 Class 41 – being in respect of educational services, educational instruction, services in Academics at grade school, high school and college level, providing of training, entertainment, production and distribution services included in class 41, film production and distribution services, information services and services relating to the dissemination of information, sporting and cultural activities, services ancillary and related to all of the foregoing;
- 18.2.4 Class 44 – being in respect of medical services, healthcare services, hospital services, dental services, pharmaceutical services, nursing home services, medical laboratory services, veterinary services, hygiene and beauty care services for human beings and animals, agricultural horticulture and forestry services, services ancillary to and related to all of the foregoing;
- 18.2.5 Class 45 – being in respect of personal and social services rendered by others to meet the needs of individuals, religious services included in this class, conducting religious observances, church services and missionary services, services ancillary and related to the foregoing.
- 18.3 The GC Corporation is also the registered proprietor of the logo “SEVENTH-DAY ADVENTIST” registered in South Africa in

terms of the TMA recorded in the Trade Marks Office under numbers 2007/10707, 2007/10708, 2007/10709, 2007/10710 and 2007/10711, copies of which are attached hereto respective as **Annexures “A36”, “A37”, “A38”, “A39” and “A40”**, which remain valid until 22 May 2017.

- 18.4 The registered trade mark in the logo also pertains to the same classes in respect of which the name was registered, namely classes 16, 36, 41, 44 and 45.
- 18.5 The logo depicts an open Bible with a cross in the middle thereof and on top thereof a flame, which bear the following symbolic meaning:
- 18.5.1 The lines at the top of the design suggest upwards momentum symbolising the resurrection and ascension to heaven at Christ's second coming, the ultimate focus of the Seventh-day Adventist faith;
- 18.5.2 The flame comprises is in the shape formed by three lines encircling an implied sphere. These lines represent the three lines of Revelation 14 circling the globe and the Church's commission to take the gospel to the entire world. The overall

shape forms a flame symbolic of the Holy Spirit;

18.5.3 The symbol of the cross represents the gospel of salvation, is positioned in the centre of the design to emphasise Christ's sacrifice, which is the central theme of the Adventist faith; and

18.5.4 The Bible forms the base of the design and represents the biblical foundation of the Church's beliefs. It is portrayed in a fully open position suggesting a full acceptance of God's word.

18.6 The logo is a very simple picture of the foundation of Adventist beliefs and values and is a recognisable symbol of the Adventist message to the world.

18.7 The registered trade marks may be used by the Seventh-day Adventist Church, its entities, institutions, including Local Churches, Divisions, Unions and Conferences.

18.8 The authorisation is contained in, *inter alia*, the SID Working Policy, 2013, the content of which will be repeated hereunder.

18.9 Article BA 40 05 of the SID Working Policy, 2013 determines that:

- 18.9.1 the Church has a historical, evangelical, and proprietary interest in the trade marks, services, marks and trade names (referred to collectively as “trade marks”) developed by the Church and its related organisations;
- 18.9.2 the Trade Mark Policy shall apply to the GC of the Seventh-day Adventist, the World Division and departments of the GC of the Seventh-day Adventist, and other services, organisations and corporations listed as GC entities in the current Seventh-day Adventist Yearbook;
- 18.9.3 the Trade Mark Policy also applies to all Seventh-day Adventist entities or organisations utilising trade marks owned or controlled by the GC;
- 18.9.4 organisations authorised to use trade marks shall include the appropriate indicia of ownership as permitted in their jurisdiction to attribute ownership of the trade mark. For instance, the ® should be used where registration is held and ® correctly attributes that ownership registration.

18.10 Article BA 40 10 of the SID Working Policy, 2013 determines that

all legal rights in any trade mark utilised by the GC shall be vested in the GC Corporation with use by a related or subsidiary entity subject at all times to approval and review by the GC Corporation.

18.11 Article BA 40 15 of the SID Working Policy, 2013 determines that ownership in trade marks shall at all times vest in the GC Corporation.

