${court}

CASE NO.: ${casenumber}

In the matter between:

**${onepname}** ${firstplaintiff}Plaintiff

${twop}

**${twopname}** Second Plaintiff

${/twop}

${threep}**${threepname}** Third Plaintiff

${/threep}

${fourp}**${fourpname}** Fourth Plaintiff

${/fourp}

${fivep}**${fivepname}** Fifth Plaintiff

${/fivep}

${sixp}**${sixpname}** Sixth Plaintiff

${/sixp}

${sevenp}**${sevenpname}** Seventh Plaintiff

${/sevenp}

and

**${onedname}** ${firstdefendant}Defendant

${twod}

**${twodname}** Second Defendant

${/twod}

${threed}**${threedname}** Third Defendant

${/threed}

${fourd}**${fourdname}** Fourth Defendant

${/fourd}

${fived}**${fivedname}** Fifth Defendant

${/fived}

${sixd}**${sixdname}** Sixth Defendant

${/sixd}

${sevend}**${sevendname}** Seventh Defendant

${/sevend}

${eightd}**${eightdname}** Eighth Defendant

${/eightd}

**FOUNDING AFFIDAVIT**

I the undersigned,

**${authorwithcaps}**

do hereby make oath and say that,

1. I am an adult [male/female] attorney and practice as such as an Associate at Mellows & De Swardt Inc., the attorneys of record for the Applicant.
2. For the sake of convenience, the parties are referred to as in the action.

1. I am duly authorised to depose to this affidavit on behalf of the ${represent}.
2. The facts contained herein are within my personal knowledge and belief, unless the context indicates to the contrary, and are true and correct.

**PURPOSE OF THE APPLICATION:**

1. The purpose of the application is to have the [Party’s] claim against the ${represent} dismissed with costs due to the [Party’s] non-prosecution of [his/her/its] claim.

**BACKGROUND:**

1. On [date] the [Party]instituted action against the ${represent}.

7. […]

**INEXCUSABLE DELAY PREJUDICIAL TO THE ${represent**}**:**

1. [Set out reasons for the inexcusable delay…]
2. It is my respectful submission that [Party’s] claim has stagnated as [he/she/it] has failed to earnestly prosecute [his/her/its]claim since issuing summons over [number] years ago.
3. I furthermore submit that [Party]has failed to provide any reasonable justification for [his/her/its]delay in finalising [his/her/its]claim. The ${represent} has been the one who has prompted the [Party]time and time again to ascertain whether the [Party]was proceeding with [his/her/its]claim or not.
4. [Party’s]legal representatives as well as the [Party]has failed to appear before the Honourable Court and failed to correspond with the ${represent}’s representatives for close to [number] years, which conduct I submit is inexcusable.
5. I humbly submit that the ${represent} would be severally prejudiced if [Party’s]inactivity to prosecute [his/her/its claim is tolerated further.
6. It is submitted that the ${represent} has been proactive in [his/her/its] attempts at bringing this matter to finality and has on several occasions attempted to progress the matter forward at [his/her/its] own expense. It is for this reason that the ${represent} submits [he/she/it] has availed [himself/herself/itself] of all remedies available to [him/her/it]in order to bring this action to trial expeditiously.
7. As this matter has been on-going for a period of [number]years it is submitted that all witnesses’ recollection of the events will be greatly impeded by the considerable lapse of time, giving rise to a substantial risk that a fair trial of the issues will not be possible. Further to this the ${represent} has already incurred costs in progressing this matter, incurred costs occasioned by pre-trial hearing attendances as well as the costs of having to bring this application.
8. In the circumstances, the ${represent} humbly submits that the inaction of the [Party]has resulted in an inordinate or unreasonable delay in prosecuting [his/her/its] action, which constitutes an abuse of process, which warrants a dismissal of the [Party’s]action.
9. The ${represent} therefore humbly requests this Honourable Court grant the order as prayed for in the Notice of Motion.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**${authorwithcaps}**

I certify that the deponent acknowledged that he/she knew and understood the contents of the above declaration, that I duly administered the oath as prescribed by Government Notice No R1258 of 21 July 1972, as amended and that thereafter the deponent in my presence, signed the declaration at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_on the \_\_\_ day of **${month} ${year}**.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**COMMISSIONER OF OATHS**