

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE NO: 2623/23

In the matter between:

MELUSI SIMELANE N.O. (in his capacity as representative  
of Eswatini Sexual and Gender Minorities,  
a company in the course of formation)

1<sup>st</sup> Applicant

SISANDA MAVIMBELA

2<sup>nd</sup> Applicant

MBALI DLAMINI

3<sup>rd</sup> Applicant

SAM LAPIDOS

4<sup>th</sup> Applicant

WANDILE TSABEDZE

5<sup>th</sup> Applicant

MAPEZU KUNENE

6<sup>th</sup> Applicant

BUYILE MAVIMBELA

7<sup>th</sup> Applicant

EMMANUEL NDLANGAMANDLA

8<sup>th</sup> Applicant

SENELE MDLULI

9<sup>th</sup> Applicant

PHUMELELE DLAMINI

10<sup>th</sup> Applicant

SINDISIWE DLAMINI

11<sup>th</sup> Applicant

THANDO NTSHANGASE

12<sup>th</sup> Applicant

THUTHU MAGAGULA

13<sup>th</sup> Applicant

MDUDUZI DLAMINI

14<sup>th</sup> Applicant

SWAZILAND RURAL WOMEN'S ASSEMBLY

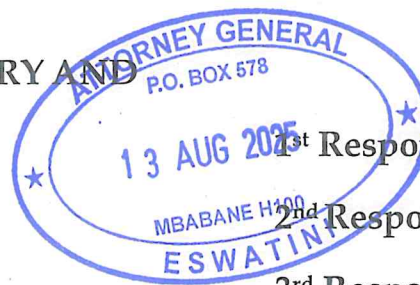
15<sup>th</sup> Applicant

And

MINISTER OF COMMERCE, INDUSTRY AND  
TRADE

REGISTRAR OF COMPANIES

ATTORNEY GENERAL



1<sup>st</sup> Respondent

2<sup>nd</sup> Respondent

3<sup>rd</sup> Respondent



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**NOTICE OF MOTION**

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**BE PLEASED TO TAKE NOTICE THAT** an Application will be made to the above Honourable Court on Friday August 22, 2025 at 09:30 hrs or so soon thereafter as counsel may be heard for an order in the following terms:

1. That the Applicants' Supplementary Affidavit, which is attached to this Notice, be admitted to form part of their application.
2. The Respondents are ordered to pay costs of this application only in the event of opposition;
3. Any further and or / alternative relief.

**BE PLEASED TO TAKE NOTICE** that the affidavit of *MELUSI SIMELANE* annexed hereto will be used in support of the Application.

**BE PLEASED TO TAKE NOTICE FURTHER** that the Applicant has appointed the offices of *MotsaMavuso Attorneys, C/o Musa M. Sibandze Attorneys* Mkhwa House North Wing Karl Grant Street Mbabane as an address where it will accept service of all documents in these proceedings.

**TAKE NOTICE FURTHER** that if the Respondents intends to oppose this application it is required to;

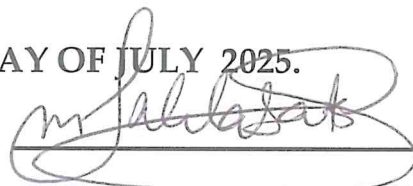
1. To notify Applicant's Attorneys in writing and further that you are required to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

2. And within the times stipulated by the court to file your answering affidavits, if any.

TAKE FURTHER NOTICE that in the event no Notice of Intention to oppose is given the matter will be moved unopposed on Friday August 22, 2025 at 09:30 hrs.

*Kindly place the matter on the roll accordingly.*

DATED AT MATSAPHA THIS 22<sup>nd</sup> DAY OF JULY 2025.



MotsaMavuso ATTORNEYS

(Applicants' Attorneys)

*c/o Musa M. Sibandze Attorneys*

Mkhiwa House, North Wing

Karl Grant Street

MBABANE

*REF: Nhlabatsi*

To: \_\_\_\_\_

THE REGISTRAR OF THE HIGH COURT

MBABANE

AND TO: THE ATTORNEY GENERAL

(Respondents' Attorneys)

Attorney General's Chambers

4<sup>th</sup> Floor, Ministry of Justice Building

Usuthu Link Road

MBABANE



Received copy hereof on this the  
\_\_\_ day of \_\_\_\_\_ 2025

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1<sup>st</sup> Respondent

REGISTRAR OF COMPANIES

2<sup>nd</sup> Respondent

ATTORNEY GENERAL

3<sup>rd</sup> Respondent



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**SUPPLEMENTARY AFFIDAVIT**

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I, the undersigned;

*MELUSI SIMELANE*

Do hereby make oath and say that –

1.

I am an adult citizen of the Kingdom of Eswatini and am the First Applicant in this matter.

2.

I depose to this affidavit in my personal capacity, as a member of Eswatini Sexual and Gender Minorities (ESGM), and in my capacity as representative of ESGM. I have the necessary authority to depose to this founding affidavit, and to institute these proceedings, on behalf of the co-Applicants.

3.