18.12 Article BA 40 25 of the SID Working Policy, 2013 determines that:

18.12.1 it shall be the responsibility of the GC Divisions to monitor and review any unauthorised use of trade marks registered in the name of the GC Corporation;

18.12.2 in the event that a registered trade mark or use is being used without authority, the Division shall initiate the protection procedures outlined in Article BA 40 50 of the SID Working Policy, 2013 in order to protect the proprietary interest of the Church, as well as its good name.

18.13 Article BA 40 40 of the SID Working Policy, 2013 determines that

existing trade marks include, but are not limited to, the denominational logo, the name “Seventh-day Adventists” and/or “Adventists”, or any derivative of such trade marks, including, but not limited to “SDA”.

18.14 Use of trade marks may, in terms of Article BA 40 40 of the SID Working Policy, 2013 be authorised as follows:

- 18.14.1 Church entities that have denominational status and are included in the Seventh-day Adventist Yearbook shall have an automatic licence to use these trade marks in their names and ministries by virtue of the trade mark policy unless specifically revoked by the GC Corporation;
- 18.14.2 Local Churches may use these trade marks in their names and ministries following approval of status by the Local Conference, in this instance the TOC;
- 18.14.3 Church members, supporting ministries and business of professional groups shall not utilise trade marks owned by the GC Corporation without its express written approval.

18.15 Article BA 40 45 of the SID Working Policy, 2013 determines that the GC Corporation shall maintain the right to revoke permission for the use of any trade marks by any denomination of entity, church member, supporting ministry and business or professional group at any time, with or without cause.

18.16 Article BA 40 50 of the SID Working Policy, 2013 contains the trade mark protection procedures. It, *inter alia*, entails:

18.16.1 that all trade mark infringements should be reported to the Division when the unauthorised use occurs, who shall attempt to obtain a simple remedy;

18.16.2 if this is not successful, the Division shall advise the GC Corporation of the matter who, through the Office of General Counsel, will work with the Division to resolve the issue;

18.16.3 if all attempts to bring resolution fail, the reporting entity, in co-operation with the Division and in consultation with the Office of the GC Corporation, may recommend redress through the Courts;

18.16.4 the GC Corporation reserves the right to initiate such legal proceedings on its own in consultation with the Division and other Church entities located where the unauthorised use occurs;

18.16.5 prior to the initiation of legal action, the appropriate administrative committees of each entity involved in legal proceedings to protect the name are to officially record approval; and

18.16.6 the GC Corporation may authorise Divisions with both a corporate basis and expert legal counsel to implement trade mark protection procedures in co-operation with the GC Office of General Counsel.

18.17 I respectfully refer the Honourable Court to the documentation attached above as Annexures “A10” – “A27” and “A29” – “A30”, the content of which was discussed in paragraphs 7.9 – 7.34 above and from which the infringement of the 2nd Applicant’s registered name and logo by the 1st – 16th Respondents is evident.

18.18 The 1st – 15th Respondents infringe upon the 2nd Applicant's registered trade mark in the name "SEVENTH-DAY ADVENTIST" in all of the abovementioned classes, *alternatively* in classes 16, 41 and 45 mentioned above.

18.19 After becoming aware of the unauthorised use of the trade marks and the infringements relating thereto being committed, the Applicants' attorney of record was instructed to dispatch a letter to the 1st – 15th Respondents, a copy of which is attached hereto marked **Annexure "A41"** and in which the said Respondents were requested to immediately cease their unauthorised use of the trade marks concerned and to desist from doing so, the content of which are repeated herein *verbatim*:

"...

Dear Pastors, Elders, Church Clerks and others

SID / SAU / TRANS ORANGE CONFERENCE

1. *We act on behalf of the Southern Africa-Indian Ocean Division and the Southern African Union of the Seventh Day Adventist Church of South Africa. Our client is the representative of the General Conference of the Seventh-day Adventists, with head office in Washington DC, USA ("the Church").*
2. *We attach hereto two documents which have come into our client's possession and refer you in particular to the names and logo appearing thereon.*

3. *As you know, the General Conference Corporation is the owner of numerous trademark registrations in South Africa for the name SEVENTH-DAY ADVENTIST and the SEVENTH-DAY ADVENTIST LOGO, and maintains common law intellectual property rights in the name SDA. This right allows the Church to prevent third parties from using any similar name or mark that is likely to confuse members, potential members or the public into believing your ministry is associated with the Seventh-day Adventist Church. Therefore because you have elected to organise your ministry without any affiliation with any of the Church's conferences or approval by the SAU, SID or GC, any use of the Church's registered marks by your ministry is unauthorised.*

