

COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Division, Pretoria

CASE NO: **2026-195890**

In the matter between:

AFRIFORUM NPC

Plaintiff / Applicant / Appellant

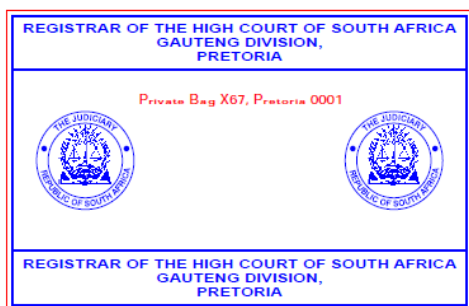
and

**ECONOMIC FREEDOM
FIGHTERS, JULIUS SELLO MALEMA**

Defendant / Respondent

Notice of Motion (Long Form)

NOTE: This document was filed electronically by the Registrar on 14/8/2026 at 2:26:31 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of Pretoria , Gauteng
Division,Pretoria**

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

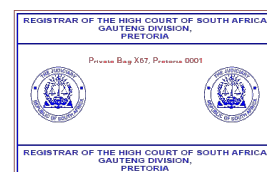
Case No: 2026-_____

In the matter between:

AFRIFORUM NPC

Applicant

and



ECONOMIC FREEDOM FIGHTERS

First Respondent

JULIUS SELLO MALEMA

Second Respondent

NOTICE OF MOTION

TAKE NOTICE that the abovementioned Applicant will make application to this Honourable Court for an order in the following terms:-

- 1) That the First and/or Second Respondent(s) are declared to be in contempt of court in respect of the order granted in this Honourable Court under case number 89196/16 by the Honourable Mabuse J;
- 2) That the First Respondent is fined in the amount of R 500,000-00, or such other amount as the Honourable Court deems appropriate;

- 3) That the Second Respondent is sentenced to imprisonment for a period of 18 months, or such other period as the Honourable Court deems appropriate or such other sanction as the Honourable Court deems appropriate;
- 4) That the First and/or Second Respondent(s) are ordered to pay the cost of the application on an Attorney and Client scale;
- 5) That further and/or alternative relief be granted.



KINDLY TAKE NOTICE that the accompanying Founding Affidavit of **CARL MARTIN KRIEL**, together with annexures thereto, will be used in support of the application.

TAKE FURTHER NOTICE that the Applicant has appointed attorneys **HURTER SPIES INCORPORATED**, with address mentioned hereunder, as attorneys and as address at which it will accept all documents, correspondence, notices and pleadings herein.

TAKE FURTHER NOTICE that if you intend opposing this application you are required:

- (a) to firstly notify the Applicant's attorneys in writing within 10 days of receipt hereof; and
- (b) secondly to file your Answering Affidavit, if any, within 15 days after having

given notice of intention to oppose (to which the Applicant reserves the right to reply).

FURTHER TAKE NOTICE that you are required to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, or if the answering affidavit is not timeously filed, the application will be made on a date and time determined by the Registrar, on the unopposed motion court roll.



KINDLY SET THE MATTER DOWN FOR HEARING ACCORDINGLY.

SIGNED AND DATED AT PRETORIA ON THIS THE 14th DAY OF AUGUST 2026.

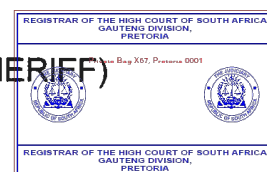
HURTER SPIES INCORPORATED
ATTORNEYS FOR APPLICANT
BUILDING 1
GREENPARK ESTATES
27 GEORGE STORRAR DRIVE
GROENKLOOF
PRETORIA
TEL: 012 941 9239
E-MAIL: wian@hurterspies.co.za

tharina@hurterspies.co.za
REF: W SPIES/MAT6997

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

AND TO: FIRST RESPONDENT
WINNIE MADIKIZELA MANDELA HOUSE,
119 MARSHALL STREET,
MARSHALLTOWN,
JOHANNESBURG

(SERVICE BY SHERIFF)



AND TO: SECOND RESPONDENT
WINNIE MADIKIZELA MANDELA HOUSE,
119 MARSHALL STREET,
MARSHALLTOWN,
JOHANNESBURG

(SERVICE BY SHERIFF)

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 2026-_____

In the matter between:

AFRIFORUM NPC

Applicant

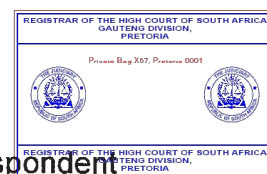
and

ECONOMIC FREEDOM FIGHTERS

First Respondent

JULIUS SELLO MALEMA

Second Respondent



FOUNDING AFFIDAVIT

I, the undersigned,

CARL MARTIN KRIEL

do hereby make oath and state the following:

1.

