

IN THE LABOUR COURT OF SOUTH AFRICA  
HELD AT BRAAMFONTEIN

In the matter between:

and

TRANSNET SOC LTD

RAMAKOA MAKOE

Case no. [REDACTED]



Applicant



First Respondent

Second Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicant intends to make application on a date and at a time to be allocated by the registrar, for orders:

1. Declaring that the applicant was subjected to unfair discrimination in the form of sexual harassment by the second respondent, which is prohibited by section 6 of the Employment Equity Act 55 of 1998 ("the EEA").
2. Declaring that the first respondent is liable in terms of section 60 of the EEA for its failure to take steps to eliminate sexual harassment in the workplace.
3. Declaring that the first respondent is liable in terms of section 60 of the EEA for its failure to ensure compliance with the provisions of the EEA.
4. Declaring that the first respondent's conduct violated section 22 of the Constitution of South Africa by infringing on the applicant's right to choose her trade, occupation or profession freely.
5. Declaring that, as a result, the first respondent is deemed to have

contravened section 6(1), read with section 6(3), of the EEA in accordance with section 60(3) of the EEA.

6. Directing the first respondent to comply with the provisions of sections 6 of the EEA and the Code of Good Practice on the Handling of Sexual Harassment Cases (GenN 1367 in GG 19049 of 17 July 1998) ("the Code"), published in terms of section 203(1) of the Labour Relations Act 66 of 1995 ("the LRA").
7. Directing the first respondent to ensure compliance with its Sexual Harassment Policy and Disciplinary Code and Procedure.
8. Granting any order which is just and equitable, including orders:
  - 8.1 Directing the first respondent to take steps to ensure that unfair discrimination in the form of sexual harassment does not occur;
  - 8.2 Directing the first respondent to compensate the applicant in the amount of R408 686.76 being the equivalent of 12 months' remuneration; and
  - 8.3 Directing the first respondent to pay the applicant damages in the amount of R 10 907 088, 10.
9. Condoning the late filing of this application, to the extent that such condonation is required.
10. Directing any of the respondents who oppose the application to pay the costs of the application, jointly and severally, the one paying the other to be absolved.
11. Ordering further and/or alternative relief.

TAKE NOTICE FURTHER THAT the attached founding affidavit of [REDACTED] together with annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER THAT the applicant appoints as its attorneys of record the Centre for Applied Legal Studies, situated at First Floor, DJ du

Plessis Building West Campus University of the Witwatersrand, Braamfontein, as the address where she will accept notices and service of all documents in these proceedings.

**TAKE NOTICE FURTHER THAT** if any of the respondents intend opposing this application, they are required, within 10 days of receipt of the applicant's notice in terms of Rule 7(4)(b) of the Rules for the conduct of proceedings in the Labour Court, to deliver an affidavit in answer to the allegations made by the applicant, failing which the matter will be set down on the unopposed roll.

DATED at Braamfontein on this 27<sup>th</sup> day of February 2018.

  
CENTRE FOR APPLIED LEGAL STUDIES (CALS)

Applicant's Attorney  
1st Floor DJ Du Plessis Building  
West Campus, University of the Witwatersrand  
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**TO: THE REGISTRAR OF THE LABOUR COURT**  
6<sup>th</sup> and 7<sup>th</sup> Arbour Square Building  
Juta and Melle Streets  
Braamfontein  
Johannesburg

AND TO: TRANSNET DOC LTD  
11 Girtton Street  
Inyanda House 2  
Parktown  
Johannesburg

01/03/2018

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Mufume

AND TO: RAMAKOA MAKOE  
30 Girtton Street  
Inyanda House 2  
Parktown  
Johannesburg

01/03/2018

9/100



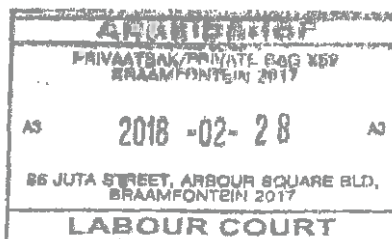
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IN THE LABOUR COURT OF SOUTH AFRICA  
HELD AT BRAAMFONTEIN

Case no.: [REDACTED]

In the matter between:

[REDACTED]



Applicant

and

TRANSNET SOC LTD

First Respondent

RAMAKOA MAKOE

Second Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

[REDACTED]

do hereby make oath and state that:

- 1 I am an adult female and current employee of the first respondent.
- 2 The facts contained in this affidavit are within my personal knowledge, save where the context indicates otherwise, and are, to the best of my knowledge and belief, both true and correct.
- 3 Where I deal with questions of law, I do so on the advice of my legal representatives, which advice I accept as correct.

LP

## THE PARTIES

- 4 I am the applicant in this matter and my place of employment is at 11 Girton Street, Inyanda House 3, Parktown, Johannesburg.
- 5 The first respondent is Transnet Soc Ltd, a state-owned entity duly registered and incorporated in accordance with the company laws of the Republic of South Africa. Its principal place of business is situated at 12 Girton Street, Inyanda House 2, Parktown, Johannesburg.
- 6 The second respondent is Ramakoa Makoe, an adult male who is employed by Transnet Freight Rail, a division of the first respondent, whose full and further particulars are unknown to me. Mr Makoe is currently employed at 11 Girton Street, Inyanda House 3, Parktown, Johannesburg. Mr Makoe is cited for any interest he may have in the relief sought in this application.

## OVERVIEW OF THIS APPLICATION

- 7 This is an application brought in terms of the Employment Equity Act 55 of 1998 ("the EEA"), read with the Labour Relations Act 66 of 1995 ("the LRA"), in terms of which I seek declaratory relief to the effect that I was subjected to unfair discrimination in the form of sexual harassment by Mr Makoe. I seek an order holding Transnet liable in terms of section 60 of the EEA. I also seek certain ancillary relief, including the payment of damages in respect of the costs I incurred in obtaining treatment and counselling following the traumatic experience, for the loss of earnings for the period I was booked off work (and in respect of which Transnet has

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refused to pay my salary), as well as for pain and suffering, emotional shock and the impairment of my dignity.

8 This application arises out of the sustained sexual harassment and discrimination which I was subjected to by Mr Makoe for a considerable period of time, from at least 2008 to 2015, and the subsequent victimisation which I have been subjected to as a result of the fact that I reported the sexual harassment on several occasions and repeatedly requested that appropriate and immediate action be taken.

9 In breach of its own policies on Sexual Harassment and Disciplinary Procedure, Transnet failed to take adequate and/or effective steps to address my complaints and to provide a safe working environment for me, despite the fact that it was at all times aware that I was being subjected to sexual harassment and victimisation by one of its employees.

10 Accordingly, I am advised that Transnet is liable, in accordance with section 60 of the EEA, for the sexual harassment and unfair discrimination which I experienced

### FACTUAL BACKGROUND

11 I am employed by Transnet in its Freight Rail division. I first joined Transnet as a trainee in 2001. I was one of the first women to be trained as an [REDACTED] Track Equipment Engineer in 2002 at Infa Maintenance and I was then promoted to the position of [REDACTED] in 2003.