4. *You may not use or reference the name –*
 - 4.1 *SEVENTH-DAY ADVENTIST, ADVENTIST, SDA or the SEVENTH-DAY ADVENTIST LOGO mark, or any variation thereof, or any confusingly similar designation, on any web site, domain name, signage, books, literature, brochures, advertisements, or with any other materials used by you or persons or organisations related to you, or ministries operated by you or persons or organisations related to you, including but not limited to the name SEVENTH-DAY ADVENTIST CHURCH or TRANS ORANGE CONFERENCE; and*

 - 4.2 *SEVENTH-DAY ADVENTIST, ADVENTIST, SDA or the SEVENTH-DAY ADVENTIST LOGO mark, or any variation thereof, or any confusingly similar designation, to advertise or promote your ministry on radio, television, Internet or other media.*

5. *Our clients and the Church have expended considerable time and effort in the establishment and promotion of its trade marks and names, both internationally and in South Africa.*

6. *Apart from the aforesaid trademark registrations, the Church has been known as the Seventh Day Adventist Church both internationally and in South Africa for a period in excess of 100 years. As such, the Church has established a reputation and is well known throughout the world.*
7. *We also act on behalf of the Trans Orange Conference, being a conference established by our client. The Trans Orange Conference has been known as such for a period in excess of 50 years.*
8. *Our clients are accordingly also entitled to prevent the unauthorised use of a mark and name which is identical or similar to its trademarks and name in relation to any services if such use would be likely to take unfair advantage of, or be detrimental to the distinctive character or the reputation of its registered trademarks, notwithstanding the absence of confusion or deception.*
9. *Our clients have advised us that you were formerly a member(s) and/or employee(s) of its Trans Orange Conference. It has however recently come to the our client's attention that you have chosen to separate from the sisterhood of Seventh-day Adventist Churches to form a self-supporting Conference or church which will operate outside of the Trans Orange Conference of the SAU.*
10. *Our instructions are that your self-supporting conference is no longer a member of our client or any of its conferences, alternatively, you are no longer authorised to represent our clients or any of its conferences.*
11. *Furthermore, your use of our client's name and marks is likely to take unfair advantage of or be detrimental to the distinctive character or repute of our clients' well-*

known names and trademarks and that of its Conferences.

12. *In addition to the above, your conduct in using the marks in relation to services and religious activities in general is also likely to mislead members of the public into believing that there is some connection or association between you and our client and/or its conferences. This is untrue. Your conduct therefore also amounts to passing off under the common law.*
13. *In light of the above, our client will be entitled to institute trade mark infringement and/ or passing off proceedings against you in the High Court of South Africa.*
14. *According of the contents of the attached documents, you are enticing members of our client to deposit the contributions and tithes into a bank account which do not belong to the Trans Orange Conference. This conduct is unlawful and constitutes a criminal offence.*
15. *Thus, in light of the above, our client has instructed us to demand, as we hereby do, that you immediately:-*
 - 15.1 *cease all unauthorised use of our clients' names, trade names and marks and/ or any other marks that are similar thereto in relation to services and religious activities in general or in any other manner whatsoever and accordingly, remove all references of such marks from, inter alia, your signage and decals, stationary, etc;*
 - 15.2 *undertake to, never in future, attempt to register, register or make any unauthorised use of a name, mark, trade mark, domain name or trading style consisting of, containing or incorporating our clients' trade names, logos and trademarks or any other confusingly and/ or deceptively similar marks in any manner whatsoever;*

- 15.3 *inform all persons and/ or entities with whom you have created the impression that you are representing our clients or that you are not entitled to do so and that they should refrain from making payments into the bank account referred to in your correspondence;*
- 15.4 *pay all amounts deposited into the aforesaid account to bank account of the Trans Orange Conference;*
- 15.5 *furnish us with written confirmation that you have complied with our client's demands by no later than 18 December 2013.*
16. *Our clients view this matter in a serious light.*
17. *We trust that you will comply with our client's demands and look forward to receiving your response by no later than the aforementioned date, failing which we will take our client's instructions on instituting further proceedings against you. We trust that this will not be necessary.*
18. *This letter is without prejudice to the rights of the General Conference of Seventh-day Adventists and its Trans Orange Conference.*
19. *We furthermore reserve our client's right to claim any damages or costs incurred in this matter in the event that its demands are not complied with or if you infringe its rights in future.*

...”