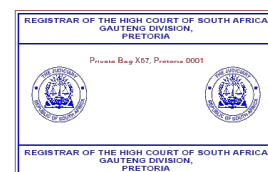
I am an adult male and Chief Executive Officer of the Applicant herein, with work address at AfriForum Building, cnr. of D.F. Malan and Union Avenues, Kloofsig, Centurion.

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2.

The content of this affidavit falls within my personal knowledge, unless the context indicates otherwise. To the best of my knowledge the content is both true and correct.

THE PARTIES:



3.

The Applicant is **AFRIFORUM NPC**, a non-profit company duly Incorporated in terms of the relevant legislation in the Republic of South Africa with registration number **2005/042861/08** and registered address / principal place of business at AfriForum Building, cnr. of D.F. Malan and Union Avenues, Kloofsig, Centurion. I am duly authorized to depose to this affidavit and to institute and conduct these proceedings on behalf of the Applicant.

4.

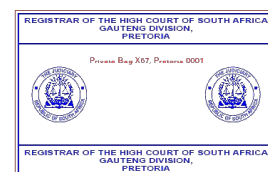
The First Respondent is the **ECONOMIC FREEDOM FIGHTERS**, a registered political party and/or an organization with its address at Winnie Madikizela Mandela House, 119 Marshall Street, Marshalltown, Johannesburg.

5.

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The Second Respondent is **JULIUS SELLO MALEMA**, an adult male politician and member of Parliament and the leader or "Commander in Chief" of the First Respondent, with work address at Winnie Madikizela Mandela House, 119 Marshall Street, Marshalltown, Johannesburg.

PURPOSE OF THIS APPLICATION:



6.

The purpose of this application is to seek relief declaring First and/or Second Respondent/s to be in contempt of Court in respect of an Order of this Honourable Court.

7.

The Applicant will also seek that an appropriate sanction be imposed for such contempt of Court.

8.

A punitive cost order will also be sought against the Respondents

BACKGROUND AND LITIGATION HISTORY:

9.

The background and litigation history will deal with the existence of the Order and will also clearly show awareness of the order from the side of both Respondents.



10.

The relevant order was granted in this Honourable Court by the Honourable Mr. Justice Mabuse on 7 March 2017 under case number 89196/16. I annex a copy of the order hereto as **Annexure "FA1"**. Prayer 1 of the order is the relevant prayer. It reads that:

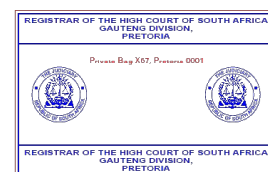
"1. First and Second Respondents are interdicted from inciting and/or instigating and/or commanding and/or procuring any individual/s to commit the crime of trespassing as described in the Trespass Act, 6 of 1959 and/or to enter any land belonging to or in control of any individual/s or entity/entities, without the required permission of the landowner/s or lawful occupant/s of the land, or a lawful entitlement to do so."

11.

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Initially there was another Applicant in the litigation along with the current Applicant. That entity was formerly known as AfriSake NPC and is now known as Sakeliga NPC. Sakeliga NPC has indicated that it waives any possible right to be joined to the current proceedings. I annex correspondence received from Sakeliga in this regard hereto as **Annexure "FA2"**.

12.



The current Respondents became aware of the Order and initially sought to rescind same. I annex copies of the relevant returns of service hereto as **Annexures "FA3"** and **"FA4"** respectively. It shows service of the relevant order that is being defied on the First Respondent on 23 March 2017 and personal service on the Second Respondent on 30 March 2017.

13.

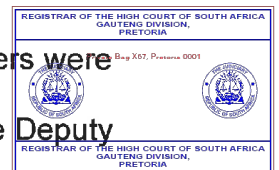
I furthermore annex 2 copies of the Notice of Motion (slightly amended versions with the second one also seeking condonation) in the rescission application attempted by the Respondents (as Applicants) in respect of the relevant order hereto as **Annexure "FA5"** and **"FA6"** respectively. The initial notice of motion is dated 6 April 2017 and the amended version is dated 10 April 2017.