12 In 2008, I was promoted to the position of [REDACTED] which is a managerial position. It was there that I first encountered Mr Makoe, who

8

was one of my superiors in the Corporate Safety Office ("the department" or "CSO"). Initially, I reported to Mr Gregory Reneke, together with my colleague, [REDACTED]

13 During August 2008, while I was still quite new in the department, Ms [REDACTED] and I received an email from Mr Makoe which contained an inappropriate joke of a sexual nature, concerning women with large buttocks. I found this email to be inappropriate and unwanted, and I felt uncomfortable about it. [REDACTED] and I discussed the email, and decided that we would each approach Mr Makoe individually to inform him of our discomfort. I went to Mr Makoe's office and advised him that I found the email to be inappropriate and offensive, and that I did not appreciate receiving those kinds of emails. Mr Makoe laughed and told me that I was behaving like a child.

14 Shortly afterwards, I had a meeting with the Human Resource Manager, Mr Brenden Randall, to discuss issues concerning my salary, as it had been brought to my attention by Ms Skeepers (who was my Executive Manager at the time) that I, together with two other colleagues, were being underpaid in comparison to other colleagues at the entry level. After that meeting, I informed Mr Randall about the email I had received from Mr Makoe. Mr Randall advised that he would look into the matter, but I never heard anything further. My salary issue was also never resolved up to this date.

15 Later in 2008, I was paired with Mr Makoe for a work assignment in Witbank. We were assigned to assist the areas according to our expertise and the need of the area concerned in the Department. Mr Makoe and I



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drove to Witbank together in his car, as it was company policy for the senior to make use of his or her own car. During the car trip Mr Makoe and myself were quiet or he mostly talked on the telephone, arranging meetings for when we arrived. I understood that the making of travel arrangements and bookings was the responsibility of the senior member of the team.

- 16 When we arrived in Witbank, I discovered that Mr Makoe had only booked one room, and that I had been booked to stay in the same room as him as a couple.
- 17 I immediately telephoned Mr Reneke and informed him of the unsatisfactory accommodation arrangements. Mr Reneke advised me that this was against company policy and that I should return to the office.
- 18 However, Mr Reneke telephoned the travel agent and arrangements were then made for a separate room to be booked for me and so it was not necessary for me to return to the office immediately.
- 19 I was deeply uncomfortable, shocked and upset about the situation, and I felt disrespected and violated. Mr Makoe said nothing.
- 20 I felt so uncomfortable that I made arrangements to travel back from Witbank with another colleague, Mr Sipiwe Ngceza, once our assignment was complete.
- 21 When I returned to the office, I discussed the accommodation issue with Mr Reneke once more and I elevated it to Mr Brendan in Human Resources. However, nothing came of this.

- 22 During this time, I began to lock myself in my office as I was feeling uncomfortable about the situation and I was becoming increasingly reserved at work.
- 23 In 2010, the department moved to the Parktown offices of Transnet. It was an open plan office and I was assigned seating by Mr Reneke. The seating assigned to me was very close to Mr Makoe's office and he had a full view of me when he went in and out of his office. I was made to understand that the seating assignment was final and so there would be no point in complaining about it and asking to be moved.
- 24 I continued to report to Mr Reneke, until he was promoted to the Risk Department. [REDACTED] and I were then required to report to Mr Makoe. We complained about this, particularly because it was a different area of work, but we were told that this was for administrative purposes only.
- 25 Throughout this time, Mr Makoe continued to make lewd comments to me to the effect that he wanted to have sex with me, calling me 'hot' and 'sexy', and saying in Setswana "wa nkgalla", meaning he lusts after me. Mr Makoe would also ask me questions about my love life. He told me that he had dreamt about making love to me when he was sleeping with his wife and he would say things like "I want you, ke ya o kgalla, who is at your house let's go I want to have sex with you" in Setswana. I felt that these comments and questions were inappropriate, and they were unwanted. They made me feel uncomfortable and I told Mr Makoe that I did not want him to make such comments to me. He made these comments every day although I told him that they were unwanted. He

would respond by making a 'joke' – "don't say I am harassing you". I responded by telling him that he was in fact harassing me.

26 Mr Makoe also continued to send me offensive and inappropriate emails. An example of such an email is attached marked annexure "FA 1". Much later on, when my daughter passed Matric, Mr Makoe said to her: "Congratulations, you are going to university and the boys are going to sleep with you." This comment was exceptionally offensive and made my daughter feel extremely uncomfortable. Other colleagues, including [REDACTED] had heard Mr Makoe make this comment, and they also felt uncomfortable.

27 I spoke to my colleagues, Ms [REDACTED] and Ms [REDACTED], and informed them of the inappropriate comments Mr Makoe was making to me. Ms [REDACTED] informed me that Mr Makoe had also been making inappropriate comments to her, and that he had also told her that he dreamt about making love to her, and that she had reprimanded him.

28 I told Mr Makoe that he must refrain from making these inappropriate and unwanted comments, and he told me in Setswana to stop behaving like a child. At the time I was victimised by him for refusing his sexual advances.

29 I reported this ongoing sexual harassment to Mr Mahenye, who was then the Executive Manager of the CSO. Mr Mahenye advised me that he would speak to Mr Makoe. I asked Mr Mahenye to question Mr Makoe and myself at the same time and in the same room, but this request was denied. Mr Mahenye advised me afterwards that Mr Makoe had denied

that he had made any of those comments or sent such emails. Nothing further was done.

- 30 Thereafter, I reported the incidents to Ms Jabulile Zondo in the Human Resources Department. Ms Zondo indicated that she would not investigate the matter or take it any further because people who report such incidents are often victimised. After I had reported this sexual harassment to Ms Zondo, I was treated differently. For example, I was not shortlisted for a particular position in [REDACTED] even though I met all of the requirements for it. I also requested to be transferred on several occasion but was denied the transfer.
- 31 [REDACTED] and I wrote an email to Mr Mahenye in which we complained about the working situation with Mr Makoe. [REDACTED] fell ill as a result of the situation and requested a transfer out of Mr Makoe's department. This request was eventually granted and she was transferred to the Occupational Health Department in 2014. I, however, was denied transfer.
- 32 I continued to work in Mr Makoe's department and to report to him, and the sexual harassment and victimisation continued.
- 33 For example, in November 2012, [REDACTED] invited a number of her colleagues, including myself and Mr Makoe, to her wedding. At the office, Mr Makoe commented to me that all of the ladies are getting married, except for me, which meant that I had passed my time to get married. His comments were unwanted and degrading and made me feel uncomfortable, mortified, violated, degraded and upset. I did not know what to do because I always reprimanded him and the comments were

now attacking my dignity and personality in the office as a manager and as a woman. I also reported him to my superiors, but nothing happened.