18.20 The Applicants' attorney received no response to the aforesaid letter.

18.21 The GC Corporation's (2nd Applicant's) rights are being infringed upon by the 1st – 16th Respondents' conduct, in that:

18.21.1 they commit an infringement under section 34(1)(a) of the TMA by permitting the unauthorised use in the course of trade in relation to goods and services in respect of which the trade mark is registered, of an identical mark or a mark so nearly resembling it as to likely deceive or cause confusion; and/or

18.21.2 they commit an infringement under section 34(1)(b) of the TMA by the unauthorised use of the mark which is identical or similar to the mark registered, in the course of trade in relation to goods or services which are so similar to the goods or services in respect of which the trade mark is registered, that in such use there exist the likelihood of deception or confusion.

18.22 The use of the 2nd Applicant's trade marks was never authorised by any of the structures of the Church in terms of the Constitution of the Church.

18.23 The unauthorised use by the 1st – 16th Respondents of the 2nd Applicant's said registered trade marks, constitutes an infringement of the 2nd Applicant's trade marks acquired by registration thereof as aforesaid.

18.24 No other remedy but an interdict will be effective in preventing the 1st – 16th Respondents from continuing to engage in such unlawful, if not illegal, conduct.

18.25 In the premises, the Applicants in particular the 2nd Applicant, should be entitled to an interdict preventing such unauthorised use.

19. **PASSING-OFF**

19.1 The TOC was established in 1980 at Johannesburg by the adoption of its own founding Constitution.

19.2 The TOC was established in compliance with the Constitutions of the Church and for purposes of fulfilling the duties of a Conference. It represents the second level of the organisational structure within the Church.

- 19.3 In terms of Article IV of the TOC's Revised Constitution 2011, the territory of the TOC consists of the Provinces of the Free State, Gauteng, Limpopo, Mpumalanga and North West. It also includes the magisterial districts of the following towns in the Northern Cape Province, namely Barkly West, Danielskuil, Delportshoop, Douglas, Griquastad, Hartswater, Jan Kempdorp, Katu, Kimberley, Kudumane, Kuruman, Pampierstad, Postmansburg, Ritchie, Salt Lake and Warrenton.
- 19.4 There are currently 313 Local Churches located within the TOC's territory, as is evidenced by the list attached hereto as **Annexure "A42"**.
- 19.5 For the past 34 years since the establishment of the TOC:
- 19.5.1 it has communicated extensively with members of the Church in Local Churches falling within its jurisdictional area;
 - 19.5.2 arranged conventions for Local Churches;
 - 19.5.3 appointed pastors to Local Churches;

- 19.5.4 provided services to Local Churches;
- 19.5.5 collected tithes from Local Churches; and
- 19.5.6 in general, fulfilled all its functions it was designed to have fulfilled in terms of the Constitutions of the Church.
- 19.6 The 5th Applicant has over the period of 34 years built up a substantial reputation in the names “TRANS-ORANGE CONFERENCE” and “TRANS-ORANGE CONFERENCE OF THE SEVENTH-DAY ADVENTISTS” and through its interactions with Local Churches and its official correspondence and letterhead and uses in the process.
- 19.7 For the past 34 years, members of Local Churches within the TOC’s jurisdictional area, whenever they heard or read the name “TOC”, immediately recognised same as the only legitimate structure responsible for organising their Local Churches.
- 19.8 As a consequence of the 5th Applicant’s continuous and extensive use of its name, the 5th Applicant has built up a substantial reputation, such that members of the Church associate the said names as being connected with the 5th

Applicant's activities as an organisational structure within the hierarchical order of the Church.

