

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 129593 /2023

In the matter between:

FREEDOM UNDER LAW (RF) NPC **Applicant**

and

THE JUDICIAL SERVICE COMMISSION **First Respondent**

JOHANNES PETRUS DAFFUE **Second Respondent**

MOKGERE BUSISIWE SHAREEN MASIPA **Third Respondent**

GLORIA NOZUKO MJALI **Fourth Respondent**

ZAMANI MSWAZI NHLANGULELA **Fifth Respondent**

MMATHEBE VIOLET PHATSHOANE **Sixth Respondent**

NAMHLA THINA YVONNE SIWENDU **Seventh Respondent**

JOHN ELDRID SMITH **Eighth Respondent**

DAVID UNTERHALTER **Ninth Respondent**

APPLICANT'S NOTICE IN TERMS OF UNIFORM RULE 16A

TAKE NOTICE THAT the Applicant hereby gives notice in terms of Uniform Rule 16A(1)(a) that it has raised constitutional issues for determination by the above

Honourable Court in its Notice of Motion dated 6 December 2023, filed simultaneously herewith.

TAKE NOTICE FURTHER THAT the constitutional issues raised are as follows—

PART A: URGENT REVIEW

1 Whether following decisions (“**the decisions under review**”) taken by the first respondent (“**the JSC**”) on 2 and 3 October 2023 ought to be reviewed, declared unlawful and set aside since they violate the principle of legality enshrined in section 1(c) of the Constitution and the JSC’s duties under sections 174(6) and 165(4) of the Constitution:

1.1 The JSC’s decision to terminate its deliberations on its recommendation of candidates for appointment to the Supreme Court of Appeal, without considering whether to fill the remaining two vacancies.

1.2 The JSC’s failure to consider whether the remaining candidates should be recommended for appointment to the remaining two vacancies.

1.3 The JSC’s decision not to recommend any of the remaining candidates for appointment to the remaining two vacancies.

2 Whether it is just and equitable to direct the JSC, within 20 days of this order, to reconvene its meeting of 2 and 3 October 2023,

2.1.1 to consider whether the remaining candidates are fit for appointment to the Supreme Court of Appeal;

2.1.2 if more than two of them are fit for such appointment, to determine the two most suitable for such appointment; and

2.1.3 to recommend the candidates so identified for appointment to the Supreme Court of Appeal.

PART B: SELECTION CRITERIA

- 3 Whether the JSC's failure to develop, publish and apply assessment criteria in terms of which it requires its Commissioners to assess candidates for appointment as judges should be declared to be unlawful since its failure violates the principle of legality in section 1(c) of the Constitution and the foundational constitutional values of accountability and openness in section 1(d) of the Constitution.
- 4 Whether it is just and equitable to direct the JSC:
 - 4.1 to develop and publish assessment criteria for the selection of candidates for the appointment as judges in the form of an assessment/scoring sheet of objective criteria, within three months; and
 - 4.2 when it selects candidates for appointment as judges, to require each of its members to score each candidate, in writing, for compliance with its published assessment criteria.

TAKE FURTHER NOTICE that any interested party may, with the written consent of all the parties to the proceedings, given not later than 10 days after this notice has been filed, be admitted therein as amicus curiae upon such terms and conditions as may be agreed upon in writing by the parties.

TAKE FURTHER NOTICE that the written consent referred to above shall, within five days of its having been obtained, be lodged with the Registrar and

the amicus curiae shall, in addition to any other provision of the Rules, comply with the times agreed upon for the lodging of the written argument.

TAKE FURTHER NOTICE that if the interested party is unable to obtain written consent as contemplated herein, he or she may, within five days of the expiry of the 10-day period prescribed above, apply to the Court to be admitted as an amicus curiae in the proceedings. Such application shall—

(a) Briefly describe the interest of the prospective amicus curiae in the proceedings;

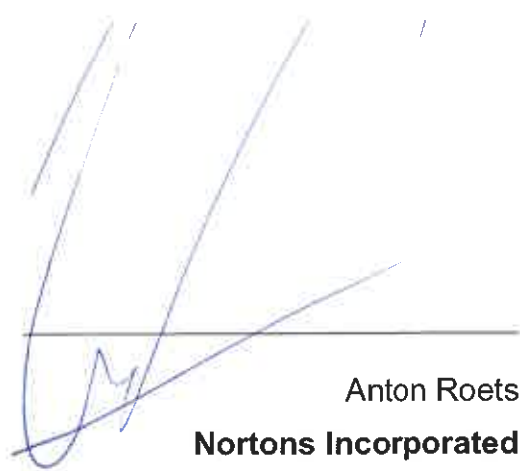
(b) Clearly and succinctly set out the submissions which will be advanced by the prospective amicus curiae, the relevance thereof to the proceedings and his or her reasons for believing that the submissions will assist the court and are different from those of the other parties; and

(c) Be served upon all parties to the proceedings.

TAKE FURTHER NOTICE THAT any party to the proceedings who wishes to oppose an application to be admitted as amicus curiae shall file an answering affidavit within five days of the service of such application upon such party. The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

KINDLY PLACE THIS NOTICE on the notice board designated for this purpose.

Dated at Johannesburg on this the 6th day of December 2023.



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Ref: LK/js/NRT-002

**TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
PRETORIA**

AND TO: THE FIRST RESPONDENT
The Office of the Chief Justice,
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AND TO: JUDGE DAFFUE
Free State Division of the High Court
Corner Fountain & President Brand Street
Bloemfontein
Free State

Service per email as agreed: Rmatthysen@judiciary.org.za

AND TO: JUDGE MASIPA

Acting Judge of the Supreme Court of Appeal
Cnr Mirriam Makeba & President Brand Streets
Bloemfontein
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Service per email as agreed: NeNgcobo@judiciary.org.za

And:

C/o Nadia Moola Attorneys
93 -123 Cowey Road
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AND TO: JUDGE MJALI

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AND TO: DEPUTY JUDGE PRESIDENT NHLANGULELA

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AND TO: DEPUTY JUDGE PRESIDENT PHATSHOANE

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AND TO: JUDGE SIWENDU

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AND TO: JUDGE SMITH

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AND TO: JUDGE UNTERHALTER
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