- 34 On 31 May 2013, I had to take family responsibility leave as my daughter had fallen ill. Approximately a month later, Mr Makoe made a false statement that I had not reported to him that I would take family responsibility leave. However, he had signed my leave forms and my time card without any questions or complaints at the time.
- 35 In the interim, Mr Makoe had laid a charge of absenteeism against me in relation to the family responsibility leave I had to take, and I was issued with a final written warning for twelve months. On 7 July 2013, I lodged a grievance, a copy of which is attached marked "FA 2", and Mr Makoe was instructed to remove the final written warning from my file. However, despite the fact that I had again raised the issue of Mr Makoe's unwanted sexual advances and his lewd comments in that grievance, these issues were not addressed.
- 36 By this stage, my working conditions had become unbearable and I suffered a number of asthma attacks as a result. I had made several requests to transfer out of Mr Makoe's department on the basis that I feared for my health and safety, but these requests were ignored.
- 37 Also during July 2013, I was required to complete [REDACTED] assessment. Mr Makoe had scheduled my [REDACTED] meeting for 14h00 on Friday. However, he phoned to say that he was unable to meet because he had to go somewhere. On Saturday morning he indicated that he would come to my house to carry it out. I was concerned

14

about allowing Mr Makoe to come to my house because of his unwanted and inappropriate comments and I feared for my safety. I spoke to [REDACTED] to obtain her advice because I was afraid that he would charge me for insubordination. She shared my concerns and suggested that I ensure that there were other people at the house when he came. I informed my brothers because my family was also aware of the working conditions I was subjected to and we agreed that Mr Makoe could come to my parents' house, and my brothers would be there with me.

- 38 My [REDACTED] interview was completed within 10 minutes, and Mr Makoe gave me a score of five on the basis that I was not assertive enough. On the following Monday, Mr Makoe remarked that the reason why I am not married is because my brothers are my bodyguards, and that they follow me everywhere I go, particularly since my younger brother had accompanied me to [REDACTED] wedding.
- 39 Mr Makoe continued to make unwanted, inappropriate and degrading comments to me in full view of other colleagues. Another example is when [REDACTED] returned from a trip to Dubai with her husband, she brought me a handbag as a gift. Mr Makoe remarked that [REDACTED] should not have brought me a bag but should have brought me a husband. I found these remarks very upsetting and I would often sit alone in the ladies room and cry after he had made them. I had on several occasions told him that they are offensive and unwanted and that I felt that he was crossing the boundary since it appeared as though he felt he could say whatever he wanted to me without any consideration because I had to report to him at work.

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- 40 During January 2014, the CSO staff went to the Drakensberg for a work breakaway session. During the night, Mr Makoe knocked on the door to the room that I had been allocated, but he was not aware that I had swapped rooms with a male colleague, Mr Mpho Matsaung.
- 41 The following morning, at breakfast, Mr Matsaung informed me that someone had knocked on the door at approximately 02h00, looking for me.
- 42 While I was sitting with several other colleagues, Mr Makoe approached our table and asked me who the man in my room was last night. My colleagues and I were shocked that he had asked this and that he admitted that he had knocked on my door late at night.
- 43 During a subsequent sexual harassment enquiry in February 2015, Mr Makoe admitted that he knew my room number because he was one of the organisers of the breakaway.
- 44 During June 2014, my daughter had an [REDACTED] school. I informed Mr Makoe that I would need to take family responsibility leave. Mr Makoe replied that my daughter was sick because she was worried that her mother was not getting sex and was not married and she is going to university. I was extremely shocked and hurt by these constant unwanted sexual comments and I felt the best solution was to resign although I desperately needed the job as a single parent and I confided in my colleagues. My health was also affected. My colleagues advised me against resigning, and I took their advice and remained, despite the

intolerable working conditions. I was working under conditions I would never wish for anyone because I had a daughter to raise.

- 45 On 18 September 2014, Mr Makoe again accused me of absenteeism and demanded that I write a report explaining my absences. I wrote another grievance letter. At that stage, I was seeing the psychologist from the Employee Assistance Programme ("EAP") because my health was deteriorating and after a referral from the Employee Hotline. I also called the Transnet Fraud Line and I reported that I was being harassed by my manager and that he had lied about me not submitting my leave form.
- 46 On 29 September 2014, after continued harassment, I wrote another email again requesting a transfer out of Mr Makoe's department. A copy of this email correspondence is attached marked "FA 3".
- 47 I sought assistance from my trade union, UNTU. UNTU initially seemed willing to assist me, but the UNTU union representative later requested that I withdraw the sexual harassment grievance which I had filed. I refused because I was harassed and I wanted the sexual harassment to stop.
- 48 As a result, I sought assistance from SATAWU, who agreed to assist me even though they were not my union. SATAWU sought to intervene informally on my behalf. However, after failed engagements, on 17 November 2014, SATAWU wrote a formal letter to Transnet to record my grievances and the sexual harassment, since HR and management had not addressed my previous complaints.



49 Accordingly, my formal complaint of sexual harassment was lodged in November 2014 and Mr Makoe was charged under case number [REDACTED] although he was only charged late in 2015 after intervention from SATAWU. However, Transnet failed to deal with the complaint expeditiously.

50 In January 2015 I was summoned to Esselen Park by Ms Yvonne Capede, who was the Senior Manager of marketing. Ms Capede asked me if I was in a relationship with Makoe. She told me that women often try to make allegations of sexual harassment after relationships with co-workers fail. I was offended by the statement because it was not the case in my situation and my working environment.

51 The Forensic Department conducted an investigation and concluded on 20 April 2015 that Mr Makoe had violated Transnet's sexual harassment policy and that steps needed to be taken against him. In this regard, I attach a copy of the Forensic Report as "FA 4". The contents of the Forensic Report are not legible for reading, I have requested Transnet to provide me with the copy of the report to date they have not provided it to me. In this regard, I attach a copy of the letter requesting the report as "FA5".

52 The statement that I had written, the forensic investigation report and the statements and names of my witnesses were shared with Mr Makoe.

53 It should be noted that my formal complaint was lodged during November 2014. However, it took months before anything occurred, despite the fact that I sent numerous emails to follow up. This is evident from a copy of

- 19
- 56 Mr Mkhize decided to conduct further interviews with me and my witnesses and additional information was presented. Mr Mkhize advised me and the witnesses that the hearing would now be on 12 September 2015.
- 57 The hearing took place on 5 September 2015 at 14h00. Mr Makoe was represented by Mr Mathekga, who was his representative. I was again informed that the hearing would take place on the morning of 5 September 2015. I felt prejudiced by the actions of Mr Mkhize. At the beginning of the hearing, we were all informed of the reason we were at the hearing and Mr Makoe was informed of his rights by the Chairperson of the hearing.
- 58 Mr Makoe had always maintained that he was not guilty and that he wanted his day in court. In the morning Ms Takalani had indicated that the Chairperson did indicate that the charges against Mr Makoe were serious, he maintained his innocence because at that time he was not aware that there was evidence against him. He was then presented with the evidence of the email he sent to me. He requested to speak with Mr Mkhize on site, who then said he cannot speak to him because the proceedings are in place.
- 59 The Chairperson then read the charges to Mr Makoe. When Mr Makoe was asked how he pleads to those charges, he said he pleads guilty. The Chairperson then explained to him all of the consequences of pleading guilty and asked him again how he pleads. He repeated that he pleads guilty. Thereafter, the Chairperson of the hearing recommended dismissal as the appropriate sanction.

