

**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

SUPPLEMENTARY AFFIDAVIT



I, the undersigned,

ANTON JACQUES ROETS

do hereby make oath and state as follows:

- 1 I am a director of the firm Nortons Incorporated, the Applicant's attorneys of record in this application. I am duly authorised to bring this application and depose to this affidavit on the Applicant's behalf.

- 2 The facts contained herein are to the best of my knowledge true and correct and are, unless otherwise stated or indicated by the context, within my personal knowledge.

- 3 For the sake of consistency, I will use the same definitions as used in the main affidavit of Ms February which was deposed to on 29 November 2023.

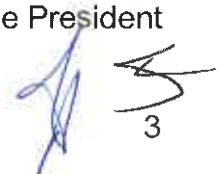
- 4 As reflected in Ms February's affidavit, on 2 and 3 October 2023, the JSC interviewed and considered for selection 10 candidates (referred to collectively as "**the candidates**") for the four vacancies on the SCA. Two of the candidates were selected for appointment, while the remaining eight candidates were not recommended for appointment.

- 5 The Second to Ninth Respondents are the candidates who were not selected for appointment by the JSC (referred to in the main affidavit as "**the remaining candidates**").



2

- 6 FUL seeks to join these candidates to these proceedings because of the interest that they have in the relief sought in Part A of the application. No relief is sought against the Second to Ninth Respondents.
- 7 On 28 November 2023, FUL's legal representatives addressed letters to each of the remaining candidates requesting permission to serve the application on them electronically. A copy of the letter addressed to Judge Mjali is attached as **AJR1**. As all of the letters were virtually identical, I have not attached each of the letters addressed to each of the remaining candidates.
- 8 All of the Judges (with the exception of Judge Masipa) confirmed that they were prepared to accept electronic service of the application. The responses of the various Judges are attached as **AJR2** (Judge Daffue), **AJR3** (Deputy Judge President (Acting Judge President) Nhlangulela), **AJR 4** (Deputy Judge President Phatshoane), **AJR5** (Judge Siwendu), **AJR6** (Judge Smith) and **AJR7** (Judge Unterhalter). Judge Masipa requested that a copy of the application be sent electronically and that a physical copy be served on her attorneys (**AJR8**). Judge Mjali confirmed by way of SMS that she consented to electronic service of the application.
- 9 Given the fact that the remaining candidates are Judges of Superior Courts in various jurisdictions in South Africa, FUL has sought to obtain the consent of the relevant heads of court as contemplated in section 47(1) of the Superior Courts Act 10 of 2013. FUL's attorneys dispatched a letter to the relevant heads of court on 29 November 2023 (including the President



3



of the Supreme Court of Appeal, given the fact that two of the remaining candidates are currently acting on the Supreme Court of Appeal (Judge Masipa and Judge Unterhalter).

- 10 A copy of this letter is attached as **AJR9**. It unfortunately erroneously referred to the relevant provision as being *rule 47(1)* as opposed to *section 47(1)*.

- 11 In view of the urgency of the matter, FUL caused an unsigned version of the Notice of Motion and the signed Founding Affidavit to be provided electronically to all of the respondents on 29 November 2023 and indicated that the notice of motion would be signed and formally issued once the relevant consents had been obtained.

- 12 Attached as:
 - 12.1 **AJR10** is the consent from Acting Judge President Mbhele in respect of Judge Daffue;

 - 12.2 **AJR11** is the consent from Acting Judge President Nhlangulela of the Eastern Cape Division of the High Court in respect of Judge Mjali and Judge Smith. Judge Nhlangulela confirmed that "*I have no objection to being cited as the respondent*", but notes that "*I am at the same time contacting my Judge President, who is on leave, to give the required consent on my behalf*".



4

- 12.3 **AJR 12** is the consent from Judge President Tlaetsi in respect of Deputy Judge President Phatshaone.
- 12.4 **AJR13** is the consent of Judge President Mlambo in respect of Judge Siwendu and Judge Unterhalter.
- 12.5 **AJR14** is the confirmation of President Molemela that none of the judges is a judge appointed to the Supreme Court of Appeal and, therefore, her consent is not required.
- 13 Accordingly, the only outstanding consents are those of the Judges President of the Eastern Cape Division of the High Court (in respect of Deputy Judge President Nhlangulela) and KwaZulu Natal (in respect of Judge Masipa).
- 14 Given the urgency of the matter, a follow up letter was sent Acting Judge President Nhlangulela (attached as **AJR15**) and Judge President Poyodlwati (**AJR16**) on 4 December 2023.
- 15 Unfortunately, the relevant consents have not yet been provided.
- 16 It bears emphasis that both Deputy Judge President Nhlangulela and Judge Masipa have indicated that they are prepared to accept service of the application and Judge Nhlangulela has further indicated that he has no objection to being joined as a respondent. It is, therefore, anticipated that the relevant consent will be received soon.



