

MDANGALA KHANYISILE	77 th APPLICANT
SINEGUGU NGEMA	78 th APPLICANT
NYAMELELA MXOKOZELI	79 th APPLICANT
NOMTHANDAZO DOZI DLAMINI	80 th APPLICANT
LINDOKUHLE NGUBANE	81 st APPLICANT
G GUGULETHU SIMAYL	82 nd APPLICANT
NTUTHUKO KHUMALO	83 rd APPLICANT
AJASSI AUBREY MMADI	84 th APPLICANT
and	
THE ETHEKWINI MUNICIPALITY	1 st RESPONDENT
THE CITY MANAGER – ETHEKWINI MUNICIPALITY	2 nd RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

MUSEMA KWELI KAKOMERE

do hereby make an oath and state that:

1.

- 1.1 I am an adult male;
- 1.2 My country of origin is the Democratic Republic of Congo;
- 1.3 I have a South African Identity document with identity number 7608185947184;



- 1.4 I am a street trader trading from trading site no. 30 on Albert Street, Durban;
- 1.5 I understand the English language and speak and read English without difficulty.

2.

The facts to which I depose herein are within my personal knowledge and belief and are true and correct unless the context otherwise indicates. Any legal submissions made by me are made upon the advice of my legal representatives.

3.

The first respondent is the Ethekewini Municipality, a Municipality established under Provincial Notice 343 of 2000 in terms of the Local Government Municipalities Act 117 of 1998 with its principal place of business situated at 18th Floor, Embassy Building, 199 Anton Lembede Street, Durban.

4.

The second respondent is the City Manager of the Ethekewini Municipality, cited herein in his official capacity as the City Manager with c/o address being the Legal Department of the Ethekewini Municipality situated at 18th Floor, Embassy Building, 199 Anton Lembede Street, Durban.

5.

The relief which I and the other applicants herein seek is an order reviewing and setting aside the decisions made by the respondents to:

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- 5.1 refuse, alternatively fail to make a decision, in respect of my and the 3rd to 17th applicants and 20th to 64th applicants and the 67th applicants' application to renew their trading permits until the end of May 2026;
- 5.2 confiscate the 2nd, 18th and 19th and 65th to 66th and 70th applicants trading permits that were validly renewed;
- 5.3 prohibit the applicants from trading in / selling second hand clothing;
- 5.4 relocate the applicants from their trading areas to Centrum Park.

6.

The trading permits in question and current trading areas referred to in paragraph 5 above is for Queen Street, Albert Street and Victoria Street in Durban.

7.

This application is brought in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and under the provisions of Rule 53.

8.

As I indicated previously I am a street trader and so are the other applicants cited herein. We apply for and are issued with trading permits to trade in our designated trading sites. Myself and the other applicants are permit holders for the designated trading sites in Albert Street, Queen Street and Victoria Street, Durban.



9.

As to whether or not we are in possession of renewed trading permits will be dealt with later on in this affidavit.

10.

These trading permits are issued to us on an annual basis with the term period being for a twelve-month period. There is no stipulation or restriction in respect of the goods that will be traded on the trading permit itself.

11.

By way of example, I annex hereto marked "A" a copy of my trading permit.

12.

I generally trade in goods such as second - hand clothing, more specifically, lady' dresses, and the other applicants also trade in the same goods as well as other items such as belts, socks, tracksuit pants and hats.

13.

I have been trading at the designated trading site for approximately 19 years and I have had my trading permit renewed each year without difficulty.

14.

Similarly, the other applicants cited herein have been trading in their designated sites for decades with the longest serving trader being the 54th applicant for a period of 20 years.

15.

This has been our source of income for as long as we can remember.

16.

Mine and the other applicants' trading permits were due to expire by the end of May 2025, latest 1 June 2025. This meant that we had to apply for the renewal of our trading permits for the next twelve-month period.

17.

Upon making, alternatively, attempting to make the said application for renewal to the respondents the following emerged:

17.1 The trading permits of the following applicants were suspended:

(a) 16th, 24th, 56th applicants.

17.2 The trading permits of the following applicants were terminated:


(a) 5th, 6th, 13th, 34th, 35th, 36th, 38th, 39th, 40th, 41st, 45th, 46th, 47th, 48th, 54th, 60th applicants.

17.3 The trading permits of the following applicants were confiscated:

(a) 2nd, 18th, 19th and applicants.

17.4 The trading permits of the following applicants were renewed and then subsequently confiscated:

(a) 64th, 65th, 66th, 67th, 70th applicants.

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17.5 The trading permits of the following applicants were renewed:

(a) 69th, 71st to 84th applicants.

17.6 The trading permits of the following applicants remain pending without a decision:

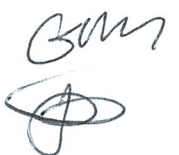
(a) 1st, 3rd, 4th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 14th, 15th, 17th, 20th, 21st, 22nd, 23rd, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 36th, 37th, 41st, 42nd, 43rd, 44th, 45th, 48th, 49th, 50th, 51st, 52nd, 53rd, 55th, 57th, 58th, 59th, 61st, 62nd, 63rd applicants.