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- 60 The Chairperson also indicated that he was flabbergasted that the Senior Manager Ms Tumiso Voss and Mr Themba Zwane were witnesses because managers should uphold the policies of the company and not defend the perpetrators because they are in management. Mr Makoe was dismissed with immediate effect. However, he never took his belongings, his desk remained as it was, and he was not removed from the system.
- 61 Mr Makoe has never shown any remorse for his actions towards me. Two weeks later, as I will set out below, Mr Makoe returned to his desk and resumed his employment.
- 62 On 18 September 2015, I addressed an email to Mr Mahenye, in which I informed him that I feared that I would be victimised as a result of the allegations of sexual harassment which led to Mr Makoe's dismissal. I also requested a transfer to another department. A copy of this email correspondence is attached as "FA 7". It should also be noted from this correspondence that I had previously requested a transfer on 14 September 2015, which was refused by Mr Mahenye on 15 September 2015.
- 63 I subsequently discovered that Mr Makoe had referred an unfair dismissal claim to arbitration before the Transnet Bargaining Council, under Case [REDACTED], although I was never informed of this, despite the fact that I was the complainant in the case of sexual harassment for which Mr Makoe was dismissed.

- 64 On 22 September 2015, an arbitrator reinstated Mr Makoe, as he found the sanction imposed to have been too harsh. A copy of that arbitration award is annexed marked "FA 8.
- 65 As is apparent from the award, Mr Makoe stated that a 'plea agreement' had been entered into at the disciplinary hearing in terms of which Mr Makoe pled guilty to a charge of 'Inappropriate Behaviour' towards a fellow employee and that the employer would impose a sanction of a final written warning.
- 66 Apparently both Transnet and Mr Makoe agreed that the plea bargain arrangement continued to represent a fair outcome that both parties would desire.
- 67 As a result, the arbitrator set aside Mr Makoe's dismissal as substantively unfair, granted his reinstatement and ordered that a Final Written Warning be issued, valid for a period of 12 months.
- 68 I was never aware that a plea bargain had been entered into and at no stage during the hearing on 5 September 2017 was this plea bargain referred to or addressed. I was never consulted or advised that a plea agreement had been entered into and I did not agree that my charge of sexual harassment could be altered to one of 'Inappropriate Behaviour'.
- 69 I was later informed by Advocate Pela that the employer wanted him to amend the sexual harassment charges to misconduct, which he had refused to do.

various email chains between myself and Mr Khotso Ntseare who was the Executive Employee Relations Manager, as well as Mr Mahenye who was my Executive Manager at the time, attached as annexure "FA 6", which indicate that I requested feedback regularly. Mr Ntseare was the Senior Manager who began the grievance process and was later replaced by Advocate Pela, as I will explain below.

- 54 On the morning of 26 August 2015 I was informed that Mr Makoe's disciplinary hearing would take place that day. However, the hearing was postponed as Advocate Pela from Employee Relations had withdrawn from the matter and Mr Sipho Mkhize was appointed as the new representative for Employee Relations. I was advised that I would not need representation from the shop steward because Mr Mkhize would present my case.
- 55 On 4 September 2015, I was again informed in the morning that Mr Makoe's hearing would take place that day, which was prejudicial to my case. Mr Makoe was represented by senior management and an UNTU shop steward, Mr Mathekga, whilst I was represented by Mr Mkhize and was not allowed to bring my full time union representative. Mr Makoe signed the Union membership in front of us at the hearing. It should be noted according to the policy that as managers we must be represented by full time shop stewards of the area. Mr Mathekga was not a full time shop steward and he was based at City Deep. Mr Makoe was also not a union member of UNTU. There was also a conflict of interest for UNTU because I was the member and they had lodged the grievance with me.

- 70 After the arbitration award and following Mr Makoe's reinstatement, I was informed that I must continue to report to Mr Makoe, despite the outcome of the hearing and the findings that Mr Makoe was guilty of sexual harassment.
- 71 On 28 September 2015, I had a mental breakdown down after I was informed that I will be reporting back to Mr Makoe and I was later hospitalised. I experienced panic attacks and cried hysterically. Mr Mahenye released me from work and sent me home. I was subsequently diagnosed with post-traumatic stress disorder ("PTSD") and I was placed on a leave of absence by the psychologist I was seeing from EAP.
- 72 On 29 September 2015, I sent an email to Advocate Pela questioning Mr Makoe's reinstatement after he had been dismissed for sexual harassment. I also requested a transfer to another department as I no longer wished to report to Mr Makoe in light of what had transpired. I attach a copy of this email chain as annexure "FA 9".
- 73 On 30 October 2015, my representative from SATAWU and I had a meeting with Transnet's Mr Ntsheare and Ms Takalani Tshisaphungu from the Employee Relations.
- 74 Both Mr. Ntsheare and Ms Tshisaphungu acknowledged that the matter was handled unfairly by Transnet. Mr Ntsheare further advised me that disciplinary proceedings would be instituted against Advocate Pela and I would be called as a witness. However, to my knowledge, these proceedings were never instituted and no hearing ever took place.

- 75 During the time that I was booked off work by the psychologist I was seeing, I was not paid my salary as Transnet was of the view that I had exhausted my sick leave and my annual leave, and so I had to be placed on unpaid leave. Consequently, from 27 February 2016 until 31 January 2017, I was not paid my salary. In 27 February 2017 I was paid only part of my salary without any explanation or my consent.
- 76 During this time, Transnet insisted that I sign certain Risk Pool Forms to receive my unpaid salary without any discussion what a Risk Pool was or how it worked. I was forwarded forms by Ms Zondo to complete and when I asked questions with my union representative, we never received any clarity or assistance. Ms Zondo also called the hospital asking the doctor if I was really sick and if I was diagnosed with PTSD. The psychiatrist brought that to my attention. Ms Zondo once sent me a text message indicating that she forgot that I had amnesia.
- 77 However, I was of the view, which was later confirmed by the Department of Labour, that the Compensation for Occupational Injuries and Diseases Act was applicable.
- 78 Initially, I discovered that the injury was reported as 'assault' by Transnet, not sexual harassment and so it was reported under the incorrect code. The Department of Labour intervened to request Transnet to complete the correct absence codes but, to date, Transnet has refused or failed to do so.
- 79 On 31 September 2015, I reported my medical condition to Transnet, after I was referred to the psychiatrist by my General Practitioner. I reported to

Transnet's doctor, Dr Zandile Mokgoatle, who advised that she will assist with finding a psychiatrist because EAP services only offered a psychologist. She never referred me to the Psychiatrist and due to my deteriorating health and the seriousness of my condition at the time my GP then referred me to the Psychiatrist, Dr Mpogisheng Mashile.