19.9 The said names have become and is identified in the minds of members of the Church with the activities of the only "Conference" duly established in terms of the Constitutions of the Church they know. Members of 313 Local Churches within the 5th Applicant's jurisdiction read or see the said name, they believe that it emanates from the 5th Applicant.

19.10 I refer the Honourable Court to the conduct of the 1st – 15th Respondents, and lately of the 16th Respondent, of using the said names or an abbreviation thereof, being "TOC" in written communications to members of Local Churches and in newspapers, which names are confusingly or deceptively similar to the 5th Applicant's trade names.

19.11 I repeat that the conduct of the 1st – 16th Respondents is not authorised by the TOC or any of the structures of the Church.

19.12 The conduct of the 1st – 16th Respondents is calculated to confuse or deceive members of the Local Churches of the TOC into believing that the parallel structure(s) they set up is/are in

fact the TOC, duly authorised by the Constitutions of the Church.

19.13 I can do no better in this instance but to quote *verbatim* the content of the letter dated 11 March 2014 (Annexure "A29") from which this conduct is evident:

"Attention: Pastors, Church Elders, Church Clerks and Church at Large

Dear Colleagues

Re: Registration and Legal Protection of the Churches

Cordial greetings in the Name of Our Lord and Saviour, Jesus Christ!

We thank the Lord for being so faithful and keeping us this far. May He continue to guide us even in 2014.

This letter serves to notify you all about the registration status of the TOC in Alberton and the Legal Protection of the Churches.

We have noted with sadness at the behaviour of the illegal TOC Orange Grove and their scams since 2013 to date and would like to inform you accordingly with regard to the legal status and the genuine TOC Office in Alberton.

Kindly be notified that there is only one true TOC and that organization is based in Alberton due to the unfortunate mishappenings of the 24 February 2013. TOC in Alberton is a legal person and hence all communications from henceforth will reflect the registration status as noted above. The registration no of TOC Alberton is NPC 2014/014484/08.

We therefore admonish you to avoid being scammed by the illegal TOC in Orange Grove. The operations of TOC in Orange Grove are illegal as they impersonate TOC Alberton as they do not have the right to use the name.

Continue being strengthened in the Lord and refuse to be intimidated. Our Lord has already defended TOC in Alberton from legal threats that were aimed:

- 1. At stopping us from legally operating as the Seventh-day Adventist Church and TOC, which are a legal TOC.*
- 2. At freezing our legitimate banking account and taking over all your tithe and offerings donations*
- 3. At prosecuting individuals that were responsible with continual usage of the legal status of the Seventh-day Adventist in Alberton.*

We thank God for continually frustrating their efforts to scam church members despite their campaign of disinformation and false propaganda that they spread throughout the conference.

We would like to assure you that as long as you align yourself with the Alberton Office, no legal threat should frustrate you.

Be kindly informed that if you are being harassed by the illegal TOC of Orange Grove in the form of freezing of bank accounts and court summons of whatever kind to kindly route all those criminal activities to the office of the secretary Dr. P.P. Mbedzi in Alberton so that they can be handled by our legal representatives accordingly.

Yours faithfully

*Dr. P. P. Mbedzi
Acting Executive Secretary”*

19.14 I also respectfully refer the Honourable Court back to Annexure “A30” and from which the conduct of the 1st – 16th Respondents in confusing Local Churches of the TOC into believing that their tithes should be deposited into an account operated by the 16th

Respondent, which bears the same name as the 5th Applicant.

19.15 In the premises, the 1st – 16th Respondents are wrongfully passing-off its structures as those of the 5th Applicant.

19.16 The 5th Applicant apprehends on reasonable grounds that the 1st – 16th Respondents will not desist with its foregoing unlawful conduct unless restrained by an order of Court.

20. **INCORPORATION OF THE 16TH RESPONDENT**

20.1 In terms of section 160(3) of the Companies Act, the Companies Tribunal may make an administrative order directing the cancellation of the registration of the 17th Respondent's name.

20.2 The 1st – 15th Respondents, under stealth and in clear contravention of the Constitutions of the Church, including but not limited to the Church's trade mark policy referred to above and contained in Article BA 40 of the SID Working Policy, 2013, on 22 January 2014 secured the registration of the 16th Respondent under the name "TRANS ORANGE CONFERENCE

OF SEVENTH-DAY ADVENTIST CHURCH” at the offices of the 18th Respondent.

