

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

**CASE NO.: 2023-129593**

In the matter between:

**FREEDOM UNDER LAW (RF) NPC**

**Applicant**

and

**THE JUDICIAL SERVICE COMMISSION**

**First Respondent**

**JOHANNES PETRUS DAFFUE**

**Second Respondent**

**MOKGERE BUSISWE SHAREEN MASIPA**

**Third Respondent**

**GLORIA NOZUKO MJALI**

**Fourth Respondent**

**ZAMANI MSWAZI NHLANGULELA**

**Fifth Respondent**

**MMATHEBE VIOLET PHATSOANE**

**Sixth Respondent**

**NAMHLA THINA YVONNE SIWENDU**

**Seventh Respondent**

**JOHN ELDRID SMITH**

**Eighth Respondent**

**DAVID UNTERHALTER**

**Ninth Respondent**

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**AMENDED NOTICE OF MOTION**

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## **PART A: URGENT REVIEW**

**TAKE NOTICE THAT** the applicant intends to apply to this court on a date to be arranged with the Registrar, for an order in the following terms:

- 1 This part A is urgent. The applicant's failure to comply with the rules of this court is condoned.
- 2 The following decisions taken by the first respondent on 2 and 3 October 2023 (*decisions under review*) are reviewed, declared unlawful and set aside:
  - (a) Its 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.
  - (b) Its failure to consider whether the remaining candidates should be recommended for appointment to the remaining two vacancies.
  - (c) Its decision not to recommend any of the remaining candidates for appointment to the remaining two vacancies.
- 3 The first respondent is directed, within 20 days of this order, to reconvene its meeting of 2 and 3 October 2023:
  - (a) to consider whether the remaining candidates are fit for appointment to the Supreme Court of Appeal;
  - (b) if more than two of them are fit for such appointment, to determine the two most suitable for such appointment; and

(c) to recommend the candidates so identified for appointment to the Supreme Court of Appeal.

4 The first respondent is ordered to pay the applicant's costs only if it opposes this part A.

5 Further or alternative relief.

#### **PART B: SELECTION CRITERIA**

**TAKE NOTICE THAT** the applicant intends to apply to this court for an order in the following terms:

1 The proceedings of the first respondent on 2 and 3 October 2023 are declared inconsistent with the Constitution, unlawful and consequently invalid.

2 Nothing in prayer 1 will affect the validity of the recommendation and subsequent appointment of Judges Kathree-Setiloane and Kgoele as Judges in the Supreme Court of Appeal in terms of section 174(6) of the Constitution pursuant to the proceedings of 2 and 3 October 2023.

3 The first respondent's failure to develop, publish and apply assessment criteria for the selection of candidates for appointment as judges, is declared to be unlawful.

4 The first respondent is directed, within three months, to develop and publish assessment criteria for the selection of candidates for the appointment as judges.

5 The first respondent is directed, when it selects candidates for appointment as judges, to require each of its members to assess each candidate, in writing, for compliance with its published assessment criteria.

**TAKE NOTICE THAT** the applicant will use the accompanying affidavit of Judith February in support of its application.

**TAKE NOTICE FURTHER THAT** the applicant will accept notice and service of all documents in these proceedings at the physical and email address of its attorneys of record below.

If you wish to oppose this part B, you must, after receipt of the applicant's supplementary affidavit or the expiry of the time period for the filing of such affidavit:

- a) within 15 days, give written notice to the applicant's attorneys of your intention to oppose and give an address, within 25 kilometres of the office of the registrar and an electronic mail address, where available, at either of which you will accept notice and service of all documents in these proceedings; and
- b) within 30 days, deliver your answering affidavit, if any.

If no notice is given of your intention to oppose this part B, it will be set down for hearing on a date to be arranged with the registrar of this court.

SIGNED at **Johannesburg** on this 25<sup>th</sup> day of January 2024.

**NORTONS INCORPORATED**  
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**TO: THE REGISTRAR**

**AND TO: THE RESPONDENTS  
C/o The State Attorney**

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