The facts contained herein are, save where stated or otherwise indicated by the context, within my own personal knowledge and are, to the best of my knowledge, true and correct in every respect. Where I make legal submissions, I do so based on the advice of the Applicants' attorneys of record.

4.

### *THE RESPONDENTS*

I beg leave of this Honourable Court to refer to the Respondents as fully described in the founding affidavit as reflected in the original record of these proceedings, so as to avoid unnecessary duplication and repetition.

5.

### *NATURE OF APPLICATION*

I depose to this affidavit to supplement my application reviewing and setting aside the decision of the First Respondent. The initial application did not take into account the subsequent letter and the reasons thereof issued by the First Respondent it was only grounded and based on his initial letter. I seek to supplement that very argument in this affidavit.

5.

### *REASONS FOR FILING THE SUPPLEMENTARY AFFIDAVIT*

This supplementary affidavit is being filed to rebut the First Respondent's baseless claims about ESGM in his subsequent letter. It aims to clarify that the Eswatini Sexual and Gender Minorities (ESGM) does not "promote homosexuality" but rather exists to embrace and advocate for the rights of sexual and gender minorities, disproving the First Respondent's mischaracterisation. Moreover, this affidavit will address the First Respondent's unsubstantiated assertion that the ESGM's name is "*misleading, annoying, offensive, blasphemous, or indecent,*" and demonstrate its modesty and adherence to constitutional norms.

Finally, the affidavit will firmly refute the First Respondent's unwarranted and legally incorrect invocation of Swazi customary law, asserting that such matters fall outside of their ministerial mandate and are contrary to constitutional principles.

## 5.1

### *ESWATINI SEXUAL AND GENDER MINORITIES (ESGM) - PURPOSE AND MISCONCEPTIONS*

The assertion by the First Respondent that the Eswatini Sexual and Gender Minorities (ESGM) exists to "promote homosexuality" is a fundamental mischaracterisation of the organization's true purpose. Such an averment demonstrates a clear misunderstanding of both the ESGM's objectives and the nature of sexual orientation itself. The ESGM's core mission, as articulated in its foundational documents, is unequivocally focused on creating a safe, inclusive, and equitable environment for all sexual and gender minorities.

### 5.1.2

Firstly, the ESGM seeks to provide a support system and community for individuals who identify as lesbian, gay, bisexual, transgender, queer, intersex, and other diverse sexual orientations and gender identities (LGBTIQ+). Many LGBTIQ+ individuals in Eswatini face significant societal stigma, discrimination, and even violence. The ESGM offers a vital space for these individuals to connect, share experiences, and find solidarity, thereby reducing feelings of isolation and marginalisation. This support often includes counselling services, peer support groups, and access to accurate information regarding health and well-being.

### 5.1.3

Secondly, the organization is dedicated to advocating for the human rights and legal protection of sexual and gender minorities. This work involves engaging with policymakers, legal professionals, and civil society to address discriminatory laws and policies that disproportionately affect LGBTIQ+ individuals. The ESGM works towards the recognition and enforcement of fundamental rights, such as the right to equality, non-discrimination, dignity, and freedom from violence, as enshrined in both international human rights instruments and the Eswatini Constitution. Their advocacy efforts focus on ensuring that LGBTIQ+ individuals are afforded the same rights and protections as all other citizens, without prejudice based on their sexual orientation or gender identity.

### 5.1.4

Thirdly, a significant aspect of the ESGM's work involves education and awareness-raising. This aims to combat misinformation, prejudice, and stereotypes surrounding sexual and gender minorities. By fostering a greater understanding within the broader community, the ESGM seeks to dismantle harmful narratives and promote a more accepting society. This education is not about "converting" individuals to a particular sexual orientation, but rather about promoting respect, empathy, and recognition of the diversity of human experiences. It aims to demonstrate that LGBTIQ+ individuals are integral members of society who deserve to live free from fear and discrimination.

### 5.1.5

Therefore, the First Respondent's assertion is not only factually incorrect but also indicative of a deeper misunderstanding of the principles of human rights and equality. The ESGM's activities are consistent with the constitutional framework of Eswatini, which guarantees fundamental rights to all its citizens. To suggest that an organisation dedicated to the support and advocacy of a marginalized group is "promoting" a lifestyle is to fundamentally misrepresent its purpose and to perpetuate harmful stereotypes that contribute to the very discrimination the ESGM seeks to alleviate. The organisation's objectives are transparent, lawful, and aligned with international best practices for human rights organisations. Whether or not one agrees with these objectives of ESGM is immaterial to the right of members to associate with each other.

### 5.2

#### *THE NAME "ESWATINI SEXUAL AND GENDER MINORITIES (ESGM)" - A MODEST AND CONSTITUTIONALLY SOUND DESIGNATION*

The First Respondent's contention that the name "Eswatini Sexual and Gender Minorities (ESGM)" is "misleading, annoying, offensive, blasphemous, or indecent" is a baseless and unsubstantiated assertion. Such an observation is devoid of any supporting reasons and reflects a profound lack of understanding that stands in stark contrast to the principles of legal reasoning and constitutional propriety. On the contrary, the name ESGM is meticulously chosen, modest in its designation, and entirely within the constitutional and legal framework of Eswatini.