- 80 I was handed forms to complete by Mr Bertus Nel from the Injury On Duty Office. My scheduled appointment with the psychologist was on 19 October 2015. I submitted the forms on the same day to the Compensation for Occupational Injuries and Diseases offices.
- 81 Since September 2015, I have been undergoing treatment for PTSD which I suffered as a result of the ongoing and unaddressed sexual harassment I have been subjected to for a considerable period of time. During November, I was admitted to a mental health clinic, Akeso, for intensive treatment. In this regard, I attach as annexure "FA 10", the various doctors letters and psychologist reports which were regularly provided to Ms Vuyokazi Bahlekazi who was appointed by CE Mr Ravi Nair to mediate during my treatment. She would undermine the Psychologist saying that he was not qualified to make any recommendations to Transnet Freight Rail and she would never recognise the reports the Psychologist wrote to the company and refused to implement any recommendations he made. She then shared the psychological reports without my consent.
- 82 I had to make use of my own funds to cover my medical costs, as it was critical at that stage that I undergo the requisite treatment and counselling. I was also not paid my salary between February 2016 and 31 January



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2017. Transnet Freight Rail was not prepared to provide me with any additional or special leave in order to undergo treatment or capture the correct absence code on my timecard. Transnet has refused to credit any of my annual leave or sick days that were deducted in my absence. Instead, Transnet placed me on absent without leave. I submitted a formal grievance to the Chief Executive, Mr Ravi Nair, in February 2017, but I have not received any response or explanation regarding the absence code. The issue remains unresolved. In this regard, I attach marked "FA 11", a copy of my letter to Mr Nair.

- 83 After lodging my various grievances (which have not been addressed, as set out above), I was subjected to bullying in the workplace by Mr Makoe. I was also not shortlisted for a Level E position in the Safety Department Rail Directives, even though I met all of the requirements for the position. On my return to work earlier this year, I was subjected to medical testing including psychological testing and I was refused entrance at work on several occasions. Although I returned to work at the beginning of February 2017, I was not paid my full salary in respect of that month, and no explanation was provided as to why this was the case. I also escalated this issue, but it has not been resolved.
- 84 As a result of Mr Makoe's reinstatement, I referred an unfair labour practice dispute to the Transnet Bargaining Council, again raising the issue of sexual harassment. The Bargaining Council indicated that it does not have the jurisdiction to deal with sexual harassment matters. The matter was then referred to the CCMA and a hearing was held on the 19 April 2016 for conciliation. As is apparent from the Certificate of Outcome

26

of Dispute Referred to Conciliation, a copy of which is attached marked "FA 12", the matter was unresolved as at 19 April 2016. Subsequently, I referred the matter to this Court where it was postponed *sine die*.

85 However, at that stage I did not have legal representation. I was only assisted by my union representatives, and I was not aware that there were different methods of approaching this Court. As a result, I prepared and served a statement of claim. Having consulted with my legal representatives, I realised that it would be far less traumatic for me to proceed by way of application than action proceedings. As I will discuss in greater detail below, it has taken a considerable period of time for me to recover my health sufficiently to return to work. I fear a relapse of my PTSD should I be compelled to testify during action proceedings and subject myself to cross-examination. Accordingly, I was of the view that this application would be the best way of ensuring that I do not suffer from any secondary trauma and a possible relapse.

86 From February 2017, I have been back at work at Transnet. At first I was denied access to work on the basis that I was required to undergo a mental assessment. I was interrogated by Dr Makwela, who was appointed by Transnet to carry out the assessment. Dr Makwela asked me questions about what I wanted to happen to the managers who were supporting Mr Makoe. She also indicated to me that I should let go of the legal action I was pursuing against Transnet as, in her view, life is too short and I should just move on, and that it was not as though I had been raped. I declined to answer her questions because I felt this was a confidential matter and she was not my psychologist. I later laid a

complaint with Dr Zandile Mokgoatle regarding the conduct of Dr Makwela. In this regard, I attach as annexure "FA 13", copies of the correspondence between myself and/or my legal representatives and Transnet concerning my return to work and the medical assessments to which I was subjected.

- 87 Notwithstanding this, I was happy to return to work at Transnet. I am passionate about my job so I was happy that I was on the road to personal recovery and could finally revive my career. I am also attending a course at the University of Pretoria on Railway Engineering, funded by Transnet. I continue to consult health practitioners to ensure my full and continued recovery.
- 88 It has been a challenge because Mr Makoe is still employed by Transnet. He is still based at [REDACTED] which is where I work too. I was advised by Ms Vuyokazi Bahlekazi, the Executive Manager of Employee Relations, that Mr Makoe would be based in School of Rail at Kempton Park. However, when I returned to work he was still based at [REDACTED] and I was informed that he would not be moved. My union intervened and he was then moved to [REDACTED] a few metres away from my office.
- 89 However, I continue to experience victimisation at work. My outstanding salary between February 2016 and January 2017 has still not been paid, despite the fact that the Department of Labour has stated that what I experienced constitutes injury on duty. I later discovered that I was booked as absent without leave whereas I was off duty due to PTSD, as a result of the sexual harassment I experienced. Transnet has not addressed the situation adequately or at all.

- 90 I similarly experience resistance from my employer and do not feel supported in ensuring that I reintegrate back into the workplace. My job has been given to someone else and I was told to come up with my own new job description when I returned to work. On several occasions upon showing up at work, I was told not to report at Transnet. I am being excluded from work that I was responsible for when I was appointed. My performance contract objective has not yet been approved or signed. I have also been informed that my role may be changed and I may need to move to another department.
- 91 I am informed that Mr Makoe still uses his desk when I am not around. He is still permitted access to our office. This is untenable and is not in the interests of my wellness, health and safety as I could easily come across him. I have panic attacks every time I enter that office.
- 92 The entire history of this matter, as well as my current situation at Transnet, have had a negative impact on my career progression. I would like to be given a fair opportunity to work without fear of being excluded or victimisation and without stigmatisation. My colleagues are very supportive and I would like to receive support from my employer too. Mr Makoe has continued to benefit from Transnet's support, despite the serious complaints and grievances that I have lodged against him, culminating in his dismissal, which was then inexplicably set aside. Mr Makoe has continued to receive his salary since his reinstatement, he has not lost his position, his career progression has not been inhibited and he has been paid all of his bonuses. He never showed any remorse and has never apologised (which at this stage I feel it is no longer relevant because

the damage is done). I, however, continue to feel the impact of the sexual harassment to which I was subjected by Mr Makoe, with Transnet's knowledge. I am still trying to rebuild my life. Mr Makoe's conduct, which Transnet did nothing about, diminished my sense of worth, privacy, energy, time, intimacy, confidence, dignity and voice. It has inhibited my career progression. I choose to stand up by reporting him to my superiors at Transnet repeatedly, but Transnet did nothing to assist me.

