

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

Case No: 15791/22

In the matter between:

**NATIONAL LOTTERIES COMMISSION**

Applicant

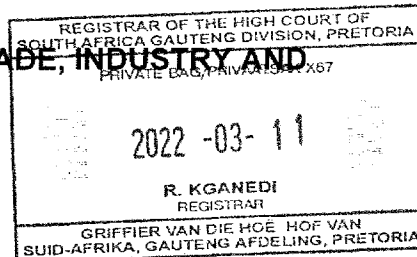
and

**THE MINISTER OF TRADE, INDUSTRY AND  
COMPETITION**

First Respondent

**THE BOARD OF THE NATIONAL LOTTERIES  
COMMISSION**

Second Respondent



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**NOTICE OF MOTION**

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**KINDLY TAKE NOTICE** that the applicant intends applying to the above Honourable Court on the **22nd** day of MARCH 2022 for an order in the following terms:

1. That the forms, service and time periods prescribed by the Uniform Rules of Court be dispensed with and that the matter be heard as an urgent application in terms of Rule 6(12) of the Uniform Rules of Court;
2. To the extent required, that condonation be granted for deviation from the practice directives of the above division related to set down, the date and time of hearing of urgent applications;
3. That the first respondent be directed to take all reasonable steps to ensure that the National Lotteries Commission has a quorate board after 31 March 2022;
4. Directing the Minister to report to the Court by no later than 31 March 2022 that he has taken the steps necessary to give effect to the aforesaid order;
5. Alternatively, to:
  - 5.1 An order that the first respondent be directed to take all reasonable steps to ensure that the National Lotteries Commission has a quorate board after 31 March 2022;
  - 5.2 An order directing the Minister to report to the Court by no later than 31 March 2022 that he has taken the steps necessary to give effect to the aforesaid order;

- 5.3 An order directing the Minister of Trade and Industry to extend the terms of the current board members pending the finalisation of the appointment of a full new board by the Minister in terms of the Lotteries Act;
6. Costs in the event of opposition;
7. Further and/or alternative relief.

**AND KINDLY TAKE NOTICE THAT** the applicant intends relying on the affidavit of THABANG CHARLOTTE CHRISTINE MAMPANE and annexures thereto in support thereof.

**AND KINDLY TAKE NOTICE THAT** the applicant has appointed Maluleke Inc t/a Maluks Inc, First Floor, 61 Katherine Street, Sandton, Johannesburg [Ref: ET Mogane/ M00224, email [joseph@maluks.com](mailto:joseph@maluks.com), [eddison@maluks.com](mailto:eddison@maluks.com) and [lufuno@maluks.com](mailto:lufuno@maluks.com) as its attorneys, at which address the applicant will accept service of all notices and process in these proceedings.

**AND KINDLY TAKE NOTICE THAT** in terms of Rule 6(5)(b) and Rule 4A all further pleadings in this matter (which do not have to be served on the applicant personally), will be accepted by electronic transmission at the email addresses supra, subject to the following restrictions, provided that any service that does not comply with these restrictions, will not be accepted and will not be regarded as having taken place:

1. Service may only take place at the appointed electronic mail address;
2. Documents must be in one of the following adaptable formats: Microsoft, OpenOffice, Portable Document Format ("PDF");
3. No message attachment included may be larger than 20 MB; and
4. Service must be confirmed in writing 24 hours after the said service.

**TAKE FURTHER NOTICE THAT** the respondent is requested to give written confirmation that it confirms that all further pleadings and correspondence in this matter are to be exchanged by way of email and to the abovementioned email address.

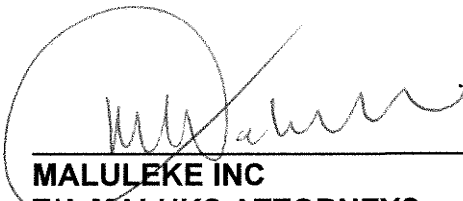
**KINDLY TAKE NOTICE THAT** in the event of you deciding to oppose the application, you are required:

- (a) To deliver a written notice of opposition by close of business on 14 March 2022;
- (b) In such a notice to appoint attorneys with an address as envisaged in Rule 6(5)(b) at which you will accept service of all notices and process in these proceedings; and

- (c) If you agree to the aforesaid process of service by email, by including in such notice of opposition the email addresses at which you will accept service of all notices and further process in these proceedings;
- (d) To file your answering affidavit no later than close of business on 16 March 2022.

**KINDLY ENROL THE APPLICATION ACCORDINGLY.**

DATED AT PRETORIA ON THIS THE 11<sup>th</sup> DAY OF MARCH 2022.