18.

18.1 I pause to mention that my trading permit in question remains pending without a decision having been made since 4 June 2025 when I made the application for renewal and I fall within the category as set out in paragraph 17.6 above.

18.2 I was informed by the first respondent that since I took the first respondent to Court they will not make a decision on the renewal of my permit and it will remain pending for as long as the Court matters are finalised. I have been advised that the other applicants falling under the category of paragraph 17.6 were also told the same thing.

18.3 Furthermore, I draw to the Court's attention that the respondents also took issue with the fact that some of the applicants who are of a South African nationality



have assistants who are of a foreign nationality and some of the foreign nationals have assistants who are of a South African nationality (mostly Zulu speaking people). Therefore, the respondents are not happy for the South African nationals to be assistants to the foreign nationals and vice versa.

18.4 To the best of my knowledge, further reasons proffered by the respondents for failing to renew the permits or failing to make a decision is due to the applicants trading in second – hand clothing and / or for the purpose of verifying the applicants' Home Affairs documents that were produced to the respondents.

19.

I draw to the Court's attention that no reasons were provided by the respondents for the decision to terminate, suspend and confiscate certain trading permits and no reasons proffered for taking the decision to renew some of the trading permits and not others. However, I can only assume that it was done so for the reasons as set out in paragraph 18 above.

20.

Flowing from the aforesaid, myself and the other applicants were frequently approached by the Durban Metro Police Officials in about the middle of June 2025 onwards who conducted destructive raids at our designated trading sites and confiscated many of the goods being sold by myself and the other applicants. The goods in question that were confiscated were restricted to clothing items only.

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21.

I pause here to mention that this is when we learnt that the respondents had made a decision to prohibit the street traders from trading in / selling second hand clothing.

22.

Once again, no reasons were provided to me or the other applicants, at the time, for making the aforesaid decision. However, at this juncture I pause to mention that the respondents' explanation for doing so was brought to my attention in their answering affidavit contained in a previous interdict application brought by the applicants.

23.

Furthermore, we obtained information via the Durban Metro Police during their frequent visits that a decision had been made to relocate all those street traders trading in / selling second hand clothing to a place called Centrum Park in Durban.

24.

Apparently, it has been a plan in progress by the respondents for quite some time and the respondents began implementing and enforcing their decision by sending the Durban Metro Police to our trading sites. However, I must draw to the Court's attention that I and the other applicants have not consented to any such relocation to Centrum Park, neither have we been made aware of the said plan.



25.

Insofar as the relocation is concerned, no reasons were provided by the respondents at the time for making a decision to relocate those traders trading in / selling second hand clothing to Centrum Park.

26.

A number of the applicants cited herein, including myself, are foreigners, notwithstanding this, myself and the other foreigners get along quite well with the South African Nationals (who are also applicants cited herein) and we are even employed under the South Africans to work at their stalls and vice versa.

27.

In light of the aforesaid, I cannot help but draw the conclusion that the respondents' decisions were aimed at attacking the foreigners in an attempt to get rid of the foreigners from Central Durban and isolate us in an area called Centrum Park and to create conflict amongst the South Africans and the foreigners. I believe that the respondents also condemn the close and cordial relationship which the foreigners and the South Africans share at the stalls on the street.

28.

I am unable to understand the possible reasoning behind the respondents' decisions, especially, since myself and many of the other applicants have been trading under the same rules for about twenty years.



29.

I now draw to the Court's attention the risks associated with relocating myself and the applicants herein to Centrum Park as well as why such relocation is not financially viable for the applicants.

30.

This above Honourable Court will appreciate that Centrum Park is located near Soldiers Way around what is commonly known as "The Workshop" area.

31.

I have been informed that there is severe political conflict in this area and that it is run by the MK Party who enforces "Operation Dudula."

32.

I was approached by one Nicole Samba who was a street trader trading on Foundry Lane, West Street Arcade, Durban. She was informed by an official employed under the first respondent that her trading permit was changed to Centrum Park. Samba proceeded to the Centrum Park location and set up her stall. She was approached by certain people about four days later who told her to close up her stall and never to return and that they are the MK people controlling the area from the Workshop Market to Centrum Park. Samba immediately left the area for fear of being beaten and she approached the first respondent for assistance. The official at the first respondent

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informed Samba that she could not help her because those people (referring to the MK people) are the “*mafia*.” Samba is now unemployed and stays at home.

33.

Annexed hereto marked “**B**” is a copy of a supporting affidavit deposed to by Samba.

34.

Similarly, I was informed by one Ilunga Natale, a street trader who was also trading at the West Street Arcade, that she was told to relocate to Centrum Park and when she did so she was approached about three days later by certain men and women, claiming to be MK people under “Operation Dudula.” These people told her that if she was seen there again they will beat her. Natale closed up her stall immediately and went to the offices of the first respondent for assistance. The official at the first respondent stated that she will investigate the matter, however, a month later Natale was informed that the first respondent could not do anything to help.

35.

Annexed hereto marked “**C**” is a copy of a supporting affidavit deposed to by Natale.

36.

It appears that the intimidation and threats by the “MK people” go as far back as 2021.