5

- 17 However, this matter is urgent and, therefore, it is important that the application be launched expeditiously for the reasons explained in Ms February's founding affidavit.
- 18 When the further consents are received, I will depose to a further affidavit to ensure that they are placed before the Court. However, should it transpire that the consents are not received before the papers are formally issued, FUL requests that the Court grant condonation for the failure to obtain the requisite consent in respect of Deputy Judge President Nhlangulela and Judge Mapisa.
- 19 No relief is being sought against either Deputy Judge President Nhlangulela or Judge Masipa and Deputy Judge President Nhlangulela has indicated that he has no objection to being cited.
- 20 In these circumstances, there is no reason to suspect that consent will not be granted by the respective Judges President and it is important that the application is formally served, given the need to ensure that the record is produced as swiftly as possible to ensure that Part A can be dealt with expeditiously. FUL's attorneys have acted reasonably in attempting to secure the consent of the relevant Judge Presidents.
- 21 It is submitted that there is no prejudice to any party in that the application is launched before the consent has been received and that it is important for the administration of justice that the application is dealt with on an urgent basis.



6



ANTON JACQUES ROETS

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at Illovo on this the ⁶29th day of **DECEMBER 2023**, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.





COMMISSIONER OF OATHS
CHARL STOOP
COMMISSIONER OF OATHS
PRACTISING ATTORNEY R.S.A.
RAMSAY WEBBER INC.
2nd FLOOR, THE RESERVE
54 MELVILLE ROAD
ILLOVO, JOHANNESBURG

The Honourable Justice Mjali
c/o Ms Thandi Ntloko
Email: ntloko@judiciary.org.za

28 November 2023

Dear Judge Mjali

Re: Review of the Judicial Service Commission's decision in relation to the appointment of judges to the Supreme Court of Appeal

- 1 We represent Freedom Under Law NPC ("FUL"), which is a public interest organisation which is actively involved, inter alia, in the promotion of democracy and the advancement of respect for the rule of law in South Africa.
- 2 Our client has significant concerns relating to the failure by the Judicial Service Commission ("JSC") to recommend four candidates for four vacancies on the Supreme Court of Appeal on 3 October 2023. Our client believes that the process that was followed by the JSC in this regard is deeply flawed, and it intends launching review proceedings as soon as reasonably possible in this regard.
- 3 As you were a candidate who was interviewed for appointment to the SCA and who may be affected by the outcome of the review application, we intend to join you in the review proceedings. No relief or costs will be sought against you.
- 4 We intend to serve FUL's application as soon as reasonably possible and would therefore be most grateful if you would indicate as a matter of urgency whether you agree to accept electronic service of the review application at the mail address to which this letter has been sent.

Yours sincerely

Anthony Norton / Anton Roets
Nortons Incorporated

Competition Law Specialists | Litigation Attorneys | Regulatory Advice

Directors: Anthony Norton Anton Roets Paul Russell Michelle Rawlinson Warwick Radford Nicola Ilgner
Vice President Economics: Avias Ngwenya
Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele
Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580



Anton Roets

From: Ronel Matthysen <RMatthysen@judiciary.org.za>
Sent: Wednesday, 29 November 2023 08:04
To: Anton Roets
Subject: RE: Freedom Under Law v The Judicial Service Commission

Good morning,

Kindly note, your email of the 28th was presented to Daffue J.

He will accept electronic service of the intended review application as suggested by yourself.

Regards



Mrs Ronel Matthysen
Judge's Secretary to
(JP DAFFUE, J) and
(PJJ ZIETSMAN, AJ)
FS High Court, Bloemfontein
Office of the Chief Justice
Tel: (+27)51 492 4601
Cell: 071 897 0714
E-mail: rmatthysen@judiciary.org.za;
rmjmatth@outlook.com;

From: Anton Roets <anton@nortonsinc.com>
Sent: 28 November 2023 13:01
To: Michelle Rawlinson <michelle@nortonsinc.com>; Anthony Norton <anthony@nortonsinc.com>; Nina Christina Greyling <nina@nortonsinc.com>; Gomolemo Sibeko <gomolemo@nortonsinc.com>; Ronel Matthysen <RMatthysen@judiciary.org.za>
Subject: Freedom Under Law v The Judicial Service Commission

Dear Ms Matthysen

Please find enclosed an urgent letter for the attention of Judge Daffue. We would be most grateful if you were able to draw it to his attention as soon as reasonably possible.

Kind regards

Anton

AJR3

From: [Nomtandazo Klass](#)
To: [Michelle Rawlinson](#)
Cc: [Anthony Norton](#), [Anton Roets](#), [Nina Christina Greyling](#), [Gomolemo Sibeko](#)
Subject: RE: Freedom Under Law v The Judicial Service Commission
Date: Tuesday, 28 November 2023 14:59:00
Attachments: [image001.png](#)

Dear Sir/Madam

I agree that the email address at which your letter was sent may be used for the papers relevant to the review application.

Nhlangulela AJP



Ms Nomtandazo Klaas
Secretary to the Honourable Justice:
Nhlangulela DJP
Office of the Chief Justice
Mthatha High Court
No. 74 Victoria Street
Private Bag X5017
Mthatha, 5099
Switchboard: 047-5045500
Email: NKlaas@judiciary.org.za

From: Michelle Rawlinson <michelle@nortonsinc.com>
Sent: Tuesday, November 28, 2023 1:15 PM
To: Nomtandazo Klass <NKlaas@judiciary.org.za>
Cc: Anthony Norton <anthony@nortonsinc.com>; Anton Roets <anton@nortonsinc.com>; Nina Christina Greyling <nina@nortonsinc.com>; Gomolemo Sibeko <gomolemo@nortonsinc.com>
Subject: Freedom Under Law v The Judicial Service Commission

Dear Ms Klaas

Please find enclosed an urgent letter for the attention of Deputy Judge President Nhlagulela. We would be most grateful if you were able to draw it to his attention as soon as reasonably possible.