- 20.3 The 16th Respondent’s name uses the exact name by which the 5th Applicant was established and which name has been used for the past 34 years in all activities involving the 5th Applicant in all its communications with Local Churches, the SAU, the SID and the GC and in which name, through such extensive use the 5th Applicant has built up a substantial reputation.
- 20.4 The name of the 16th Respondent also in part comprises of the registered trade name “SEVENTH-DAY ADVENTIST” by the Registrar of Trade Marks in South Africa in terms of the TMA.
- 20.5 I challenge the 1st – 15th Respondents to, in their answering affidavits, provide this Honourable Court with a copy of the application for the reservation of the 16th Respondent’s name when application was made to the 18th Respondent and to further indicate to the Honourable Court any authorisation they were relying upon from the 2nd Applicant permitting the use and the registration of a name in which the 2nd Applicant’s registered trade name appears.

20.6 It is furthermore unthinkable that the 18th Respondent, who shares offices with the 17th Respondent where the trade mark register is being kept, could have allowed the registration of a name which constitutes a registered trade mark in terms of the TMA.

20.7 It is furthermore unthinkable that the 18th Respondent, when it received the application for the reservation of a name and the registration of the 16th Respondent's name, that it did not contemplate that the name proposed for the 16th Respondent would infringe upon the Church's registered trade name.

20.8 Be that as it may, the registration of the 16th Respondent's name by the 18th Respondent is in clear violation of the provisions of section 11(2)(a)(i) and (iii) of the Companies Act, which expressly determines that the name of a company must not be the same as, or confusingly similar to:

“(i) the name of another company, registered external company, close corporation, or co-operative unless the company forms part of a group of companies using similar names;

...

(iii) a registered trade mark belonging to a person other than the company, or a mark in respect of which an

application has been filed in the Republic for registration as a trade mark or a well-known trade mark as contemplated in section 35 of the Trade Marks Act, 1993 (Act 194 of 1993);”

20.9 The 16th Respondent’s name also clearly violates the provisions of section 11(2)(b)(i) of the Companies Act, which determines that the name of a company must not falsely imply or suggest, or be such as would reasonably mislead a person to believe incorrectly, that the company is part of, or associated with, any person or entity.

20.10 The 2nd Applicant’s remedy for the contravention of section 11(2) of the Companies Act lies in section 160 of the Companies Act. It provides for an application to be made to the 19th Respondent for a determination whether the 16th Respondent’s name satisfies the requirements of section 11 of the Companies Act.

20.11 The 2nd Applicant is in the process of making application for a determination in terms of section 160(1) of the Companies Act, wherein the 19th Respondent will be requested to make an administrative order, in terms of section 160(3)(b)(ii) of the Companies Act, directing the 16th Respondent to choose a new name and to file a notice of an amendment of its Memorandum of Incorporation, within a period and on any conditions that the

19th Respondent considers just, equitable and expedient in the circumstances.

20.12 Pending the finalisation of the 2nd Applicant's application to the 19th Respondent for a determination in terms of section 160(1) of the Companies Act, the Church, represented by the Applicants herein, and in particular the 2nd Applicant, requires an interim protection against the use of the 16th Respondent's name.

20.13 The Applicants respectfully submit that:

20.13.1 the 2nd Applicant has a clear right in the protection of its trade name in circumstances where it is registered as a trade mark in South Africa in terms of the TMA;

20.13.2 a well-grounded apprehension of irreparable harm is feared if interim relief is not granted and the 19th Respondent eventually directs the 16th Respondent to choose a new name for reason of the fact that:

20.13.2.1 a letterhead depicting the name and registration details of the 16th Respondent has already been distributed on 11 March 2014 to all Local Churches within the 5th Applicant's

jurisdictional area, a copy of which has already been attached hereto as **Annexure “A29”**;

- 20.13.2.2 in the letter, members of Local Churches are informed that the 16th Respondent is the only true TOC and members of Local Churches should avoid being scammed by *“the illegal TOC in Orange Grove”*, being a reference to the 5th Applicant. It also further informs that the 5th Applicant’s activities *“are illegal and they impersonate TOC Alberton as they do not have the right to use the name”*;
- 20.13.2.3 the breakaway group will, armed with the registration of the 16th Respondent, approach more Local Churches within the TOC jurisdiction, in attempting to convince its members that the 16th Respondent in fact represents an authorised structure within the Church; and
- 20.13.2.4 the breakaway group will open bank accounts in the name of the 16th Respondent and siphon off tithes deposited at Local Churches, being moneys deposited in trust for and on behalf of the TOC.

