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Legal Practitioners for the Defendant
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Windhoek

DEFENDANT'S SUPPLEMENTARY WITNESS STATEMENT
IN THE HIGH COURT OF NAMIBIA
(Main Division)

CASE NUMBER: HC-MD-CIV-ACT-OTH-2022/02957

In the matter between:

SHAPWA TANGENI KANYAMA

1ST PLAINTIFF

BEATA NDAENDELAO SHITEKETA KANYAMA

2ND PLAINTIFF

and

MATHILDE MUTALENI KATOSHE KADHIKWA

DEFENDANT

BE PLEASED TO TAKE NOTICE THAT, the Defendant intends to call the undersigned **MATILDA MUTALENI KATOSHE KADHIKWA** to testify at the hearing of this matter. A statement of her evidence appears hereunder:

I, the undersigned

MATILDA MUTALENI KATOSHE KADHIKWA

1. Make the following statement:

1.1. I am an adult female residing at Onamungundo Village, Oshikoto Region, Republic of Namibia;

1.2. I am a retired registered nurse with specialisation in Critical Nursing Care. Before my retirement, I was a nurse for more than 30 years – I served as a nurse at the Oshakati State Hospital, Windhoek Central Hospital and the Ministry of Correctional Service as the head of the nursing service.

2. I am personally acquainted with the facts set out hereunder and the facts contained herein are true and correct, unless the context indicates otherwise, or it is otherwise stated.

3. I am advised that I am required to provide a statement of my evidence in chief for the hearing of this matter. I deliver this statement to this Honourable Court on my own behalf as the Defendant, being duly competent to do so.

4. I reserve my rights to clarify, supplement and/or vary the statements herein, and to tender such further evidence as may be necessary or required at trial, and I hereby state the following:

5. I am a qualified nurse with an Advanced Diploma in Nursing Science from the University of Namibia. I was registered as a nurse in 1986 by the South African nursing Council. Copies of the Diploma and certificate of registration are attached hereto.

6. As a nurse in the public service, I closely monitored and experienced how the procurement of medical equipment and pharmaceuticals affects my job and the patients that I treated.

7. During or about May 2022, on a WhatsApp group named, "2024 Presidential" I, recorded and sent an audio message in Oshiwambo in response to an audio message sent by one of the other group members. I have been informed that the audio message has been translated to English by a Sworn Translator, and a copy of the sworn translation is attached hereto.

8. The WhatsApp group's main discussions are public interest and topics that are usually discussed range from politics, health and finance.

9. On or about May 2022, I raised my concerns, as health professional, towards the government's procurement of medical equipment and pharmaceutical products. I also raised concerns on how the Namibian government spends a lot of money to procure medical equipment and pharmaceutical products.

10. From my experience as a nurse, the government does not get the value of its money because even though the Namibian government has persons through which it procures medical equipment and pharmaceutical products, there were a lot of occasions where hospitals would not have the required medical equipment and pharmaceutical products which is to the detriment of the patients.

11. Where medical equipment is supplied, it sometimes does not come in the required quantities and it malfunctions. As a former taxpayer and former nurse, it was a big disappointment because public funds are being spent on procurement contracts, but it does not translate to the medical equipment that we as nurses in the public service are being supplied with. I have witnessed this numerous times.

12. In my informed opinion as a former nurse who has an interest in the proper administration of the health sector, the procurement agents who procure medical equipment and pharmaceutical products on behalf of the Namibian government are generously compensated for the services but the services are not worth the taxpayers' money.

13. The state of the Namibian health sector is not a satisfactory one, partly due to key players involved in the procurement of medical equipment and pharmaceutical products. The inefficiency of public procurement of medicine and clinical supply is not a view that I hold alone, there is a report that was published by the Ministry of Finance in conjunction with the Ministry of Health and Social services titled *Strengthening Health Procurement For Impact*. On page 28 of the report, the government expressed similar sentiments that I expressed in the WhatsApp audio as follows:

"There have been challenges with timely communication and engagement between the key players involved in pharmaceutical and clinical supplies procurements. Given

the potential negative impact that inefficiencies in health procurements can have on Namibia's development goals, there is need for ongoing communication and consensus building between MoF, MoHSS and CPBN."

14. The report also acknowledged that large sums of public funds were dedicated towards the procurement of pharmaceutical products they have failed to reach objective. A copy of the report is attached hereto.

15. The statements I made in the audio message in question were in no way malicious, nor were they made with the intention to defame or injure the reputation and good name of any individual. My audio message was simply recorded and sent for me to add my fair public comment on the topic and to contribute to the discussion that was being had on the said WhatsApp group at that time.

16. It is important to note, that in the said audio message I, at no point mentioned any individual's name, more specifically I, did not mention either one of the Plaintiffs' names. Further, I did not record the audio message to portray the Plaintiffs as unscrupulous persons, with low morals or to injure their reputations.

17. Any reasonable person listening to the audio will not conclude that the statements made in the audio were directed towards the First and Second Plaintiffs. The First and Second Plaintiff projected their personal circumstances to the audio. I personally do not know the First and Second Plaintiffs, I have never met them, and I do not know anything about their personal lives apart from what was alleged by the First and Second Plaintiff's in the particulars of claim.

18. I further state that I do not know the First and Second Plaintiff educational background or their business dealings beyond what is stated in the media. I further do not know about the tertiary education institution that is being alleged by the Second Plaintiff and what her status in the society is.

