

MARIPE J.

**IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA
HELD AT MAUN**

Case No. MAHMN-000075-22

In the matter between:

GQWIHABA RESOURCES (PTY) LTD

Applicant

And

MINISTER OF MINERALS AND ENERGY

1st Respondent

ATTORNEY GENERAL

2nd Respondent

FILING NOTICE

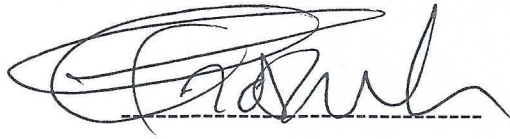
BE PLEASED TO TAKE NOTICE THE FOLLOWING IS FILED HEREWITH:

1. Notice of Motion (Application for Condonation);
2. Supporting Affidavit;
3. Draft Order;
4. Answering Affidavit.

DATED AT GABORONE ON THIS ^{21st}..... DAY OF FEBRUARY 2023

Received in Court on
28 February 2023 by
Madunwane, G. at
08:55

MAUN HIGH COURT PRIVATE BAG 30, MAUN CENTRAL DISTRICT	
24 FEB 2023	
DOCUMENTS RECEIVED	
TIME: 11:31	SIGNATURE: 



G.I. BEGANE

For/ Respondents
Attorney General's Chambers
Civil Litigation Division
Government Enclave
Private Bag 009

GABORONE

TO: REGISTRAR OF HIGH COURT

High Court

MAUN

AND TO: COLLINS CHILISA CONSULTANTS

Applicant's Attorneys
Chambers Plot 4858, Lecha Close
Off Marakanelo Way
P. O. Box 45136

GABORONE

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NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the above named Applicant/Respondent intends to make an application to the above Honourable Court on the day of 2023 at **09h00** or soon thereafter as counsel may be heard for an order in the following terms:

1. That the applicants (respondents in the main application) be allowed to file their answering papers to the respondent's (applicant in the main application) Founding Affidavit.
2. Further and / or alternative relief.

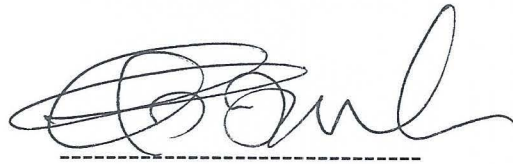
TAKE NOTICE FURTHER that the Affidavit of OFENTSE DITSELE shall be used in support hereof. Kindly place the matter on the roll for hearing accordingly.



TAKE NOTICE FURTHER THAT if you intend opposing this application you are requested:

- a) To notify the Applicants/Respondents' attorneys in writing within five (5) days of the service of this application upon you.
- b) Within 14 days of the service of this application upon you, to file your answering affidavit, if no such notice of intention to oppose is given, the application will be made on the day of 2023 at Am/pm.

DATED AT GABORONE ON THIS.....^{21st} DAY OF NOVEMBER 2022



G.I. BEGANE

For/ Respondents

Attorney General's Chambers

Civil Litigation Division

Government Enclave

Private Bag 009

GABORONE

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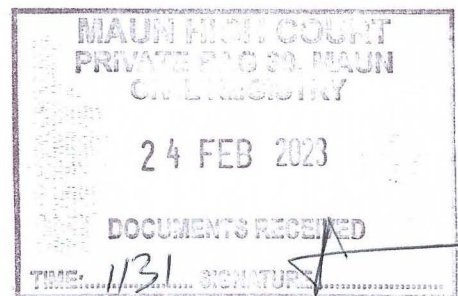
ATTORNEY GENERAL

2nd Respondent

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR CONDONATION OF LATE
FILING**

I, the undersigned,

OFENTSE DITSELE



do hereby make oath and state that:

1. I am an adult male of full legal capacity resident in Gaborone. My address for purposes hereof is that of the respondents' attorneys, Attorney General Chambers, Private Bag 009, Gaborone.