93 I am endeavouring to obtain confirmatory affidavits from the persons referred to in this factual background. However, I have been met with considerable reluctance since the persons concerned are still employed by Transnet and fear reprisals and/or other forms of victimisation or prejudice should they assist me in my case.

94 To the extent that any such confirmatory affidavits can be obtained, I reserve the right to supplement this affidavit accordingly. In the event that I am unable to obtain these affidavits, I am advised that the requisite application for the admission of hearsay evidence will be made in due course.

#### **APPLICABLE LEGAL PRINCIPLES**

95 I am advised that in terms of section 23 of the Constitution, every person has the right to fair labour practices.

96 I am advised further that the LRA was enacted to give effect to the right to fair labour practices, together with various other employment laws, including the EEA, which was enacted to promote the constitutional right

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to equality (contained in section 9) in the specific context of employment.

97 Section 6 of the EEA prohibits unfair discrimination in any employment policy or practice, which is defined to include the working environment, on any listed ground, including gender and sex.

98 Section 6(3) of the EEA provides that *"[h]arassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds ..."* contained in section 6(1). I am further advised that this Court has accepted that sexual harassment falls within the scope of section 6 of the EEA.

99 In terms of section 10 of the EEA, any unfair discrimination dispute may be referred to this Court for determination, where, as in this case, that dispute remains unresolved after conciliation.

100 I am advised that section 50(1) of the EEA provides that this Court may make any appropriate order, including condoning the late referral of a dispute, awarding compensation and damages, as well as ordering compliance with any provision of the Act. Furthermore, in terms of section 50(2), if the Labour Court concludes that an employee has been unfairly discriminated against (which includes being subjected to sexual harassment in the workplace), the Court may make an order that is just and equitable in the circumstances, including ordering the payment of compensation and damages, as well as directing the employer to take steps to prevent the same unfair discrimination or a similar practice occurring in future in respect of other employees.

101 In terms of the LRA, this Court is empowered to make an order directing

the performance of a particular act which would remedy a wrong and give effect to the LRA's primary objects (section 158(1)(a)(iii)) and may also order compliance with the provisions of any employment law, such as the EEA (section 145(1)(b)).

102 I am also advised that the Code, published in terms of section 203(1) of the LRA, is applicable. Section 203(3) of the LRA provides that any relevant code of good practice that has been issued must be taken into account in the interpretation or application of the LRA.

103 The Code stipulates that its object is to eliminate sexual harassment in the workplace and to provide appropriate procedures for dealing with the problem and preventing its recurrence.

104 Under the heading "Guiding Principles", the Code states that:

*"Employers should create and maintain a working environment in which the dignity of employees is respected. A climate in the workplace should also be created and maintained in which victims of sexual harassment will not feel that their grievances are ignored or trivialised, or fear reprisals ..."* [Emphasis added].

105 The Code emphasises that management has a "positive duty" to implement the employer's policy on sexual harassment and to take disciplinary action against employees who do not comply (section 6(2)).

106 The Code also sets out the procedures which should be developed by employers to deal with allegations and incidents of sexual harassment.

- 107 The Code also states that employers should consider granting additional sick leave in cases of serious sexual harassment in circumstances in which the victim, on medical advice, requires trauma counselling (section 9).
- 108 The emphasis of the Code is therefore on ensuring that there are effective procedures in place to address instances of sexual harassment and that these procedures are followed and applied.
- 109 Any failure to do so should, I respectfully submit, cause the employer to incur liability in terms of section 60 of the EEA.
- 110 I am also advised that in terms of section 22 of the Constitution every citizen has the right to choose their trade, occupation or profession freely. I am advised that this means that I have the right to choose and enter into an occupation of my choice. I am advised further that this right also protects individuals in instances where regulations and restrictions are placed on their ability to practise a trade. I respectfully submit that this also entails a right to be free from unfair discrimination and sexual harassment which has the effect of limiting my right to choose my trade or profession. Transnet's failure to take steps to address sexual harassment and to implement its own policies amounts to a limitation on my right in terms of section 22 since I am effectively being forced out of the profession, trade or occupation of my choosing as a result.

#### **TRANSNET'S SEXUAL HARASSMENT POLICY**



111 Transnet has a Sexual Harassment Policy which has been effective since approximately 1 January 2008. I attach a copy of that policy as "FA 14".

112 The following aspects of the Policy bear particular emphasis:

113 The policy records that its purpose is to *"promote a safe and secure working environment that is free of sexual harassment"*, as well as to:

*"[p]rovide Transnet employees with credible, accessible and fair mechanisms to deal with allegations of sexual harassment and to set out a procedure to ensure that reported cases of harassment are dealt with seriously, expeditiously and confidentially".*

114 The policy is also intended to ensure that Transnet meets the legal requirements of the Constitution, the EEA, the LRA and the Code.

115 The policy acknowledges that sexual harassment is a form of unfair discrimination and is prohibited by section 6 of the EEA.

116 In recording the principles of the policy, it specifically states that:

*"Transnet is strongly opposed to and prohibits sexual harassment of any kind, and will take whatever action is necessary to prevent, correct and/or discipline acts of sexual harassment".*

117 And further that –

*"Sexual harassment – whether an isolated serious incident or persistent instances of 'less serious' harassment – constitutes serious misconduct for which an employee, if found guilty, may*

34

*be summarily dismissed in terms of Transnet's disciplinary code and procedure".*

- 118 It also records that any allegation of sexual harassment will be *"regarded in a serious light"* and undertakes that it will be investigated *"with due care, consideration and sensitivity"* towards the complainant.
- 119 Section 5.2 records the responsibility of Transnet managers and supervisors, confirming that all employees must uphold the policy, but that managers and supervisors have *"a particular responsibility"* to ensure that no sexual harassment takes place, which includes *"[t]aking appropriate actions in accordance with this policy where sexual harassment occurs in the working environment"*.
- 120 Section 5.3 records the procedures that are supposed to be in place for the lodging of complaints of sexual harassment and how such complaints should be dealt with. It states that *"at any stage following an investigation"*, where it is determined that sexual harassment has occurred, disciplinary action must be taken in accordance with Transnet's disciplinary code and procedure (section 5.3.6). This would have been engaged as soon as the forensic report was received which found that Mr Makoe had violated the sexual harassment policy.
- 121 In terms of Transnet's Disciplinary Code and Procedure, a copy of which is attached as *"FA 15"*, Transnet undertakes to *"[d]eal with instances of misconduct by implementing the provisions of this disciplinary code and procedure in a timeous, consistent and fair manner"* (section 4.6).