Please would you confirm receipt of this mail.

Kind regards

Michelle

AJR4



**CHAMBERS OF THE DEPUTY JUDGE PRESIDENT:
NORTHERN CAPE HIGH COURT
MADAM JUSTICE MV PHATSHOANE**

Private Bag X5043
KIMBERLEY
8300

Tel No: 053 492 3507
E-mail: MNgema@judiciary.org.za

28 November 2023

NORTONS INC
1st Floor, The Reserve
54 Melville Road
Illovo
JOHANNESBURG

By e-mail: info@nortonsinc.com

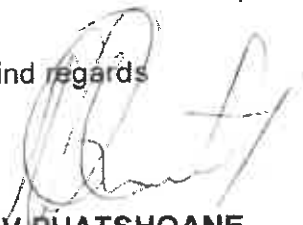
For the attention: Messrs Anthony Norton /Anton Roets

Dear sirs

**RE: REVIEW OF THE JUDICIAL SERVICE COMMISSION'S DECISION IN
RELATION TO THE APPOINTMENT OF JUDGES OF THE SUPREME COURT OF
APPEAL**

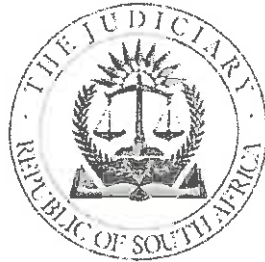
1. I refer to the above matter and acknowledge receipt of your letter of today.
2. With reference to para 4 of your above-mentioned letter, kindly take notice that I would accept the form of service suggested.

Kind regards


MV PHATSHOANE
DEPUTY JUDGE PRESIDENT
NORTHERN CAPE DIVISION



CHAMBERS OF THE HONOURABLE JUDGE SIWENDU



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG
CHAMBERS 403, FOURTH FLOOR
TEL: (010) 494 7306 / 071 493 7562
E-MAIL: KwRamoroka@judiciary.org.za

TO: Anthony Norton/Anton Roets Nortons Incorporated
Michelle@nortonsinc.com
Anthony@nortonsinc.com
Anton@nortonsinc.com
Nina@nortonsinc.com
Gomolemo@nortonsinc.com

Date: 28 November 2023

RE: Review of the Judicial Service Commission's
decision in relation to the appointment of judges to
the Supreme Court of Appeal

Dear Sirs / Madams

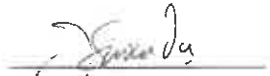
Thank you for your letter dated 28 November 2023.

I confirm that I am an interested party in this matter.

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a flourish.

I agree to accept electronic service of the review application at the above email address.

Yours Faithfully



JUDGE NTY. SIWENDU



Anton Roets

From: Grace Devilliers <GDevilliers@judiciary.org.za>
Sent: Tuesday, 28 November 2023 15:27
To: Anton Roets
Subject: RE:

Good afternoon

Please note that Judge Smit will accept electronic service of all papers in the application. Please forward all correspondence to his secretary at Lkoesnel@judiciary.org.za in future.

Thank you
GRACE



Grace de Villiers
Secretary to the Honourable Mr Justice Lowe
High Court, 104 – 106 High Street,
Makhanda, 6139
Private Bag X1011, Makhanda, 6140
Direct Extension: 046 603 5011
Cell phone Number: 0835145348
Fax Number: 0864549117

From: Anton Roets <anton@nortonsinc.com>
Sent: Tuesday, November 28, 2023 1:01 PM
To: Lucinda Koesnel <LKoesnel@judiciary.org.za>; Nina Christina Greyling <nina@nortonsinc.com>; Lucille Frazer <LuFrazer@judiciary.org.za>; Grace Devilliers <GDevilliers@judiciary.org.za>; Anthony Norton <anthony@nortonsinc.com>; Gomolemo Sibeko <gomolemo@nortonsinc.com>
Cc: Michelle Rawlinson <michelle@nortonsinc.com>
Subject:

Dear Ms De Villiers

Please find enclosed an urgent letter for the attention of Judge Smith. We would be most grateful if you were able to draw it to his attention as soon as reasonably possible.

Kind regards

Anton



NORTONS INC

ANTON ROETS
DIRECTOR

ANTON@NORTONSINC.COM

WWW.NORTONSINC.COM

+27 82 777 0694

Disclaimer: 1) Confidentiality This email sent from anton@nortonsinc.com to gdevilliers@judiciary.org.za on Tue, 28 Nov 2023 11:00:36 +0000, is confidential and may contain privileged or copyright information. You may not present this message to another party without consent from the sender. If you are not gdevilliers@judiciary.org.za, please notify anton@nortonsinc.com and delete this email, and you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. 2) Liability This email is not a binding agreement and does not conclude an agreement without the express confirmation by the sender's superior or a director of the Company. 3) Viruses. The Company does not certify that this email is free of viruses or defects. 4) Requested. The Company does not consent to its employees sending un-asked for emails which contravene the law, in the event that you feel this email is such, please notify the Company in order for the appropriate corrective action to be taken. 5) Advice. Any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company. Any actions taken on the basis of this email are at the reader's own risk. 6) Other. The sender of this email is expressly required not to make any defamatory statements. Any such communication is contrary to company policy and outside the scope of the employment of the individual concerned. The company will not accept any liability in respect of such communication, and the employee responsible will be personally liable for any damages or other liability arising.