14.

A handwritten signature in black ink, appearing to be a stylized 'A' or similar character, located in the bottom right corner of the page.

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After some delay caused by *inter alia* the Respondents not timeously filing heads of argument, the rescission application was eventually dismissed on 12 February 2018. I annex a copy of the relevant Order in this regard hereto as **Annexure "FA7"**. The Honourable Court will note that the Order dismissing the rescission application was granted by the Honourable Nathan AJ in the Johannesburg High Court. A practice existed at the time where matters were transferred between the Pretoria and Johannesburg High Courts if the Deputy Judge President deemed it more appropriate to hear the case in the other division. Nothing turns on this.



15.

The order in terms of the rescission application which was dismissed was also served on both current Respondents and on their attorneys, as is indicated by the Returns of Service attached hereto as **Annexure "FA8"** and **"FA9"** respectively and the Filing Notice that I annex hereto as **Annexure "FA10"**.

16.

The Respondents thereafter approached this Honourable Court on an urgent basis to stay the execution of the cost orders granted by Mabuse J and Nathan AJ, pending the outcome of a constitutional challenge launched by

- 7 -

them, which was at the time schedule for hearing on 12 and 13 December 2018 in this Honourable Court.

17.

The constitutional challenge (which commenced in the High Court) eventually led to the now reported judgment of the Constitutional Court in *Economic Freedom Fighters & Another v. Minister of Justice and Correctional Services & Another*, 2021 (2) SA 1 (CC).



18.

The current Applicant was, however, not a party to the constitutional challenge. The attempt at suspending the operation of the cost orders was struck from the urgent roll for lack of urgency by the Honourable Judge Louw. I annex a Notice of Motion and the relevant Order striking that application to stay execution from the roll hereto as **Annexure "FA11"** and **"FA12"** respectively hereto.

19.

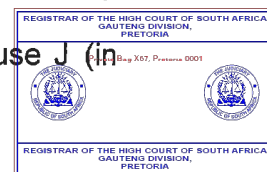
A belated application for leave to appeal against the initial default judgment by the Honourable Mabuse J was then served by the Respondents on or about 13 November 2018. I annex a copy of this application hereto as **Annexure**

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"FA13". This is yet another indication of awareness of the order from the side of the Respondents.

20.

The Respondents have also since duly paid the cost orders granted by Nathan AJ and Louw J. Eventually the cost order granted by Mabuse J (in respect of the order now contravened) was also paid.



21.

The Respondents approached the Constitutional Court for direct access after Mabuse J dismissed the belated application for leave to appeal. I annex the order and judgment dismissing the application for leave to appeal by Mabuse J hereto as **Annexure "FA14"** and **"FA15"** respectively.

22.

The Constitutional Court thereafter dismissed an application for direct access in its order dated 22 March 2023. I annex a copy of this order hereto as **Annexure "FA16"**. It should be noted that the Constitutional Court on this occasion it was not only decided that it was not in the interest of justice to not grant direct access (after Mabuse J dismissed leave to appeal), but it in fact decided that:

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“... the application should be dismissed as it bears no reasonable prospects of success”.

23.

Thereafter the Respondents approached the Supreme Court of Appeal for leave to appeal (despite the fact that the highest Court had already stated that there was no prospect in such an attempt).



24.

This, unsurprisingly, led to the Supreme Court of Appeal also dismissing the application for leave to appeal with cost in its order dated 22 June 2023, that is annexed hereto as **Annexure "FA17"**.

25.

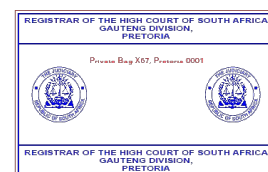
To the surprise of the Applicant, the Respondents then again appealed to the Constitutional Court (after that Court had already found that the application had no merit).

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26.

Unsurprisingly, this second approach by the Respondents to the Constitutional Court was dismissed on 28 September 2023 because the Court held that the issue had already been decided. I annex a copy of this order hereto as **Annexure "FA18"**.

27.