37.



I was informed by one Albino Moyana, a street trader who was trading on Field Street, opposite Centrum Park, that a group of people called "MK" and "Operation Dudula" beat him and other street traders who also had valid permits. Two street traders were pronounced dead after being beaten so severely. Moyana went to the offices of the first respondent to report the incident, however, he was told that the first respondent can only relocate the traders elsewhere as there is nothing it can do about the "Mafia" in the workshop area. To date, Moyana has not been given an alternative trading site by the first respondent and remains unemployed.

38.

Annexed hereto marked "D" is a copy of a supporting affidavit deposed to by Moyana.

39.

In addition to the above, my suspicion that the respondents' decisions were aimed at ousting the foreigners from trading in Durban and at causing a separation between the foreigners and the South Africans proved correct.

40.

In October 2025 the 13th applicant called a meeting with an official employed under the first respondent to discuss the issues that has been on-going for a couple of months. The 13th applicant pleaded with the official to release the permits that she was withholding or at least release the trading permits for the South African people and grant the foreigners permits for Centrum Park (even though it is unsafe for the



foreigners to trade from there). However, the official refused and commented that *"I can't give you foreigners and those South African citizens who are working together or married to a non-citizen. They must go to Centrum Park and it is wrong for them to work with foreigners."*

41.

Flowing from the above, it is clear that the respondents' decisions are xenophobic in nature.

42.

Annexed hereto marked "E" is a copy of a supporting affidavit deposed to by the 13th applicant, Mohamadou Balma.

43.

I believe that the respondents have plotted a very calculated plan to relocate the street traders to Centrum Park knowing fully well that the MK people will threaten, intimidate and oust us from the area leaving us unemployed and forced to stay at home.

44.

The Centrum Park trading area is a large open space enclosed by a wired fence that has two small pedestrian gates on the far end of each other to enter and exit the area. The wired fence in question is properly blocked and not visible to people passing by.



45.

The difficulty with this type of set-up is that it is not suitable for our trade. Our work requires visibility, passers-by to see us and easy access by the public to our stalls to buy a fruit, a bag or a pair of shorts and move on.

46.

With the existing set – up the public will not know that there are street traders within the enclosed fenced area in Centrum Park.

47.

As I mentioned previously, the relocation to Centrum Park is not financially viable for the traders.

48.

The respondent's decisions are unfair, arbitrary, *contra bonos mores* and unlawful and must be reviewed and set aside.

49.

I have been advised that section 7 of PAJA specifies that any proceedings for judicial review must be instituted without unreasonable delay and not later than 180 days after

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the date upon which any proceedings instituted in terms of internal remedies have been concluded, or where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.

50.

I am not aware of any internal remedies that could have provided any relief for myself and the other applicants.

51.

Save to say that a meeting was held with the 13th applicant and an official from the first respondent to amicably resolve the issues in October 2025.

52.

I draw to the Court's attention that on 30th July 2025 an urgent applicant was brought in the above Honourable Court seeking interdictory relief pending the outcome of review proceedings, however, the application was struck off the roll for lack of urgency.

53.

Handwritten signature and initials in the bottom right corner of the page.

I have instructed my attorney not to persist with that application as it fails to deal with all the issues i.e. the decision to prohibit the street traders from trading in / selling second hand clothing and the decision to relocate the street traders to Centrum Park.

54.

As alluded to above, myself and the other applicants herein became aware of the respondents' administrative action when we made or attempted to make application for renewal of our trading permits on or about 01 June 2025 and via the subsequent raids conducted by the Durban Metro Police in the middle of June 2025 onwards.

55.

As such I have been advised that the 180 days referred to above will begin to run from the middle of June 2025 and will terminate in the middle of December 2025.

56.

I pause here to mention that in about the first week of December 2025 the respondents renewed the permit for the 37th applicant to continue trading in second – hand clothing on Albert Street. This gave the applicants hope and we anticipated that our permits will also be renewed which will make the bringing of this application unnecessary. However, upon making enquiries with the respondents we were informed that the respondents stance remained the same in respect of the other applicants. Therefore, the bringing of this application then became necessary once again.



57.

It is also worth noting that on or about 15 December 2025 the trading sites for the 5th and 6th applicants were allocated to new traders without giving the 5th and 6th applicants alternative sites. Furthermore, the new trader is currently trading in second – hand clothing and the respondents have not taken issue with that.

58.

The Court will note that the festive period was approaching at the time and our legal representatives then closed offices for the holiday period. I was advised that this application will only be able to be launched in January 2026.

59.

Accordingly, the applicants and I have brought this application without unreasonable delay.

60.

However, should it transpire that the application has been brought out of the 180 days period then myself and the applicants seek that the period of 180 days be extended to the date of the launch of this application.

61.

In the circumstances, the applicants seek an order in terms of the Notice of Motion prefixed hereto.

A handwritten signature in black ink, appearing to be 'GM' with a stylized flourish underneath.

GM

DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to and before me at on this 01 day of 09 202⁶, the regulations contained in Government Notice R 1258 of July 1972 having been complied with.



71901673
[Signature]
COMMISSIONER OF OATHS