From: Lucinda Koesnel <LKoesnel@judiciary.org.za>

Sent: Tuesday, November 28, 2023 12:41 PM

To: Nina Christina Greyling <nina@nortonsinc.com>; Lucille Frazer <LuFrazer@judiciary.org.za>

Cc: Michelle Rawlinson <michelle@nortonsinc.com>; Anton Roets <anton@nortonsinc.com>

Subject: RE: Judge Smith's clerk

Dear Ms. Greyling

I acknowledge receipt of your email.

If it is to do with duty for this week. Please email to GDevilliers@judiciary.org.za since she is assisting Judge Smith this week.

Kind Regards

Lucinda

Disclaimer:

The information contained in this communication from gdevilliers@judiciary.org.za sent at 2023-11-28 15:27:07 is intended solely for use by anton@nortonsinc.com and others authorized to receive it. If you are not gdevilliers@judiciary.org.za, you are hereby notified that any disclosure, copying, distribution or taking action in reliance on the contents of this information is strictly prohibited. Powered by [Afrovation](#)

AJR 7

Anton Roets

From: Veruschka DeKlerk <VDeKlerk@sca.judiciary.org.za>
Sent: Tuesday, 28 November 2023 14:28
To: Anton Roets
Subject: RE: Freedom Under Law v The Judicial Service Commission

Dear Mr Roets

I write on behalf of Justice Unterhalter. We are in receipt of your email. I write to confirm that Justice Unterhalter is content to accept service by email. His email address for such service is: david@unterhalter.law

Yours sincerely

Veruschka de Klerk



IN ENGLISH AND IN THE NINETEEN
REPUBLIC OF SOUTH AFRICA
**OFFICE OF THE
CHIEF JUSTICE
REPUBLIC OF
SOUTH AFRICA**

Veruschka de Klerk
Senior Judge's Secretary to the Honourable Justice
D UNTERHALTER
Cnr. Miriam Makeba and President Brand Streets
Bloemfontein
South Africa 9301
Email: Vdeklerk@sca.judiciary.org.za / Judiciary4vdeklerk@gmail.com
Tel: 051 4127 416
www.supremecourtofappeal.org.za

From: Anton Roets [mailto:anton@nortonsinc.com]
Sent: Tuesday, 28 November 2023 12:56
To: Gomolemo Sibeko <gomolemo@nortonsinc.com>; Veruschka DeKlerk <VDeKlerk@sca.judiciary.org.za>
Cc: Anthony Norton <anthony@nortonsinc.com>; Michelle Rawlinson <michelle@nortonsinc.com>; Nina Christina Greyling <nina@nortonsinc.com>
Subject: Freedom Under Law v The Judicial Service Commission

Dear Ms de Klerk

Thank you very much for your email.

Please find enclosed an urgent letter for the attention of Judge Unterhalter. We would be most grateful if you were able to draw it to his attention as soon as reasonably possible.

Kind regards

Anton

AJR8

Anton Roets

From: Neliswa Ngcobo <NeNgcobo@judiciary.org.za>
Sent: Wednesday, 29 November 2023 08:48
To: Anton Roets
Subject: RE: Freedom Under Law v the Judicial Service Commission

Good day

Judge Masipa would prefer personal service but since the Judge is moving around the country, arrangements can be made with an attorney in Durban to receive documents on the Judge's behalf. You can email to me as well but the Judge requires hard copies.

Please serve on:
Nadia Moola Attorneys
93 -123 Cowey Road
Suite 401 Cowey Centre
Essenwood
Durban

With kind regards.



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

Neliswa Ngcobo
Secretary to Judge Masipa
KwaZulu-Natal High Court: **Durban**
Office of the Chief Justice
Tel: +27 (31) 492 8730
E-mail: NeNgcobo@judiciary.org.za
Website: www.judiciary.org.za

From: Anton Roets <anton@nortonsinc.com>
Sent: Tuesday, 28 November 2023 15:32
To: Neliswa Ngcobo <NeNgcobo@judiciary.org.za>
Subject: RE: Freedom Under Law v the Judicial Service Commission

Thank you very much, Ms Ngcobo.

Kind regards

Anon

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, located in the bottom right corner of the page.



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From: Neliswa Ngcobo <NeNgcobo@judiciary.org.za>
Sent: Tuesday, November 28, 2023 3:12 PM
To: Anton Roets <anton@nortonsinc.com>
Subject: RE: Freedom Under Law v the Judicial Service Commission

Good day

I have forwarded the letter to Judge Masipa who is currently acting in the SCA.

With kind regards,



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

Neliswa Ngcobo
Secretary to Judge Masipa
KwaZulu-Natal High Court: Durban
Office of the Chief Justice
Tel: +27 (31) 492 8730
E-mail: NeNgcobo@judiciary.org.za
Website: www.judiciary.org.za

From: Anton Roets <anton@nortonsinc.com>
Sent: Tuesday, 28 November 2023 13:05
To: Gomolemo Sibeko <gomolemo@nortonsinc.com>; Anthony Norton <anthony@nortonsinc.com>; Michelle Rawlinson <michelle@nortonsinc.com>; Nina Christina Greyling <nina@nortonsinc.com>; Neliswa Ngcobo <NeNgcobo@judiciary.org.za>
Subject: Freedom Under Law v the Judicial Service Commission

Dear Ms Ngcobo

A handwritten signature in blue ink, appearing to be 'Ngcobo' with a stylized flourish.