### 5.2.1

Firstly, the term "Eswatini" clearly and accurately identifies the geographical and national scope of the organization's operations. It signifies that the organization serves the community within the Kingdom of Eswatini and is committed to addressing issues pertinent to its citizens. There is nothing misleading or offensive about this geographical descriptor.

### 5.2.2

Secondly, the phrase "Sexual and Gender Minorities" is a widely accepted and academically recognized term used globally to respectfully and accurately describe individuals whose sexual orientation, gender identity, or gender expression differs from the majority.

### 5.2.3

"Sexual Minorities" refers to individuals whose sexual orientation is not exclusively heterosexual, encompassing identities such as lesbian, gay, bisexual, and other non-heterosexual orientations. This term is neutral and descriptive, avoiding judgmental or pejorative language.

### 5.2.4

"Gender Minorities" refers to individuals whose gender identity or expression differs from the gender they were assigned at birth, including transgender, gender non-conforming, and non-binary individuals. Again, this term is precise and respectful.

### 5.2.5

The use of "minorities" accurately reflects the statistical reality that these groups constitute a smaller proportion of the overall population. It does not imply inferiority or a desire for special privileges, but rather acknowledges their position as a distinct demographic group that often faces unique challenges and discrimination.

### 5.2.6

The right to freedom of association and expression, which includes the right to choose a name for an organization, is enshrined in the Eswatini Constitution. Any limitation of this right must be reasonable and justifiable in an open and democratic society, and necessary. The First Respondent's blanket condemnation of the name, without any rational basis, constitutes an arbitrary and unconstitutional infringement on these fundamental rights.

### 5.3

#### *MINISTERIAL MANDATE*

The First Respondent's unwarranted resort to the realm of Swazi customary law to justify their stance against the Eswatini Sexual and Gender Minorities (ESGM) regarding homosexuality is a clear overreach of mandate and a misapplication of legal principles. The Minister ought not to have entered the Swazi customary law fray as it falls squarely outside his purview and expertise.

### 5.3.1

Customary law further does not restrict association based on a shared identity or sexual orientation, and its inclusion in the basis of the Minister's decision is irrational.

### 5.3.2

I wish to state further that the First Respondent's mandate is typically defined by statute and the specific portfolio they hold within government. Ministers are appointed to administer particular acts of Parliament, implement government policies within their designated departments, and ensure the smooth functioning of their ministries. It is highly improbable that the Minister's portfolio would explicitly grant them authority to interpret, define, or adjudicate on matters of complex customary law, particularly when such interpretations are used to infringe upon fundamental human rights. Customary law interpretation typically falls within the purview of traditional authorities, community elders, and specialized courts or legal scholars who possess deep knowledge of specific customary practices and their evolution. For a Minister to unilaterally pronounce on customary law in a manner that seeks to restrict the rights of a segment of the population is an abuse of power and an encroachment on the domain of other legal and traditional institutions.

### 5.3.3

What is more is that the Eswatini's Constitution is the supreme law of the land. The Constitution of Eswatini guarantees various rights, including the right to dignity, equality, and non-discrimination. Customary law cannot be used as a pretext to deny or abridge constitutionally protected rights. The First Respondent's attempt to invoke customary law to suppress the rights to dignity, equality, association and expression of sexual and gender minorities implicitly suggests that customary law trumps the Constitution, which is an erroneous and dangerous legal proposition.

### 6.

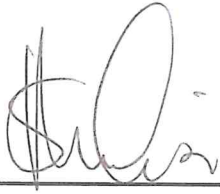
#### *PREJUDICE*

I humbly submit that, should leave to supplement the founding affidavit of my application with this affidavit be denied, the Applicants will be severely prejudiced in that they may lose the opportunity to address the issues raised by the First Respondent in his subsequent letter which would affect the application as a whole. Should leave be granted, the Respondent will not be prejudiced as it has yet to file its answering papers in this matter.

### 7.

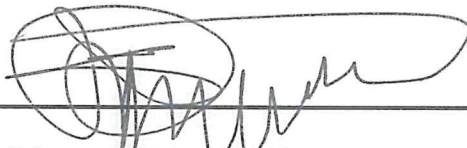
#### *PRAYER*

*Wherefore*, it may please this Honourable Court to grant the relief sought as set out in the Notice of Motion.



DEPONENT

THUS SIGNED AND SWORN BEFORE ME AT MATSAPHA ON  
THE 13<sup>th</sup> DAY OF AUGUST 2025, THE DEPONENT HAVING  
ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE  
CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION TO TAKING  
THE PRESCRIBED OATH AND CONSIDER THE SAME TO BE BINDING  
ON HIS CONSCIENCE.



COMMISSIONER OF OATHS



SEKWANELE A. DLAMINI  
ATTORNEY OF THE HIGH COURT  
OF ESWATINI  
PRACTISING ATTORNEY / COMMISSIONER  
OF OATHS