19. The statements I made in the audio constitute fair comment and are in the public's interest. The statements I made in the audio represent the fair exercise of my freedom of speech and are crucial in a democratic dispensation such as Namibia.

20. Therefore, I deny the allegations put forth by the Plaintiffs in their Particulars of Claim that I made the audio message:

20.1. with the intention to defame, injure and/or tarnish the 1st Plaintiff's reputation and dignity;

20.2. to imply that the 1st Plaintiff is a corrupt businessman, that he commits criminal acts and that he embezzled public funds for his own benefit;

20.3. with intent and malice to lower and undermine the 1st Plaintiff's good name, fame, credit or reputation in the estimation of reasonable persons of ordinary intelligence or right-thinking members of society.

21. Although the comments that I made are not defamatory and they were in no manner directed towards any of the Plaintiff's, the First Plaintiff has been the subject of many controversial procurement contracts awarded by the Namibian government which have been published in local newspapers and have drawn criticism from members of the public. It shows that the issue of public procurement in general is of public interest. Copies of newspaper publications are attached hereto.

22. Namibia's poor procurement process is not a secret as there are even reports by international organisations that highlight lack oversight as one of the causes of the health sector's poor standard. According to *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ) report on the Namibian health sector (page 3), there are several challenges associated with pharmaceuticals storage and procurement, such as the lack of an overview for clinical supply. A copy of the report is attached hereto.

23. It is through protests on social media platforms, such as my WhatsApp, that we as citizens can influence public policy and hold our government accountable especially when it comes to public expenditure.

24. I, further, deny that the audio message that I made is defamatory, wrongful and injurious towards the 2nd Plaintiff's name, dignity, fame, credit or reputation in the eyes of reasonable persons of ordinary intelligence or right-thinking members of society.

25. I, specifically deny, that knowledgeable persons would have heard the audio message and thought of the 2nd Plaintiff and interpreted the audio message to mean that I was implying that the 2nd Plaintiff is married to a man who is dishonest, a corrupt businessman, a man who commits criminal acts and embezzles public funds for his own benefit.

26. I am, of the belief that if the 1st Plaintiff's good name and dignity were defamed, his reputation injured in the minds of reasonable persons of ordinary intelligence or right-thinking members of society, then the 1st Plaintiff would not have been in line to be awarded tenders for the supply and delivery of goods and services by the Central Procurement Board of Namibia (CPBN) to State hospitals. As reasonable persons of ordinary intelligence or right-thinking members of society including members of the CPBN would be of the view that the 1st Plaintiff has lower dignity and a bad reputation and would, therefore, not want to be associated with him.

27. I am, further of the belief that if the 1st Plaintiff's was considered as a dishonest man, if his good name, fame, credit, reputation was undermined in the minds of reasonable persons of ordinary intelligence or right-thinking members of society, then the 1st Plaintiff would not have been in line to be awarded tenders for the supply and delivery of goods and services by the Central Procurement Board of Namibia (CPBN) to State hospitals. As reasonable persons of ordinary intelligence or right-thinking members of society including members of the CPBN would be of the view that the 1st Plaintiff is a dishonest man, is a corrupt businessman, commits criminal acts, embezzles public funds for his own benefit, is infamous, has no credibility and has a low reputation and would have disqualified him from being awarded the tenders.

28. I am of the view that the 2nd Plaintiff's name, dignity, fame, credit or reputation was not defamed nor injured by myself. This is, because reasonable persons of ordinary intelligence or right-thinking members of society would not think that the 2nd Plaintiff is married to a man who is dishonest, a corrupt businessman, a man who commits criminal acts and embezzles public funds for his own benefit.

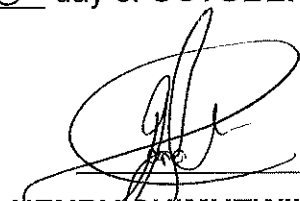
29. I am further of the view that, reasonable persons of ordinary intelligence or right-thinking members of society know that the 1st Plaintiff is an honest, incorruptible business, he does not commit criminal acts and does not embezzle public funds for his own benefit. As the 1st Plaintiff is in the lead to be awarded tenders for the supply and delivery of goods and services to the Ministry of Health and Social Services. This is an indication that the 1st Plaintiff is an honest, trustworthy businessman with an impeccable business track record.

30. The statements that I made in the audio pertain to a public discussion about the states and its procurement processes. As a former civil servant employed in the health sector, I was disappointed by how the Ministry of Health and Social Services procured medical equipment and pharmaceutical products as it had a direct impact on how I did my job.

31. The facts contained in this statement are true and correct to the best of my knowledge and recollection of events relating to this matter.

32. I reserve the right to refer to and prove other documents as discovered or made available by the Parties.

DATED and **SIGNED** at **WINDHOEK** on this 20th day of **OCTOBER 2023**.



HENRY SHIMUTWIKENI & CO INC
66 JOHN MEINERT STREET & HOSEA KUTAKO ROAD
WINDHOKE WEST

WINDHOEK

**TO: SISA NAMANDJE & CO INC.
LEGAL PRACTITIONERS FOR THE PLAINTIFFS
13&15 PASTEUR STREET
WINDHOKE WEST
WINDHOEK**

**AND TO: REGISTRAR OF THE HIGH COURT
MAIN DIVISION
JP KARUAIHE STREET
WINDHOEK**