

AFFIDAVITS

What they mean in South African law

There are many affidavits which are accepted as authentic although they contain hearsay allegations only. In a court of law they would be struck out as inadmissible.

An important aspect of our law is the "*Audi Alteram Partem*" Rule which means *Let the other side be heard*.

It is a fundamental democratic and humanitarian principle and a principle of our law that every person must be given an opportunity to present his or her case fully and to be given a full hearing. To hear *only* one side is an injustice and a contravention of sound humanitarian and democratic principles.

In South Africa there is very little State financial assistance for those who cannot afford legal costs.

Legal costs are exorbitant. There are many people in South Africa who are denied access to the law and thus are denied the opportunity of having their cases presented fully because, whilst innocent, they do not have the funds to seek legal assistance.

In view of the large number of affidavits that have been and are presently being presented to the Natal Courts involving allegations usually concerning violence, it is important that this legal device be explained.

Unfortunately, in many instances, these affidavits are *on their own* highlighted in the media and circulated by individuals and organisations for their own purposes with subsequent replying affidavits receiving little or no attention.

Furthermore, certain individuals and organisations have access to seemingly unlimited funds with which to process these affidavits and incur Court costs while others cannot afford to do so.

Certain applications made against some Inkatha members, for instance, have caused severe financial hardship to them and their families. In defending the actions (many of which have later been withdrawn or dismissed by the Courts) they have been faced with crippling legal fees.

An affidavit is a statement made on oath by the Deponent and sworn to and signed before a commissioner of oaths.

While theoretically a deponent who signs an affidavit is liable to criminal prosecution on a charge of perjury if he willingly signs the affidavit knowing that the contents are not true and correct, it is still easy for the deponent to make allegations while knowing that they are not true or without investigating their truth.

Often the deponent is not subject to cross-examination in respect to the allegations made in the affidavit and therefore the truthfulness and authenticity of those allegations are *never* tested in a court of law by cross-examination.

It is easy to make allegations — it is not always easy to prove them.

Therefore, one cannot always accept affidavits on face value unless the deponent has been properly cross-examined in a court of law by a lawyer and the facts stated have been proved by calling for supporting evidence.

In a court of law *hearsay* evidence is not acceptable and there are many affidavits which are accepted as authentic although they contain hearsay allegations only.

In a court of law they would be struck out as inadmissible.

Affidavits often contain carefully concealed hearsay evidence which the ordinary reader or layman may not see. These affidavits are often subsequently destroyed under cross-examination and the allegations are shown to be confused, misinterpreted, false, distorted and the like.

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Often, when hearing one side's version of a specific event (such as that set out in an affidavit) it all seems clear — until the other person submits his or her case.

It is morally wrong for people to quote only one set of affidavits and not the answering affidavits. Both sides should be quoted.

When matters are brought to court on affidavit and there are counter-affidavits, the courts do not decide the issue on the basis of the affidavits only. The courts then order that the matters be referred to oral evidence so that the deponents can be cross-examined.

The courts do this because it is often impossible to decide issues on the basis of affidavits alone.

It is essential that *everyone*, of whatever creed, race, religion, age, political outlook, social or economic status and the like, be given an opportunity to present his or her case at all times and when necessary by competent legal practitioners — as the complexity and nature of the case require. Nobody should be deprived of fair legal representation simply because he or she does not have such financial means.

In South Africa there is very little State financial assistance for those who cannot afford legal costs. Some individuals and organisations do receive funding from sources in South Africa and abroad for legal actions while those who do not are, of course, at an extreme disadvantage.