I annex a press release from the First Respondent dated 28 September 2023 (same date as date of the order by the Constitutional Court) hereto as **Annexure "FA19"**. The statement was released in response to the decision of the Constitutional Court to (again) dismiss the application for leave to appeal. The second paragraph thereof reads that:

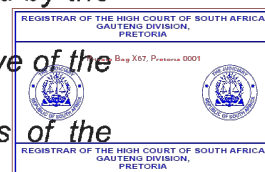
"The matter which has been before our courts has now reached finality, with a disappointing and frankly a ahistoric judgment, that criminalizes a practical expression of the demand to reserve the sins of colonialism and land theft. It is our considered view, that the call for Africans to occupy land should they have the need to do so, either for residential or agricultural purposes, is part of the very identity of our nation and our history."

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28.

The statement continues:

"The call for those who are deprived of land to occupy a piece of land should they need to do so, is in line one again with a demand by the Freedom Charter, in that the land has never been the preserve of the individual, but an asset of all people. Since the demands of the liberation struggle of equitable distribution of land have not been achieved, this demand remains relevant and ought to remain, until a capable state is in a position to distribute land equitably."



29.

It is furthermore stated that:

"Therefore, the interdict which has been upheld by the Constitutional Court is not a defeat for the EFF, but a criminalization of our liberation history that all progressive forces of society ought to condemn."

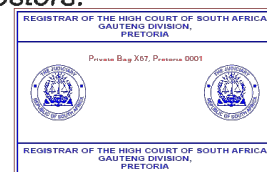
- 12 -

30.

The second last paragraph ended that:

"... no one must ever feel that they are a criminal, for occupying a piece of land in the land of their birth and the land of their ancestors."

31.



It can hardly be clearer that the Respondents were aware of the initial Court Order (that they tried to reverse on several occasions) and the eventual outcome. They also accepted that the Constitutional Court has had the final say on the matter. A clear intention to defy the order can also be seen from this statement. The statement is in itself contemptuous.

32.

Knowledge of the Order is accordingly proven beyond any doubt. I also pause to mention that in all the applications to undo the order (rescission and leave to appeal to all the various courts), the Second Respondent was the deponent on behalf of the First Respondent. The Respondents have also paid all cost orders, including those granted by the Constitutional Court against them. The Second Respondent is the political head and so-called "commander in chief" of the First Respondent and accordingly has intimate

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knowledge of and control over the actions and decisions of the First Respondent. The actions of the First Respondent can also be attributed to him and *vice versa*.

33.

On 6 April 2025 the First Respondent posted on its page on X (previously Twitter). The post was on the official page of the First Respondent with the handle @EFFSouthAfrica. I annex a copy of the relevant posting hereto as **Annexure "FA20"**. The message, *inter alia*, reads that:



“ – after today, right at this moment, our people must go get the land. Occupy everywhere where they need to farm and build houses!”

34.

This is clear *mala fide* disobedience of the Court Order, calling for unlawful land occupation and acts of trespassing whenever the members/supporters of the First Respondent identify a need. Clearly the intention communicated is that property rights and the rights of lawful occupants of land should be ignored or trampled, if a need for housing or farming land is claimed to exist.

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35.

I also pause to mention that this occurrence was on the date of a rally of the First Respondent, which was called a "*land reclamation rally*". The rally was, *inter alia*, addressed by the Second Respondent, the leader of the First Respondent.

36.



The First and Second Respondents committed further contempt of court when the Second Respondent addressed a public lecture organised by the First Respondent on 23 July 2026 in Polokwane, Limpopo Province.

37.

The Applicants are in possession of a video recording of the relevant speech by the Second Respondent. He presents this speech in front of a banner of the First Respondent and addresses a large crowd, donning the well-known red regalia of members/supporters of the Economic Freedom Fighters.

38.

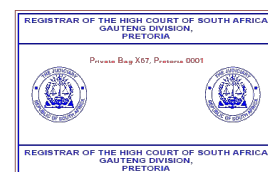
A link to the relevant video material is the following:

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<https://www.youtube.com/watch?v=sSROzX5sICI> from the 33rd minute and further.

A copy of the video will also be made available to the Honourable Court during the hearing.

39.