Handwritten signature
MM

2. I am the Director of Department of Mines in the Ministry of Minerals and Energy stationed in Gaborone.
3. By virtue of my position, I am duly authorised to depose hereto.
4. The facts contained herein are within my personal knowledge and unless the context indicates otherwise, are to the best of my knowledge and belief both true and correct.
5. Where I make submissions of law, I do so on the strength of legal advice obtained by me from my legal representatives in this matter, which advice I verily believe to be true and correct.
6. This is an application for leave that the applicants (respondents in main application) be given an opportunity to file their Application for Condonation of Late Filing of Leave to Appeal out of time. This application is motivated by the following reasons:
7. The Applicants filed their supplementary affidavit upon receipt of the record of proceedings on 1 December 2022 and delivered a letter of proposal for settlement dated 19 December 2022.
8. The Attorney General subsequently referred the supplementary affidavit and letter to me which I also forwarded to the Minister for consideration.
9. The applicants (respondents) file their response to the founding and supplementary affidavit late due to a number of challenges:

AD
MM

- 9.1 The officers who was assigned to respond to the Supplementary Affidavit from the Applicant is not familiar with the process, and as a result the draft response he had put together could not be of much use.
- 9.2 The Director of Mines, myself, who could have assisted was for the most part out of office on other pressing official assignments and was only able to work on a response upon his return to the office.
10. The applicants have considered both the founding and supplementary affidavits from the respondent (applicant in the main application) and are, notwithstanding the failure to file as ordered by the court, desirous of doing so and therefore, seek the Honourable Court's leave to file an answering affidavit out of time.
11. Failure to file in terms of the Rules of Court is neither deliberate nor aimed at defying court orders. It was on account of the honest difficulties hereinabove mentioned.
12. I urge the Court to consider the importance of the matter which raises novel issues in this jurisdiction, In 2014, the Okavango Delta was declared a World Heritage Site by the United Nations Educational, Scientific and Cultural Organisation (UNESCO). By virtue of this status the Delta was subject to protection from activities that could compromise the property, including exploration and mining activities. When the Delta was nominated for registration as a world Heritage site, a buffer zone was established around the delta.
13. In terms of the Operational Guidelines for the Implementation of the World Heritage Convention, all prospecting and mining activities are prohibited within the core of the Okavango Delta World Heritage Site. The buffer zone around core zone of a World Heritage Site is intended to provide effective protection of the property, and

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should have complementary legal and/or customary restrictions placed on its use and development in order to give an added layer of protection to the core.

14. After the declaration of the Okavango Delta World Heritage site it was noted that some mineral concessions which were already granted fell within the buffer of the World Heritage Site. Then, the Ministry through the Department of Mines started engagements with companies that held mineral concessions within the Okavango World Heritage Site and/or its buffer zone, including Gcwihaba Resources. The engagements were aimed at getting the companies holding Mineral Concessions to agree to voluntarily relinquish portions of the license areas that fell within the Okavango World Heritage Site and/or its buffer zone. As a matter of public interest, allegations arising should be fully ventilated as the case involves matters of public interest and economy of the country.
15. When such serious economic issues of the country ensue, it is in the interest of justice that a proper and full hearing for all the sides involved should be conducted.
16. By reason of the foregoing I state that the balance of convenience favours the granting of condonation.
17. I hereby urge the Honourable Court to exercise its unfettered discretion and grant the reliefs herein sought.
18. I file herewith the answering affidavit which clearly demonstrates that the applicants (respondents in the main application) have strong and reasonable prospects of success.




WHEREFORE I pray for the granting of the reliefs herein sought.

Ditsele

DEPONENT

THUS done and Signed Before Me at Gaborone on the 23rd day of February 2023 at 0835 AM/PM, The Deponent having Acknowledged that he understands the Contents of this Affidavit and has no objection to taking the prescribed oath.

[Signature]

COMMISSIONER OF OATHS

NAME NONTHUSI MAZEBEDI

RANK SERGEANT



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2nd Respondent

DRAFT ORDER

BEFORE JUSTICE at Court of
Appeal on this day of 2021 at 0930

Upon hearing Mr Attorney for the Applicants and Mr Attorney
..... for the Respondents and having read the documents filed on record:

IT IS THIS DAY ORDERED AS FOLLOWS:

1. That the Applicants be allowed to file their application for leave to appeal out of time;
2. Further and / or alternative relief.



ORDER OF COURT

REGISTRAR OF COURT APPEAL
