IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO: 1907/2020

In the matter between:

LOUIS AND ASSOCIATES ATTORNEYS **APPLICANT**

and

ZUKISA NDUNENI **RESPONDENT**

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APPLICATION TO COMPEL

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DATED AT JOHANNESBURG ON THIS 14th DAY OF SEPTEMBER 2020



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TO:

THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
JOHANNESBURG

AND TO:

N.J MONGALO ATTORNEYS
ATTORNEYS FOR THE RESPONDENT
C/O ABC ATTORNEYS
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SERVED VIA EMAIL BY AGREEMENT

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(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO: 1907/2020

In the matter between:

LOUIS AND ASSOCIATES ATTORNEYS **APPLICANT**

and

ZUKISA NDUNENI **RESPONDENT**

NOTICE OF APPLICATION

BE PLEASED TO TAKE NOTICE that application will be made on behalf of the abovementioned Applicant on the **23 September 2020**, at 10h00, or so soon thereafter as the matter may be heard for an Order:-

1. Directing the Respondent to deliver her heads of argument and practice note within 3 (three) days of the service of the Order on the Respondent's Attorneys, failing which the Respondent's defence will be struck out.

2. Granting the Applicant leave to make application on the same papers, supplemented as may be necessary and/or appropriate, striking out the Respondent's defence should the Respondent fail to comply with the Order in 1 above

3. Directing the Respondent to pay the costs of this application on the attorney and client scale;

4. Granting the Applicant further and/or alternative relief.

BE PLEASED TO TAKE NOTICE FURTHER that the affidavit of Kevin Anthony Louis will be used in support of this application.

DATED AT JOHANNESBURG THIS 10th DAY OF SEPTEMBER 2020

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TO:
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In the matter between:

LOUIS AND ASSOCIATES ATTORNEYS **APPLICANT**

and

ZUKISA NDUNENI **RESPONDENT**

APPLICANT'S AFFIDAVIT IN SUPPORT OF APPLICATION TO COMPEL THE RESPONDENT TO FILE HEADS OF ARGUMENT AND PRACTICE NOTE

I, the undersigned,

KEVIN ANTHONY LOUIS

do hereby make oath and state that:-

1. I am an adult duly admitted attorney of the High Court of South Africa, practising as such under the name and style of Louis & Associates Attorneys, at Ground Floor, Block 3, Fountain Grove, No. 5, 2nd Road, cnr. William Nicol, Hyde Park, Johannesburg, Gauteng. I am the Applicant's attorney of record herein and, as such, I am duly authorised to bring this Application on behalf of the Applicant.

2. The facts herein contained are, save as where otherwise stated or the

contrary appears from the context, within my personal knowledge. Such facts are to the best of my knowledge and belief, true and correct, and I verify same.

PURPOSE OF AFFIDAVIT

3. I depose to this affidavit in support of an application brought in terms of subsection 12 of subsection 9.8.2 of chapter 9 of the practice manual of the above Honourable Court, which reads as follows:

> "***Where a party fails to deliver heads of argument and/or a practice note within the stipulated period, the complying party may enrol the application for hearing. Such party shall simultaneously bring an application, on notice, to the defaulting party that on the date set out therein, (which shall be at least 5 days from such notice), he will apply for an order that the defaulting party delivers his/her heads of argument and practice note with three days of such order, failing which the defaulting party's claim on defence is struck out. Such application shall be set down on the interlocutory role referred to in 9.10 below.***"

4. Accordingly, this affidavit is deposed to in support of the application contemplated in subsection 12 of subsection 9.8.2 of chapter 9 of the practice manual of the above Honourable Court under the circumstances more fully mentioned herein below.

RELEVANT FACT AND TIME-LINE

5. The Applicant's heads of argument, practice note, chronology and list of authorities were served upon the Respondent on 11 August 2020.

6. In terms of sub paragraph 7 of section 9.8.2 of chapter 9 of the practice

manual of the above Honourable Court, the Respondent was required to deliver his heads of argument and practice note within 10 days from the date of receipt of the Applicant's heads of argument, i.e. by 25 August 2020. The Respondent has failed to do so.

7. Simultaneously with the filing of this application, a date for the hearing of the abovementioned application will be obtained and the matter will be enrolled for hearing on the date allocated by the Registrar.