- 122 Under the 'Disciplinary Process', the Disciplinary Code states that disciplinary hearings *"must be held as soon as possible after the commission of an alleged offence"* (section 6.2.1).
- 123 The Disciplinary Code distinguishes between primary and secondary offences. Sexual harassment is listed as a primary offence, which is an offence that is considered serious and may include summary dismissal as an appropriate sanction. Secondary offences, on the other hand, are those for which a final written warning may be an appropriate sanction – and notably, sexual harassment is not one of these (see sections 6.6.3 and 6.6.4).
- 124 Nowhere in the Disciplinary Code is it provided that a charge of sexual harassment (or other misconduct) may be altered during the course of a disciplinary enquiry, or that the employee accused of misconduct may plead guilty to a lesser offence.
- 125 Despite the fact that Transnet has clear policies in place, no appropriate steps were taken in accordance with those policies to address my complaints of sexual harassment. My various complaints were not addressed expeditiously, and were only pursued (inadequately and ineffectively) because of my persistence. If I had not been as persistent, I do not believe Transnet would have done anything at all.
- 126 Also, in clear violation of the Disciplinary Code and the Sexual Harassment Policy, an agreement appears to have been reached between Transnet and Mr Makoe that he would plead guilty to some unspecified charge of "Inappropriate Behaviour", when in fact he was

charged with sexual harassment. This plea bargain was never discussed with me, nor would I have agreed to it.

127 I also wish to point out to this Court that at no stage prior to or during my employment with Transnet was a copy of the Sexual Harassment Policy provided to me, nor was it discussed or workshopped, and no awareness was created about its existence or contents.

128 I therefore respectfully submit that Transnet has failed to comply with its own Disciplinary Code and Sexual Harassment Policy in relation to all of my complaints and grievances about the sexual harassment I suffered, during working hours, at the hands of Mr Makoe, who was my superior.

#### **TRANSNET'S FAILURE TO TAKE STEPS**

129 As is evident from the factual background I have set out above, I was subjected to ongoing sexual harassment, which took place at Transnet's premises, while Mr Makoe and I were both employed by Transnet.

130 I lodged numerous complaints of sexual harassment by Mr Makoe, including at least the following:

131 During 2008, I made my superiors aware of the sexual harassment verbally immediately after the first incident occurred.

132 In July 2013, I submitted a formal grievance against the written warning I had received for absenteeism, in which I again raised the unwanted sexual advances from Mr Makoe and his inappropriate sexual comments.

- 133 On 29 September 2014, I sent an email to Transnet requesting a transfer out of the department headed by Mr Makoe.
- 134 On 17 November 2014 I lodged a formal complaint of sexual harassment under case number [REDACTED]
- 135 During April 2015, Transnet received a copy of a forensic report, prepared by its own department, which determined that Mr Makoe had breached Transnet's Sexual Harassment Policy and that steps should be taken to address the situation.
- 136 During September 2015, Transnet held a disciplinary hearing against Mr Makoe, ostensibly on the basis of my formal grievance concerning the sexual harassment to which I had been subjected.
- 137 After the sham of a disciplinary enquiry and Mr Makoe's referral of an unfair dismissal claim, I was placed on medical leave by my psychologist as a result of the break down I experienced and my subsequent diagnosis with PTSD. I have since been undergoing treatment for the PTSD.
- 138 On 31 September 2015, I reported my medical condition to Transnet. My medical team has submitted regular reports to Transnet on the status of my treatment and my readiness to return to work. The team requested a back to work programme which was never facilitated by Transnet.
- 139 In spite of these complaints, and in clear breach of both Transnet's own Codes of Conduct and Policies as well as the law, Transnet failed to take adequate steps to address the situation or to prevent it. Instead I was exposed to secondary victimisation by Transnet after the sexual

harassment itself.

38

- 140 At all material times, Transnet and/or its managers, from at least as early as 2008, have been aware of the unwanted sexual advances that Mr Makoe has made towards me, which amount to sexual harassment. This occurred while Mr Makoe and I were both employees of Transnet. This sexual harassment amounts to unfair discrimination for purposes of section 6 of the EEA, and it took place at the workplace.
- 141 I brought this sexual harassment to Transnet's attention immediately, from as early as 2008, and I instituted formal proceedings against Mr Makoe in November 2014. Accordingly, Transnet is, and has always been, aware of the countless incidents of sexual harassment to which I have been subjected.
- 142 Transnet failed to consult me about the alteration of the charges at Mr Makoe's disciplinary inquiry, and has completely failed to take the necessary steps to eliminate or address the sexual harassment that I suffered over a considerable period of time. In failing to address this sexual harassment insofar as I am concerned, Transnet has failed to implement its own Policy, or to comply with the requirements of the Code and the EEA.
- 143 Its complete disregard for my situation demonstrates that Transnet is failing to take all reasonable and practical measures to ensure that employees do not act in contravention of the EEA, the Code and its own

Policies.

39

## SECTION 22 OF THE CONSTITUTION

144 As I have set out above, I am advised that I have a constitutionally enshrined right to choose my profession, trade or occupation. Transnet was obliged to protect and promote this right by ensuring that I was not subjected to sexual harassment in the workplace and to provide a safe working environment to me. The fact that Transnet allowed the sexual harassment to continue and did not take adequate and effective steps to address it after I had reported it on numerous occasions, I have been forced to consider leaving the occupation of my choosing and to accept a considerable curtailment of my career progression.

145 As I have explained above, as a result of Transnet's failure to take adequate steps to address the sexual harassment to which I was being subjected at the workplace, I began to experience severe stress and trauma. The continuous workplace stress that I experienced culminated in my experiencing physical unwellness. I began to suffer asthma attacks, and I was diagnosed with PTSD and was ultimately admitted to a mental health facility.

146 Due to the seriousness of my condition, I was booked off work for approximately a year while I underwent extensive counselling in an effort to restore my mental health. I was physically unwell as a result of the

sexual harassment I experienced at the hands of Mr Makoe.

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147 Transnet was aware of my complaints and my health challenges.

148 I considered resigning on many occasions and was convinced not to by colleagues who reminded me that I was a single parent and had to support my daughter.

149 For the year that I was booked off work, I was forced to discontinue practising my occupation. I have returned to work, but as I have explained elsewhere, my career progression has been hampered in the meantime. I no longer hold my previous position and, in fact, I am not certain what position I currently hold. There is considerable uncertainty as I have been advised that I may be moved to another department, I have had to create my own job description and my performance contract objectives have not yet been approved or signed.

150 However, throughout this time, Mr Makoe has continued as usual, without any impact on his career or his prospects. He continues to be employed by Transnet and works in the same building as me. He still makes use of his desk in the same office as me when I am not around and he has access to my workspace.