Please find enclosed an urgent letter for the attention of Judge Masipa. We would be most grateful if you were able to draw it to her attention as soon as reasonably possible.

Kind regards

Anton



Disclaimer: 1) Confidentiality: This email sent from anton@nortonsinc.com to nengcobo@judiciary.org.za on Tue, 28 Nov 2023 11:04:58 +0000, is confidential and may contain privileged or copyright information. You may not present this message to another party without consent from the sender. If you are not nengcobo@judiciary.org.za please notify anton@nortonsinc.com and delete this email, and you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited. 2) Liability: This email is not a binding agreement and does not conclude an agreement without the express confirmation by the sender's superior or a director of the Company. 3) Viruses: The Company does not certify that this email is free of viruses or defects. 4) Requested: The Company does not consent to its employees sending un-asked for emails which contravene the law. In the event that you feel this email is such, please notify the Company in order for the appropriate corrective action to be taken. 5) Advice: Any views or opinions presented in this email are solely those of the author and do not necessarily represent those of the company. Any actions taken on the basis of this email are at the reader's own risk. 6) Other: The sender of this email is expressly required not to make any defamatory statements. Any such communication is contrary to company policy and outside the scope of the employment of the individual concerned. The company will not accept any liability in respect of such communication, and the employee responsible will be personally liable for any damages or other liability arising.

From: Neliswa Ngcobo <NeNgcobo@judiciary.org.za>
Sent: Tuesday, November 28, 2023 12:01 PM
To: Gomolemo Sibeko <gomolemo@nortonsinc.com>
Subject: RE: Contact details

Good day

You can contact me on 033 345 8211 as I am currently in PMB with Ntlokwana AJ until Friday 1 Dec 2024, thereafter I will be back in Durban 031 492 8730. Email is always preferable.

With kind regards,



Neliswa Ngcobo
Secretary to Acting Judge Ntlokwana
KwaZulu-Natal High Court: Pietermaritzburg
Office of the Chief Justice
Tel: +27 (33) 345 8211
E-mail: NeNgcobo@judiciary.org.za
Website: www.judiciary.org.za

A handwritten signature in blue ink, appearing to be 'N. Sibeko', is located in the bottom right corner of the page.

The Honourable Judge President C J Musi
c/o Wilma Mostert
Email: wmostert@judiciary.org.za

The Honourable Judge President T P Poyo-Dlwati
c/o Norma Fynn
Email: nfynn@judiciary.org.za

The Honourable Acting Judge President Nhlangulela
c/o Ms Samukelisiwe Sithole
Email: sitholes@judiciary.org.za

The Honourable Judge President Tlaletsi
c/o Gaynor Lemmetjies
Email: glemmetjies@judiciary.org.za

The Honourable Judge President D Mlambo
c/o C L Mabunda / D Sereko
Email: CLMabunda@judiciary.org.za / DSereko@judiciary.org.za

The Honourable President M B Molemela
c/o Elizabeth Vermeulen
Email: evermeulen@sca.judiciary.org.za

29 November 2023

Dear President and Judge Presidents

Re: Review of the Judicial Service Commission's decision in relation to the appointment of judges to the Supreme Court of Appeal

- 1 We represent Freedom Under Law NPC ("FUL"), which is a public interest organisation which is actively involved, inter alia, in the promotion of democracy and the advancement of respect for the rule of law in South Africa.

Competition Law Specialists | Litigation Attorneys | Regulatory Advice





- 2 Our client has significant concerns relating to the failure by the Judicial Service Commission (“JSC”) to recommend four candidates for four vacancies on the Supreme Court of Appeal on 3 October 2023. Our client believes that the process that was followed by the JSC in this regard is deeply flawed, and it intends launching review proceedings as soon as reasonably possible in this regard.
- 3 We intend to cite in the review application all of the candidates who were interviewed by the JSC for appointment to the SCA and who may be affected by the outcome of the review application. The candidates who will be cited are the following:
 - 3.1 Judge J P Daffue
 - 3.2 Judge M B S Masipa
 - 3.3 Judge G N Mjali
 - 3.4 Deputy Judge President Z M Nhlangulela
 - 3.5 Judge M V Phatsoane
 - 3.6 Judge N T Y Siwendu
 - 3.7 Judge J E Smith
 - 3.8 Judge D Unterhalter
- 4 No relief or costs will be sought against the above judges.
- 5 We understand that when citing a judge in a litigious matter, it may be necessary in terms of section 47(1) of the Superior Courts Act to obtain the permission of the head of the court to which that judge is appointed. In this case, we are of the view that it may not be necessary to obtain permission as envisaged by section 47(1) as the individual judges are cited due to the interest they may have in the matter, but no relief is sought against them. However, to the extent that it is necessary and as a courtesy, we address this letter to you because one or more of the judges referred to above are



appointed to your division.

- 6 We intend to serve FUL's application as soon as reasonably possible and would therefore be most grateful if you would confirm, to the extent necessary and as a matter of urgency, that we may cite the relevant judge/s in your division in our client's review application.

Yours sincerely

[Unsigned due to electronic transmission.]

Anthony Norton / Anton Roets
Nortons Incorporated

AJR10

From: [Wilma Mostert](#)
To: [Michelle Rawlinson](#)
Cc: [Anthony Norton](#); [Anton Roets](#); [Nina Christina Greyling](#); [Gomolemo Sibeko](#)
Subject: RE: Freedom Under Law // The Judicial Service Commission
Date: Friday, 01 December 2023 11:13:07

Dear Ms Rawlinson

I have been asked by Judge Mbhele to respond to our correspondence dated 30/11/2023. She asked me to confirm that your understanding is correct, that she has no objection to the citing of Judge Daffue in the Review Application.