20.13.3 the balance of convenience favours the granting of interim relief for reason of the fact that:

20.13.3.1 the prejudice to the Applicants if the interim interdict is refused far outweighs any prejudice that could be suffered by the 1st – 16th Respondents;

20.13.3.2 it is only the 5th Applicant that stands to be prejudiced by the conduct of the 1st – 16th Respondents, as it is the 5th Applicant's organisational reputation and authority vis-à-vis Local Churches are being harmed by the said conduct;

20.13.3.3 the 5th Applicant will continue to experience resistance from Local Churches in forwarding their tithes to the TOC;

20.13.3.4 the TOC will experience increased resistance to it attempting to arrange conventions and sessions with Local Churches. The entire unity in the Church is being threatened by the unlawful conduct of the 1st – 16th Respondents; and

20.13.3.5 the prospects of success in the 2nd Applicant obtaining a directive in terms of section 160(3)(b)(ii) of the Companies

Act by which the 16th Respondent is ordered to choose a new name, favours the 2nd Applicant overwhelmingly.

20.13.4 there exist no other satisfactory remedy to prevent the 1st – 16th Respondents from continuing with their unlawful activities.

20.14 In the premises, the Applicants seek the granting of an interim interdict as is prayed for in the notice of motion.

21. **THE RELEVANT CONSTITUTIONS**

21.1 In the body of this affidavit, I made extensive reference to various Constitutions of the Church.

21.2 I have also stated that all the different Constitutions of the Church are interwoven and interdependent.

21.3 In order to present the Honourable Court with the full text of all the Constitutions being referred to above, I attach same hereto as follows:

21.3.1 **Annexure “A43”**, the Constitution of the GC;

- 21.3.2 **Annexure “A44”**, the GC Bylaws;
- 21.3.3 **Annexure “A45”**, the GC Working Policy 2013 – 2014;
- 21.3.4 **Annexure “A46”**, the Church Manual;
- 21.3.5 **Annexure “A47”**, the SID Working Policy, 2011 – 2013;
- 21.3.6 **Annexure “A48”**, the Constitution of the SAU;
- 21.3.7 **Annexure “A49”**, the SAU Working Policy;
- 21.3.8 **Annexure “A50”**, the Revised Constitution of the TOC, 2011:

and

- 21.3.9 **Annexure “A51”**, the TOC Bylaws, 2011.

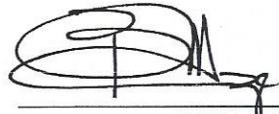
21.4 In order to save costs and because the 1st – 15th Respondents should have copies of the said Constitutions, I do not intend attaching same to the copies being served on the Respondents. Should any Respondent, however, wish to receive a copy of any of the Constitutions being referred to, the Applicants’ attorney

has been instructed to provide same by electronic mail.

21.5 I incorporate into this affidavit the entire content of each of the Constitutions attached hereto as if specifically recorded in this affidavit.

22. **RELIEF SOUGHT**

22.1 The Applicants respectfully request the Honourable Court to grant the relief set out in the notice of motion.



DEPONENT

Signed and sworn before me at Pretoria this 27th day of May 2014 after the deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).



COMMISSIONER OF OATHS: _____

FULL NAMES: **Regardt Grobler** _____

CAPACITY: _____

ADDRESS: _____

Commissioner of Oaths / Kommissaris van Ede
Practising Attorney / Praktiserende Prokureur
Rep. Of South Africa / Rep. van Suid Afrika
79 STEENBOK AVENUE MONUMENT PARK,
PRETORIA