**MALULEKE INC**

**T/A MALUKS ATTORNEYS**

Attorneys for Applicant

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61 Katherine Street

Sandton

Johannesburg

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REF: ET Mogane/ M00224

**C/O HAHN & HAHN INC**

222 Richard Street

Hatfield

Pretoria

Email: [Victor@hahn.co.za](mailto:Victor@hahn.co.za)

Ref: Mr Victor Williams

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



**AND TO: THE MINISTER OF TRADE, INDUSTRY AND COMPETITION**

First Respondent  
77 Meintjies Street  
Sunnyside  
Pretoria

**C/O THE STATE ATTORNEY**

SALU Building  
316 Thabo Sehume Street  
Pretoria

Email: [Mebrahim@thedti.gov.za](mailto:Mebrahim@thedti.gov.za)  
[StateAttorneyPretoria@justice.gov.za](mailto:StateAttorneyPretoria@justice.gov.za)  
[IChowe@justice.gov.za](mailto:IChowe@justice.gov.za)

***[By e-mail]***

**AND TO: THE BOARD OF THE NATIONAL LOTTERIES**

**COMMISSION**

Second Respondent

Block D,

333 Grosvenor St

Hatfield,

Pretoria,

0083

Email: [Mpumi@nlcsa.org.za](mailto:Mpumi@nlcsa.org.za)

***[By e-mail]***

**IN THE HIGH COURT OF SOUTH AFRICA**

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Case No:

In the matter between:

**NATIONAL LOTTERIES COMMISSION**

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**THE BOARD OF THE NATIONAL LOTTERIES  
COMMISSION**

Second Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**THABANG CHARLOTTE MAMPANE**

do hereby make oath and state that:

1.

- 1.1 I am the National Lotteries Commissioner, duly appointed in terms of the Lotteries Act, with offices located at Block D, 333 Grosvenor Street, Hatfield, Pretoria.
- 1.2 The facts contained herein fall within my personal knowledge, unless the context indicates otherwise, and are both true and correct.
- 1.3 Legal contentions contained herein are advanced on the basis of advice accepted from the legal practitioners of the applicant.

2.

The first respondent is THE MINISTER OF TRADE INDUSTRY AND COMPETITION, who is cited herein in his capacity as the Minister to whom the Administration of the Lotteries Act, 57 of 1997 has been assigned, with address for service at The State Attorney, 316 Thabo Sehume street, Pretoria.

3.

The second respondent is THE BOARD OF THE NATIONAL LOTTERIES COMMISSION, duly appointed in terms of Section 3 of the Lotteries Act, 57 of 1997, which Board is currently not quorate and can therefore not institute these proceedings as co-applicant. Since the Board is an interested body in the relief being sought, it is

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cited as a respondent, but no relief is sought against the Board.

**PURPOSE OF THIS APPLICATION**

4.

On Tuesday, 8 March 2022 the Minister of Trade and Industry announced that he wishes to dissolve the Board of the National Lotteries Commission ("NLC"). This disclosure was made by the Minister when he appeared before the National Assembly Department of Trade Industries Competition Portfolio Committee. He advised the Committee that he has instructed his attorneys to take action to disband the Board.

5.

The Board of the NLC currently consists of three remaining members, which means that it is not quorate. However, the terms of office of the current Board members expires on 31 March 2022, after which there will be no Board.

6.

As Commissioner of the Lotteries Board, I have been prompting the Minister since the beginning of 2022 to take the necessary steps to ensure that there is a full operating Board at the NLC for urgent legality reasons. Historically, it is a known fact that the selection of Board members for the NLC takes time and the process of appointing new

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Board members after the expiry of the term of the current Board has not even commenced. Therefore, unless the term of the current Board members are extended, as envisaged by Section 10(4) of the Lotteries Act, or are extended only for purposes of remaining in office until new Board members have been appointed, the Lotteries Commission faces the absence of a Board with effect from 1 April 2022.

7.

The absence of a Board will paralyze the entire Lotteries Act and deprive good causes of distributions of funds on which they depend.

8.

The purpose of this application is therefore to obtain a mandamus against the Minister to take the necessary steps to ensure that there is a Board in place at the expiry of the current Board on 31 March 2022. As Commissioner I cannot preside over inaction in this regard, as the interests of the National Lottery are being severely prejudiced.

**PRIMA FACIE AND/OR CLEAR RIGHT**

9.

In order to understand the right of the Commissioner to approach the Court for relief, the context within which the Board functions needs to be understood. The power of the Commissioner is to approach the Court in the independently.