Regards



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

Wilma Mostert

Judge's Secretary
(C.J. Musi, Judge President/
N.M. Mbhele, Acting Judge President)
15 High Court, Bloemfontein
Office of the Chief Justice
Tels: 27 51 492 4614/083 2575 280
E-mail: wmostert@judiciary.org.za

From: Michelle Rawlinson <michelle@nortonsinc.com>
Sent: Thursday, November 30, 2023 5:25 PM
To: Wilma Mostert <WMostert@judiciary.org.za>
Cc: Anthony Norton <anthony@nortonsinc.com>; Anton Roets <anton@nortonsinc.com>; Nina Christina Greyling <nina@nortonsinc.com>; Gomolemo Sibeko <gomolemo@nortonsinc.com>
Subject: RE: Freedom Under Law // The Judicial Service Commission

Dear Ms Mostert

Thank you for your mail below and the attached letter.

We attach a further letter for the attention of Acting Judge President Mbhele and would be most grateful if you could bring it to his attention.

Kind regards

Michelle





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From: Wilma Mostert <WMostert@judiciary.org.za>
Sent: Thursday, November 30, 2023 4:44 PM
To: Michelle Rawlinson <michelle@nortonsinc.com>
Subject: RE: Freedom of Information Law // The Judicial Service Commission

Dear Ms Rawlinson,
Kindly find the attached letter for your attention.

Regards



Wilma Mostert
Judge's Secretary
(C.J. Musi, Judge President/
N.M. Mbhele, Acting Judge President)
15 High Court, Bloemfontein
Office of the Chief Justice
Tel: +27 51 492 4614/083 2575 280
E-mail: wmostert@judiciary.org.za

From: Michelle Rawlinson <michelle@nortonsinc.com>
Sent: Wednesday, November 29, 2023 2:22 PM
To: Wilma Mostert <WMostert@judiciary.org.za>
Subject: RE: Freedom of Information Law // The Judicial Service Commission

Thank you, Ms Mostert.

Kind regards,

Michelle



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From: Wilma Mostert <WMostert@judiciary.org.za>
Sent: Wednesday, November 29, 2023 2:15 PM
To: Michelle Rawlinson <michelle@nortonsinc.com>
Subject: Re: *Restitutio Under Law // The Judicial Service Commission*

Dear Ms M Rawlinson

Your email dated 29 November 2023 as well as the letter attached thereto were received and forwarded to both Judge President Musi and Acting Judge President Mbhele.

Regards



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

Wilma Mostert
Judge's Secretary
(C.J. Musi, Judge President/
N.M. Mbhele, Acting Judge President)
15 High Court, Bloemfontein
Office of the Chief Justice
Tel: +27 51 492 4014/083 2575 280
E-mail: wmostert@judiciary.org.za

A handwritten signature in blue ink, appearing to be 'W Mostert'.

From: Michelle Rawlinson <michelle@nortonsinc.com>
Sent: Wednesday, November 29, 2023 10:11 AM
To: Wilina Mostert <WMostert@judiciary.org.za>; Norman Yun <Nfyun@judiciary.org.za>;
SitholeS@judiciary.org.za; Gaynor <gnorm@judiciary.org.za>;
<Glemmetries@judiciary.org.za>; Clement Mabunda <CMabunda@judiciary.org.za>; Dineo
Sereko <DSereko@judiciary.org.za>; Elizabeth Vermeulen <EVermeulen@sca.judiciary.org.za>
Cc: Anthony Norton <anthony@nortonsinc.com>; Anton Roets <anton@nortonsinc.com>; Nina
Mostert Consulting <nina@nortonsinc.com>; Gomolemo Sibeko <gomolemo@nortonsinc.com>
Subject: Freedom of Information Law of The Republic of South Africa

Dear Sir/Madam

Please find enclosed an original letter for the attention of the respective heads of court.

We would be most grateful if you could draw the letter to the attention of the relevant
President, Judge President or Acting Judge President of your division, as the case may be.

Please confirm receipt of this letter.

Kind regards

Michelle



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Disclaimer:

From: "Michelle Rawlinson" <michelle@nortonsinc.com>
To: "Wilina Mostert" <wmostert@judiciary.org.za>; "Norman Yun" <Nfyun@judiciary.org.za>; "Sithole Sithole" <SitholeS@judiciary.org.za>; "Gaynor" <gnorm@judiciary.org.za>; "Glemmetries" <Glemmetries@judiciary.org.za>; "Clement Mabunda" <CMabunda@judiciary.org.za>; "Dineo Sereko" <DSereko@judiciary.org.za>; "Elizabeth Vermeulen" <EVermeulen@sca.judiciary.org.za>
Cc: "Anthony Norton" <anthony@nortonsinc.com>; "Anton Roets" <anton@nortonsinc.com>; "Nina Mostert Consulting" <nina@nortonsinc.com>; "Gomolemo Sibeko" <gomolemo@nortonsinc.com>
Subject: Freedom of Information Law of The Republic of South Africa

A handwritten signature in blue ink, appearing to be 'S' followed by a flourish.