151 I love my job and my career. I have always been passionate about the work I do and I have worked hard to succeed and to ensure my career progression. Despite the traumatic and humiliating indignities to which I have been subjected, I still wake up every morning to go to work because I want to put these experiences behind me and focus on my career and

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my own mental well-being.

152 However, Transnet, as my employer, has done nothing to assist me in this regard. Not only did it fail to take adequate and expeditious action to address the sexual harassment to which I was subjected, it has done nothing to assist me in re-integrating at work after my diagnosis with PTSD.

153 I respectfully submit that Transnet's conduct, both in not addressing the sexual harassment to which I was subjected and in not assisting me to reintegrate at work after my medical leave, is a violation of my rights under section 22 of the Constitution.

154 Such conduct amounts to a restriction on and a barrier to my freedom to choose my profession, trade or occupation freely.

#### **RELIEF SOUGHT**

155 Accordingly, I seek relief in the following terms:

156 An order declaring that I was subjected to unfair discrimination for purposes of section 6 of the EEA as a result of the continued sexual harassment I was subjected to by Mr Makoe, as an employee of Transnet;

157 An order declaring that Transnet is liable in terms of section 60 of the EEA as a result of its failure to take steps to eliminate sexual harassment in the workplace.

158 An order declaring that Transnet is liable in terms of section 60 of the EEA for its failure to ensure compliance with the provisions of the EEA;

42

- 159 An order declaring that Transnet's conduct violates section 22 of the Constitution since it has restricted my right to choose my trade, occupation or profession freely;
- 160 As a result of the above, an order declaring that Transnet has contravened section 6(1), read with section 6(3) of the EEA, in accordance with section 60(3);
- 161 Orders directing Transnet:
- 162 To take steps to ensure compliance with its Sexual Harassment Policy (In terms of section 158(1)(a)(iii) of the LRA);
- 163 To comply with sections 6 and 60 of the EEA, as well as the Code (in terms of section 158(1)(b)) of the LRA and section 50(1)(f) of the EEA);
- 164 In terms of section 50(2) of the EEA, that this Court make a just and equitable order, which includes at least orders:
- 165 Directing Transnet to take steps to ensure that the same unfair discrimination in the form of sexual harassment does not occur;
- 166 Directing Transnet to pay me compensation in an amount of R408 686, 79 being the equivalent to 12 months' remuneration (in accordance with sections 50(1)(d) and 50(2)(a) of the EEA and section 158(1)(a)(v) of the LRA); and

167 Directing Transnet to pay me damages in the amount of  
R1 150 000 (in accordance with sections 50(1)(e) and  
50(2)(b) of the EEA and section 158(1)(a)(vi) of the LRA.

168 I am advised that, in the circumstances, I have plainly established that an  
unfair labour practice has occurred. Accordingly, this Court may award  
compensation that is just and equitable in the circumstances, but in any  
event not more than the equivalent of 12 months' remuneration. I  
respectfully submit that it would be just and equitable in this case to award  
me 12 months' remuneration.

169 I am further advised that this Court may make an award of damages, and  
such damages award must be just and equitable in the circumstances of  
this case. As I have set out above, I suffered a mental break down during  
September 2015 after Mr Makoe was reinstated and I was directed to  
continue to report to him. This has plainly had a hugely detrimental impact  
on my emotional well-being, as well as my financial well-being.

170 As a result of that break down, I was hospitalised for approximately two  
weeks, and I had to undergo a lengthy and in depth course of treatment  
which included both medication and regular counselling sessions.

171 I had to pay for all of this treatment through my own medical aid and my  
own funds when my medical aid was exhausted. All of this treatment was

44

necessary in order to nurse myself back to health.

172 In the circumstances, I submit that I have suffered the following damages:

173 Loss of earnings for the period 1 February 2016 to 31 January 2017 in respect of the salary which I was not paid for this period, in the amount of R408 686.76. I attach as annexure "FA 16" a copy of my payslip for January 2016.

174 Past and future medical expenses in the following amounts:

175 Costs of consulting with my psychologists' and/or psychiatrists in the amount of R856.00 and R56 232.09. I attach as annexure "FA 17" an invoice from a psychiatrist and "FA 18" recorded hospital costs as per my medical aid fund.

176 Future medical expenses in respect of psychotherapeutic treatment for three years (inclusive of yearly in hospital treatment) in the total amount of R550 000. I attach as annexure "FA 19" Doctor Modipa's report recommending treatment to that effect.

177 Damages for pain and suffering in the amount of R2, 000, 000.00

178 Damages for emotional shock, in the amount of R2, 000,000.00;

179 Damages for the loss of the amenities of life in the amount of R3,000,000.00;

180 Damages for the impairment of my dignity, in the amount of R3, 45  
000, 000.00.

181 In addition, a report has been prepared by my psychologist which sets out  
the extent of the treatment which I will require in future.

### CONDONATION

182 To the extent that it may be necessary, I respectfully request this Court to  
grant condonation for the late filing of this application, in accordance with  
section 158(1)(f) of the LRA and section 50(1)(b) of the EEA.

183 As I set out above in the factual background, as soon as it became  
apparent that Transnet did not intend to address the issue of my sexual  
harassment by Mr Makoe adequately (and bearing in mind the fact that I  
had been booked off work with PTSD and was even hospitalised in  
November 2015), I referred an unfair labour practices dispute to the  
CCMA. Once it became apparent that the dispute could not be resolved  
by the CCMA, I referred the matter to this Court.

184 However, at that stage, I did not have legal representation and was being  
assisted by my union, SATAWU. I was not aware that there were different  
procedures that could be pursued in this Court and so I filed a statement  
of claim. As I mentioned above, that action was opposed by Mr Makoe  
and ultimately was postponed *sine die*.

185 However, once I secured my legal representation, they briefed counsel to  
consider the matter and the process going forward. My legal  
representatives advised me that it would be possible to bring this matter

46

on application, which would not require a full trial, including giving evidence and subjecting myself to cross-examination. I was of the view that this would be a better approach to adopt so as to minimise the secondary trauma I would be subjected to during the evidence giving process and In order to prevent a relapse of my PTSD, particularly since it has taken so long for me to recover sufficiently to be able to return to work.

186 I respectfully submit that no prejudice has been occasioned and that the present process is far more conducive to efficient, expeditious and cost-effective resolution of this extremely grave situation. It is also the best way to ensure that I am not subjected to further trauma and the possibility of a relapse.

187 Accordingly, I respectfully submit that, to the extent that condonation may be required, this is a proper case for it to be granted.

### CONCLUSION

188 In the circumstances, I pray for an order in terms of the Notice of Motion.



I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and affirmed before me at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 2018, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government

42

Notice No R1648 of 19 August 1977, as amended, having been complied with.

47



**COMMISSIONER OF OATHS**

Full names:

Address:

Capacity:

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