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**URGENCY: GOVERNANCE CONSEQUENCES OF THERE BEING NO NLC BOARD**

10.

The current Board was appointed on 27 April 2017. Only three Board members remain (which is still not a quorum), but their term of office expires on 31 March 2022. One of the Board members has passed on in February 2022 with the consequence that the Board is currently not quorate.

11.

The governance impact on the National Lotteries Commission if there is no Board as at 1 April 2022, includes what is set out below:

- 11.1 The establishment of the National Lotteries Board is one of the purposes of the Lotteries Act.<sup>1</sup> The National Lotteries Commission is established by Section 2 of the Act and it is governed by the Board appointed in terms of Section 3.<sup>2</sup> The absence of a Board therefore removes the Commission from its controlling structure;

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<sup>1</sup> The Preamble to the Lotteries Act

<sup>2</sup> Section 2(2)

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- 11.2 While the Board may assign management or other functions, or delegate its powers or functions to the Commissioner or the Commission, ultimate responsibility remains with the Board for the exercise of any such functions. However, if the Board is non-existent, no delegations or assignments of such functions can be either made or supervised;
- 11.3 It is well-known that the licence for the operator of the National Lottery will expire soon. The appointment of a new operator is a function which the Minister may only exercise after he has consulted with the Board.<sup>3</sup> In the absence of such a consultation with the Board, the appointment of a new operator cannot take place lawfully;
- 11.4 Even if the Minister decides that he will not appoint a new operator, but will appoint an organ of State to conduct the National Lottery, this power of the Minister can also only be exercised after consultation with the Board.<sup>4</sup> Not even a temporary licence may be issued by the Minister without consulting the Board.<sup>5</sup>

## 12.

The Board has very specific statutory functions which will not be capable of being exercised if not properly appointed. These include:

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<sup>3</sup> Section 13(1)

<sup>4</sup> Section 13(A) of the Act

<sup>5</sup> Section 13(B) of the Act

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- 12.1 Advising the Minister on the issuing of the licence to conduct the National Lottery;<sup>6</sup>
- 12.2 To ensure that the proceeds of the National Lottery are as large as possible and that the interests of all participants are protected and all laws are complied with;<sup>7</sup>
- 12.3 To manage and administer the National Lottery Distribution Trust Fund, which Fund is managed by the Board and entrusted to it in terms of Section 21(1). The Administration of the National Lottery Distribution Trust Fund is central to the effectiveness of the Lotteries Act. It governs the allocation of expenditure for funding of worthy good causes. The Act is part of the social network to improve the life of citizens.<sup>8</sup>

13.

The Board is required by statute to advise the Minister on:

- 13.1 Percentages of money to be allocated in terms of Section 26(3);
- 13.2 The efficacy of legislation pertaining to lotteries and ancillary matters;

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<sup>6</sup> Section 10(1)(a)

<sup>7</sup> Section 10(1)(b)

<sup>8</sup> Sections 21 and 22 of the Act, read with Section 10(1)(c)

13.3 Establishing and implementing social responsibility programmes in respect of lotteries;

13.4 Any matter relating to the National Lottery and other lotteries or any other matter on which the Minister requires the advice of the Board.<sup>9</sup>

14.

The oversight by the Board of the Commission in respect of performance of its functions, and approval and management of its operational strategic framework of policies, corporate governance framework policies, human resources policies and appointment of senior executive employees are all statutory obligations of the Board.<sup>10</sup> This oversight is removed.

15.

The Board is the reviewing authority for decisions of the distributing agency regarding applications for grants.<sup>11</sup> There can be no such reviews.

16.

The Board is also charged with recovering of any amounts in respect of grants which have been withdrawn, prohibited or reduced in terms of Section 33.<sup>12</sup>

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<sup>9</sup> Section 10(1)(e), (f), (g) and (k) of the Act

<sup>10</sup> Section 10(1)(m)

<sup>11</sup> Section 10(1)(p)

<sup>12</sup> Section 10(1)(r)

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17.

The Board further makes recommendations to the Minister to intervene in respect of grants being used in an unauthorised manner or for an unlawful purpose.<sup>13</sup>

18.

There are numerous further provisions of the Lotteries Act that will be paralyzed in the absence of a duly appointed Board.

19.

It suffices to state that:

19.1 The exercise by the Minister of his statutory powers in terms of the Lotteries Act are largely paralyzed in the absence of a properly appointed Board;

19.2 The oversight over the Commission is paralyzed in the absence of a duly appointed Board;

19.3 The administration and management of the National Lottery Distribution Trust Fund will be paralysed in the absence of a duly appointed Board.