8. In terms of the provisions of the Practice Manual, should the Respondent fail to deliver her heads of argument and practice note within 3 days of the granting of such order, the Court may direct that the Respondent's defence be struck out.

CONCLUSION

9. In the light of what is stated hereinabove, and the relevant provisions of the practice manual as more fully referred to hereinabove, it is submitted that the Applicant is entitled to an order compelling the Respondent to deliver her heads of argument and practice note within 3 days of such order, with costs.

10. In addition, the Applicant seeks leave to make application on the same papers, supplemented as may be necessary and appropriate, for dismissal of the Respondent's defence should the Respondent fail to deliver her heads of argument and practice note within 3 days of the granting of the order compelling delivery thereof.

WHEREFORE I PRAY THAT it may please the above Honourable Court to grant an Order as prayed for in the Notice of Application to which this Affidavit is annexed.

DEPONENT

I CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, that he has no objection to taking the prescribed oath and that he considers the prescribed oath to be binding on his conscience and stated the words "So help me God", and that this affidavit was signed and sworn to, before me, at JOHANNESBURG on this the 8th day of SEPTEMBER 2020, the Regulations contained in Government Notice No. R.1258 dated 21 July 1972 (as amended), Government Notice No. R4648 dated 19 August 1977 (as amended) and Government Notice No. R.774 dated 23 April 1982, having been complied with.

COMMISSIONER OF OATHS

IRENE PHILOMENA NOEL
EX OFFICIO - PRACTISING
ATTOREY
10 ADOLF STREET
SANDTON

G.P.S 003-0102 J 118E

1907/20 *Case No. (year first e.g.92/1236)*

23 SEPTEMBER 2020 *Date of hearing*

U *U (unopposed)/OP (opposed)*

T *Case Type (see OPTIONS)*

LOUIS AND ASSOCIATES ATTORNEYS *NAMES OF PARTIES*

versus *(Surname, then initials*

ZUKISA NDUNENI *1st plaintiff and 1st defendant only)*

Pigeon hole No.

OPTIONS			
Family law	*Payment*	*Various*	*Solvency*
E Divorce	*D Default Judgment*	*T Interlocutory*	*R Rehabilitation*
N Rule 43	*S Summary Judgment*	*I Interdict*	*B Surrender*
C Custody	*P Provisional Judgment*	*H Review*	*PS Provisional Sequestration*
F Interdict	*O Other (specify)*	*V Declaratory*	*FS Final Sequestration*
T - APPLICATION TO COMPEL			*FL Final Liquidation*

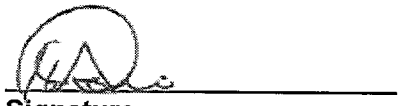
NOTICE OF SET DOWN
GAUTENG LOCAL DIVISION

REGISTRAR, HIGH COURT
JOHANNESBURG

KINDLY SET THE ABOVE MATTER DOWN IN ACCORDANCE WITH THE ABOVE INFORMATION

Signed on the 10th Day of September 2020

Attorney for:



Signature
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CASE NO: 1907/2020

Before the Honourable Judge _____ on the _____ day of _____ 2020.

In the matter between:

LOUIS AND ASSOCIATES ATTORNEYS **APPLICANT**

and

ZUKISA NDUNENI **RESPONDENT**

DRAFT ORDER

HAVING READ the papers filed of record, having considered the matter and having heard Counsel for the Applicant,

IT IS ORDERED:

1. The Respondent is to deliver her heads of argument and practice note within 3 (three) days of the service of the Order on the Respondent's Attorneys, failing which the Respondent's defence will be struck out.

2. The Applicant is granted leave to make application on the same papers, supplemented as may be necessary and/or appropriate, for the striking out of the Respondent's defence in the event that the Respondent fails to deliver her heads of argument and practice within 3 (three) days of service of the Order on the Respondent's Attorneys.

3. The Respondent is directed to pay the costs of this application on the attorney and client scale.

BY THE COURT

THE REGISTRAR

Applicant's Counsel: Adv. V. M. Moore - AdvVMMoore@vodamail.co.za
Applicant's Attorney: Mr. K. Louis – kevinl@louisattorneys.com