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Free State High Court, Private Bag X20612 BLOEMFONTEIN 9300
Corner Fountain and President Brand Street
Tell: 051 406 8100 Fax: 051 430 7041

File 13/3

30 November 2023

Mr A Norton

Nortons Inc
PO Box 41162,
Graighall
2024

E-mail: Michelle Rawlinson <michelle@nortonsinc.com>

Dear Mr Norton

FREEDOM UNDER LAW/THE JUDICIAL SERVICE COMMISSION

I acknowledge receipt of your letter dated 29 November 2023.

I have noted the contents thereof.

Yours faithfully

Judge N. M. Mbhele
Acting Judge President
Free State High Court, Bloemfontein

AJK 11



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

TEL.: 047- 5045500
Email: NKlaas@judiciary.org.za

OFFICE OF THE DJP
MAKHANDA HIGH COURT
HIGH STREET
MAKHANDA

**HIGH COURT OF SOUTH AFRICA, EASTERN CAPE LOCAL DIVISION,
MAKHANDA
CHAMBERS OF THE HONOURABLE ACTING JUDGE PRESIDENT**

30 November 2023

**Ms Nina Christina Greyling
Nortons In
Email: nina@nortoninc.com**

And To:

**The Honourable President of the SCA
Molemela M B
c/o Elizabeth Vermeulen
Email: EVermeulen@sca.judiciary.org.za**

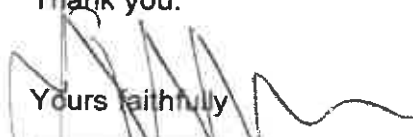
Re: FREEDOM UNDER LAW // THE JUDICIAL SERVICE COMMISSION

I have consulted with my colleagues being Judge J.E. Smith, and Judge G.N. Mjali. They have no objection to the papers served upon them. Accordingly, in my capacity as the Acting Judge President of the Eastern Cape Division, I hereby give consent for them to be cited in the application on the basis that you have indicated in your correspondence.

For my part, I have no objection to being cited as the respondent. I am at the same time contacting my Judge President, who is on leave, to give the required consent on my behalf.

Thank you.

Yours faithfully


Z.M. Nhlangulela
Acting Judge President
Eastern Cape Division



ATR12



CHAMBERS OF THE JUDGE PRESIDENT
NORTHERN CAPE HIGH COURT
JUSTICE LP TLALETSI

Private Bag X5043 KIMBERLEY 8300
Sol Plaatje Drive KIMBERLEY 8301

Telkom: 053 492 3507 / 3543
Email: Glemmetjies@judiciary.org.za
SdeVilliers@judiciary.org.za

2023

Date: 01 December

Nortons Inc
PO Box 41162
Graighall
2024

BY EMAIL: Info@nortonsinc.com

ATTENTION: Mr Anthony Norton / Mr Anton Roets

RE: REVIEW OF THE JUDICIAL SERVICE COMMISSION'S DECISION IN RELATION TO THE APPOINTMENT OF JUDGES TO THE SUPREME COURT OF APPEAL

Your letter dated 29 November 2023 refers.

Kindly note that I have consulted Phatshoane DJP regarding your request and she has no objection to permission being granted to your client to cite her as a respondent in the envisaged litigation.

This serves to confirm that in terms of section 47(1) of the Superior Courts Act, 10 of 2013, permission is granted to your client to cite Phatshoane DJP as a respondent on condition that no relief or costs will be sought against her.

Kind regards



L.P. TLALETSI
JUDGE PRESIDENT
NORTHERN CAPE DIVISION



AJR13



OFFICE OF THE JUDGE PRESIDENT
GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA

P O Box 442, PRETORIA 0001 - Tel 012- 314-9003 - Fax 012-326-4940
Palace of Justice, Church Square, Room 13, First Floor, Pretoria

Private Bag X7, JOHANNESBURG 2001 - Tel 011 494 8588 - Fax 086-207-1291
c/o Pritchard and Von Brandis Streets, Room 510, Fifth Floor, Johannesburg
E-mail: CLMabunda@judiciary.org.za

04 December 2023

TO: NORTON INCORPORATED
Attention: Mr. Anthony Norton
Per Email: anthony@nortonsinc.com

AND: NORTON INCORPORATED
Attention: Mr. Anton Roets
Per Email: anton@nortonsinc.com

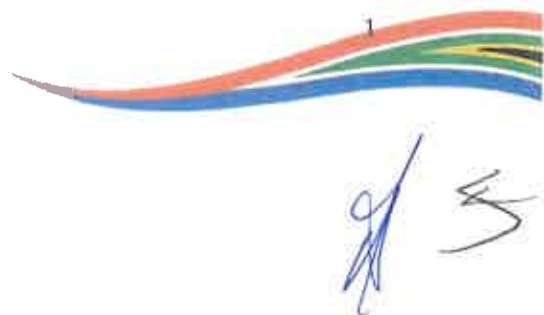
Dear Sirs,

RE: REVIEW OF THE JUDICIAL SERVICE COMMISSION'S DECISION IN RELATION TO THE APPOINTMENT OF JUDGES TO THE SUPREME COURT OF APPEAL – SECTION 47(1) CONSENT

1. The above matter and your letters dated 29 November 2023 and 4 December 2023 bear reference.
2. In your letters under reply, you indicate that you wish to institute review proceedings against the Judicial Service Commission ("JSC") and that in so doing you wish to cite as respondents two Judges from my Division, namely, Judge NTY Siwendu and Judge D Unterhalter, from whom you seek no relief, but have elected to cite due to the interest that they may have in the matter.
3. Under the circumstances, I hereby grant you permission in terms of section 47 of the Superior Courts Act 10 of 2013, to cite Judge Siwendu and Judge Unterhalter as aforesaid.

