

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

CASE NO: 74313/16

In the matter between:

**PROXI SMART SERVICES (PTY) LTD**

Applicant

and

<b>LSSA</b>	1 <sup>st</sup> Respondent
<b>CHIEF REGISTRAR OF DEEDS</b>	2 <sup>nd</sup> Respondent
<b>ROGER DIXON</b>	3 <sup>rd</sup> Respondent
<b>MINISTER OF JUSTICE &amp; CONSTITUTIONAL DEVELOPMENT</b>	4 <sup>th</sup> Respondent
<b>ATTORNEYS FIDELITY FUND</b>	5 <sup>th</sup> Respondent
<b>THE LAW SOCIETY OF KWAZULU-NATAL</b>	6 <sup>th</sup> Respondent
<b>THE CAPE LAW SOCIETY</b>	7 <sup>th</sup> Respondent
<b>THE FREE STATE LAW SOCIETY</b>	8 <sup>th</sup> Respondent
<b>THE LAW SOCIETY OF THE NORTHERN PROVINCES</b>	9 <sup>th</sup> Respondent
<b>NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS</b>	10 <sup>th</sup> Respondent
<b>BLACK LAWYERS ASSOCIATION</b>	11 <sup>th</sup> Respondent
<b>THE BLACK CONVEYANCERS ASSOCIATION</b>	12 <sup>th</sup> Respondent
<b>THE MINISTER OF LAND &amp; RURAL DEVELOPMENT</b>	13 <sup>th</sup> Respondent
<b>THE NATIONAL FORUM ON THE LEGAL PROFESSION</b>	14 <sup>th</sup> Respondent

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**SUPPLEMENTARY AFFIDAVIT**

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*M G. G.*

I, the undersigned,

**GARETH EDWARD GRIFFITHS,**

do hereby make oath and say that:

1. I deposed to the main founding affidavit herein *jurat* 16 September 2016.
2. The facts set out below fall within my own knowledge and belief save where the context indicates otherwise, in which case I believe them to be true for the reasons given.
3. On reflection, I realise that the content of paragraph 39 of the founding affidavit is in certain respects unclear. The purpose of this affidavit is to clarify the content thereof.
4. Subsequent to the joinder of the Fifth to Fourteenth Respondents, the Seventh Respondent (the Cape Law Society) requested access to the Applicant's '*conveyancing software platform*' referred to in paragraph 39 of the founding affidavit.
5. However, the software platform to which reference is made in paragraph 39 of the founding affidavit is not yet in existence. The tasks that the Applicant envisages will be performed by the software platform referred to therein will initially be performed on a pilot software platform, which platform will be developed shortly prior to the pilot implementation of the

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model. On the assumption that the pilot implementation is successful, the Applicant will then proceed to wider implementation of the model which will involve the development and use of a software platform that will be developed on the basis of the aforementioned pilot software platform.

6. On considering the aforesaid request from the Seventh Respondent, the Applicant realised that the wording of paragraph 39 of the founding affidavit is to a certain degree unclear and imprecise, particularly in that the reference therein to the envisaged software programme varies between the present tense and the future tense.
7. Paragraph 39 reads as follows, with the imprecise and unclear portions thereof – being those expressed in the present tense – underlined (in addition, to illustrate the variance between the present and future tenses, the use of the future tense is also highlighted, by the use of bold print):

*“39. The Applicant and the attorneys on the Applicant’s panel **will** operate in parallel in carrying out their respective tasks on a custom built, partitioned conveyancing software platform. The Applicant **will** perform its data collection function as a part of its wider administration task in the area of the software platform accessible to it. The Applicant **will** capture data relating to buyer, seller and property into*

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*the software capture fields. The captured data **will be** stored in a database until needed by the panel attorney when preparing reserved work documents. The software platform differs from conventional conveyancing software in that the software contains a coded software partition which prevents the Applicant from being able to access the reserved work document templates or using the captured data to prepare reserved work documents. Only the panel attorney can access the reserved work transfer document templates and populate them using the data captured by the Applicant, should they so choose. The platform **will** contain a full audit trail of who performed what task so that there will be no doubt that the Applicant performed only administration work. Should the attorney find data capture errors in the data captured by the Applicant whilst preparing the reserved work documents, the panel attorney **will have** access to the data base to correct any data capture errors before the data is used to populate the reserved work document templates selected by the panel attorney for a particular transfer.”*

8. Paragraph 39 correctly starts in the future tense and states that the software “. . . will operate . . . on a custom built, partitioned conveyancing software platform”, and it correctly continues in the future

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tense by stating it “. . . will perform . . . will capture . . . will be stored . . .”, and so on.

9. However, half-way down the paragraph the above underlined sentence states in the present tense that “*The software platform differs from conventional conveyancing software*”, “. . . contains . . .” and “. . . prevents . . .” (emphasis supplied).
10. This change from the appropriate future tense to the inappropriate present tense was a drafting error that ought to have been detected, but was not. The entire paragraph should have been drafted in the future tense and the aforesaid reference to “. . . differs . . .”, “. . . contains . . .” and “. . . prevents . . .” should have read “. . . will differ . . .”, “. . . will contain . . .” and “. . . will prevent . . .”.
11. The remainder of the paragraph is then again correctly drafted in the appropriate future tense in that it states that: “*The platform will contain . . . will be no doubt . . . will have access . . .*”, and so on.
12. In the premises, the Applicant respectfully requests that it be granted leave to file this supplementary affidavit.
13. In light of the fact that the Respondents have yet to file their answering affidavits and the discrepancy, which is due to a drafting error, being limited to one sentence in a single paragraph of the founding affidavit,

the Respondents stand to suffer no prejudice should the Applicant be permitted to file this further affidavit.

- 14. Should any of the Respondents raise any objection to this affidavit, the Applicant shall make formal application to this court for leave to file it.

*G. E. Griffiths*

**GARETH EDWARD GRIFFITHS**

I certify that:

- I. the Deponent acknowledged to me that :
  - A. he knows and understands the contents of this declaration;
  - B. he has no objection to taking the prescribed oath;
  - C. he considers the prescribed oath to be binding on his conscience.
- II. the Deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God".
- 1. the Deponent signed this declaration in my presence at the address set out hereunder on *01* day of June 2017.

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**COMMISSIONER OF OATHS**