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<sup>13</sup> Section 10(5)

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20.

In effect, the National Lottery will be paralyzed, and the benefits intended for worthy causes and receivers of grants will be rendered nugatory.

21.

My statutory obligations as Commissioner of the National Lotteries Board urge me to approach the Court for urgent relief to avoid the National Lottery from being paralyzed by inaction of the Minister.

22.

In the light thereof that I cannot discharge my duties lawfully without the oversight of a duly appointed Board, I submit that I have a clear right to approach the above Honourable Court for urgent relief for the appointment of a Board timeously so that there is no period in which the National Lotteries Board has no members.

**RISK OF IRREPARABLE HARM**

23.

From the above analysis of the Lotteries Act, it is apparent that, without a functional Board, distributions of benefits to worthy causes cannot continue. Since such worthy

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causes are very often totally dependent upon their grants or distributions of benefits, worthy causes will suffer immediately if no distributions can be made.

### **BALANCE OF CONVENIENCE**

24.

It is submitted that there will be no prejudice if the Minister were to be directed to give effect to the relief being sought and, if so ordered, to report the Court on his compliance with such orders.

25.

The Minister has not been responding to correspondence of the National Lotteries Commission to the Minister regarding the appointment of a Board. This has resulted therein that the issue has been escalated to the Presidency. Unfortunately, no action has been taken by the Minister despite the aforesaid attempt to secure his adherence to his statutory obligations under the Lotteries Act.

26.

It bears noting that the licence of the current holder of the National Lottery Licence expires at the end of May 2023. The process of selecting an appropriate new incumbent requires a tender for submissions to be authorised and distributed timeously. This is a process over which the Board has control. A delay in appointing

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the Board will result in the risk of potential harm to the public if a tender process for a new licence is not timeously completed. What complicates the above is that:

- 26.1 The process of selecting new Board members in itself has historically taken a substantial amount of time;
- 26.2 The failure by the Minister to initiate the process of selecting new Board members means that, unless current Board members' terms are extended, there will be a hiatus during which there will be no Board members at all;
- 26.3 Whatever time is lost in appointing a new Board, will be subtracted from the available time to formulate and extent the tender (RFB) for operators of the new licence;
- 26.4 It would not be onerous for the Minister to make a decision to stabilise the Lotteries Board by extending the term of the current Board members in terms of Section 10(4) or merely indefinitely, pending appointment of their replacement Board;
- 26.5 However, in the light of the Minister's recent indications that he intends removing the Board, despite their term of office expiring in three weeks, there appears to be no prospect of the current Board having their terms extended by the Minister;

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26.6 The selection of a new Board is not something that the Minister can do on his own in the time available. However, the failure of action on his part to secure a valid Board by 1 April 2022 exposes the National Lotteries Commission and the Board to the risk of harm. The greatest sufferers, however, would be the general public and particularly those worthy causes that are dependent on the National Lottery;

26.7 It is therefore submitted that the granting of urgent interim relief to secure the presence of an operational Board from 1 April 2022 is warranted on the grounds that the granting of such relief will not prejudice the Minister while it will stabilise the National Lottery. It is therefore submitted that the balance of interest favours the granting of the relief.

#### **NO ALTERNATIVE REMEDY**

#### **27.**

The National Lotteries Commission is not an organ of State within a sphere of Government. It is therefore not subject to the cooperative governance provisions of the Constitution and the Intergovernmental Cooperative Governance Act.

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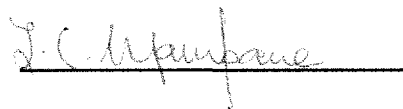
28.

The applicant has made numerous attempts to obtain the Minister's buy-in into the proposed way forward but has received no response. Even an attempt to involve the Presidency has met with no response.

29.

In light of the aforesaid it is submitted that the applicant has no adequate alternative remedy other than to approach the above Honourable Court for urgent relief.

**WHEREFORE** the applicant prays for the relief set out in the notice of motion.



**DEPONENT**

I certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at Pretoria on this 21<sup>st</sup> day of March 2022 and that the provisions of the Regulations contained in Government Notice R1258 of the 21<sup>st</sup> JULY 1972, (as amended), have been complied with.



**COMMISSIONER OF OATHS**

FULL NAMES:

BUSINESS ADDRESS:

DESIGNATION:

AREA/OFFICE:

**NDLOVU ATTORNEYS**  
**COMMISSIONER OF OATHS**  
**DZUNANI NORMAN NDLOVU**  
TEL: 012 321 0729  
OFFICE 309, CHARTER HOUSE  
179 BOSMAN STREET  
PRETORIA, 0001