Yours faithfully,

D. MLAMBO
JUDGE PRESIDENT OF THE GAUTENG DIVISION
THE HIGH COURT OF SOUTH AFRICA



Gomolemo Sibeko

From: Elizabeth Vermeulen <EVermeulen@sca.judiciary.org.za>
Sent: Tuesday, 05 December 2023 08:16
To: Michelle Rawlinson
Cc: Anthony Norton; Anton Roets; Nina Christina Greyling; Gomolemo Sibeko
Subject: RE: Freedom Under Law // Judicial Service Commission

Dear Ms Rawlinson

I apologise for only responding now. President Molemela requested that I respond to your letter as follows:

'Please advise Messrs Nortons Inc that none of the judges alluded to in para 3.1 – 3.8 of their letter dated 29 November 2023 is a judge appointed to the Supreme Court of Appeal. It is therefore not necessary for me to express any views as to whether any of the judges concerned may be cited in the review application.'

I trust you will find the above in order.

Kind regards



Ms E Vermeulen
 Chief Registrar: Supreme Court of Appeal,
 Crn. President Brand & Miriam Makeba Streets
 Bloemfontein
 9300
 Tel: 051 - 412 7400
 Cell: 082 3399 729
 Email: EVermeulen@sca.judiciary.org.za
 Website: www.judiciary.org.za

From: Michelle Rawlinson <michelle@nortonsinc.com>
Sent: Monday, 04 December 2023 11:13
To: Elizabeth Vermeulen <EVermeulen@sca.judiciary.org.za>
Cc: Anthony Norton <anthony@nortonsinc.com>; Anton Roets <anton@nortonsinc.com>; Nina Christina Greyling <nina@nortonsinc.com>; Gomolemo Sibeko <gomolemo@nortonsinc.com>
Subject: Freedom Under Law // Judicial Service Commission

Dear Ms Vermeulen

We attach hereto an urgent letter for the attention of President Molemela.

We would be most grateful if you could bring the letter to the President's attention.

Kind regards

Michelle



NORTONS INC

MICHELLE RAWLINSON
 DIRECTOR

MICHELLE@NORTONSINC.COM
 WWW.NORTONSINC.COM
 +27 83 380 8444

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The Honourable Acting Judge President Nhlangulela
c/o Nomthandazo Klaas
Email: nklaas@judiciary.org.za

4 December 2023

Dear Acting Judge President Nhlangulela

Re: Review of the Judicial Service Commission's decision in relation to the appointment of judges to the Supreme Court of Appeal

- 1 We refer to your letter of 30 November 2023 in which you provided consent for Freedom Under Law to cite Judges Smith and Mjali in its review application in relation to the JSC process of recommending judges for appointment to the Supreme Court of Appeal, and thank you for your response in this regard.
- 2 In your letter, you indicated that you would contact the Judge President of the Eastern Cape Division in relation to obtaining his consent to cite you as a party to the review application as well. We would be most grateful to receive a response in this regard as, given the urgency of the matter, our client is quite anxious to formally launch the review application as soon as possible.
- 3 We thank you for your assistance to date and look forward to hearing from you.

Yours sincerely

Anthony Norton / Anton Roets
Nortons Incorporated

Competition Law Specialists | Litigation Attorneys | Regulatory Advice

Directors: Anthony Norton Anton Roets Paul Russell Michelle Rawlinson Warwick Radford Nicola Ilgner
Vice President Economics: Avias Ngwenya
Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele
Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580



The Honourable Judge President T P Poyo-Dlwati
c/o Norma Fynn
Email: nfyinn@judiciary.org.za

4 December 2023

Dear Judge President Poyo-Dlwati

Re: Review of the Judicial Service Commission's decision in relation to the appointment of judges to the Supreme Court of Appeal

- 1 We refer to our letter of 29 November 2023 in which we sought the permission of the Judge Presidents and Acting Judge Presidents of the various divisions to cite judges within their divisions in the review application which our client intends to launch against the Judicial Service Commission in relation to its process to recommend judges for appointment to the Supreme Court of Appeal.
- 2 We have received confirmation from the Judge President of the Northern Cape, the Acting Judge President of the Free State High Court, and the Acting Judge President of the Eastern Cape High Court, that our client may cite Deputy Judge President Phatshoane, Judge Mjali, Judge Daffue and Judge Smith in its review application.
- 3 Our client is, given the urgency of the matter, anxious to be able to formally launch the review application as soon as possible and would be very grateful if it were possible to obtain consent to cite the other named Justices, including Judge Masipa.
- 4 We would therefore be most grateful to receive your response to our letter of 29 November 2023, a copy of which is attached for ease of reference.

Competition Law Specialists | Litigation Attorneys | Regulatory Advice

Directors: Anthony Norton Anton Roets Paul Russell Michelle Rawlinson Warwick Radford Nicola Ilgner
Vice President Economics: Avias Ngwenya
Senior Associates: Nicci van der Walt Nina Greyling Melissa Steele
Company Registration Number: 2009/006902/21 VAT Registration Number: 4510252580





Yours sincerely

[Unsigned due to electronic transmission.]
Anthony Norton / Anton Roets
Nortons Incorporated