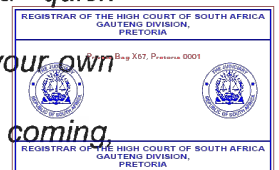


In the video at approximately 33 minutes and 30 seconds the Second Respondent, *inter alia*, says:

"...Here is Alexandra. Millions of black South Africans are squeezed together in one place. Next to Alexandra there is an open land owned by University of Witwatersrand. Witwatersrand because it is associated with a white man. These blacks are scared to go and occupy that land. They will rather stay in squalor, squeezed, cramped like sardines and then they see a land that looks like it's owned by a white man, they will never go there. Instead of saying, but we can't live like this, let's unite and go and take that thing. We don't do that. A good picture is a picture of Stellenbosch. What is that Kayamnandi just outside Stellenbosch. There is a squatter camp, I don't know it is formalised now. There is a squatter camp. Those guys stay like this and it's a bit on a hill. When you are there, there is a beautiful land

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green all over going those many hectares with one house of a white man in a 3000 hectares of land with one white house, British colonial design house. They will never go there. And when I go to Kayamnandi I say to them, we must go and take that land. We must go and occupy that land. We can't live like this. They don't go, but I will never stop, because to politicise people is not a quick arrangement, it's longevity. If you are used to quickies, it's your own problem. We are used to longevity. So revolution is not I'm coming. I'm coming, I'm coming (laughing). No. Revolution is about working on instilling ideas on young people until they appreciate these ideas. One day when the youth of Kayamnandi stand up and go into that farm at Stellenbosch they will be speaking about us the same way we speak about Onkgopotse Tiro" (own emphasis)



(Ironically, there is no known record or evidence of Onkgopotse Tiro, despite advocating for redress and redistribution of land, ever calling for or encouraging the occupation, invasion, trespassing, or seizure of land or farms belonging to white people.)

40.

From this paragraph the Respondents make clear that they have no intention to stop calling for land invasions in respect of private land in particular (but it appears also the land of Universities and/or state land). The also do not care

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if there is a lawful owner or occupant (or household) there. From the statement it is also clear that the Second Respondent is of the view that those who he instigates or commands or procures to unlawfully enter land might likely act and resort to such criminality in future.

41.

There is clearly wilful and *mala fide* disobedience of the Court order. It is also clear that further and continuous violation is threatened.



42.

A prominent politician and political party cannot propagate or incite any conduct that has the potential to infringe on property rights or other lawful existing rights to occupation (lease agreements etc). This cannot be done, even if there is a need. This has already been dealt with in the initial litigation. The Respondents have no choice. They must respect the order by Mabuse J. All their attempt to undo same has failed in all Courts.

43.

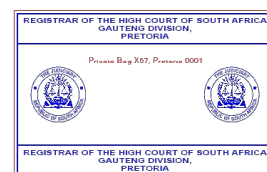
The Respondents are called upon to indicate what an appropriate sanction would be in the event that they (or anyone of them) is found to be in contempt of Court. Such relevant factors can include previous criminal history and

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similar cases, age, health conditions, income, dependants, etc. The Respondents are also welcome to address any other factor/s that they deem relevant as to an appropriate sanction.

PUNITIVE COST ORDER:

40.



A punitive cost order is, with respect, clearly warranted under these circumstances. Such blatant defiance of the Orders of this Honourable Court (and confirmed by the Highest Court) can simply not be tolerated.

41.

This Court should send a strong message in this regard. There will be a Constitutional crisis if litigants can simply choose to ignore and defy court orders.

42.

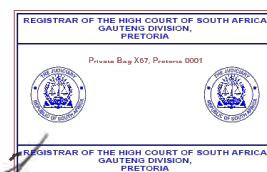
The Applicant should also not be out of pocket when having to litigate to curtail such blatant defiance of Court Orders.

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43.

CONCLUSION:

The Applicant accordingly respectfully prays for the relief as sought in the Notice of Motion.



**CARL MARTIN KRIEL
DEPONENT**

Thus sworn and signed at Cape Town on this 7th
day of August 2026, before me,
Mathilda Westley, commissioner of oaths, the
deponent having acknowledged that he understands the contents of this
affidavit, has no objection in taking the oath and regards the oath as binding
on his conscience after complying with the requirements of government notice
R1258, dated 21 July 1972, as amended.

Mathilda Westley B.Proc
Commissioner of Oaths
6, Springbok Rd, Langeberg Ridge

COMMISSIONER OF OATHS

"FA1"

SP 3
P
1/11/17

2017-03-07

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Before the Honourable Judge Mabuse
On 07 March 2017

Case No: 89196 / 16

In the matter between:

AFRIFORUM NPC

First Applicant

AFRISAKE NPC

Second Applicant

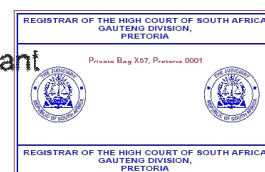
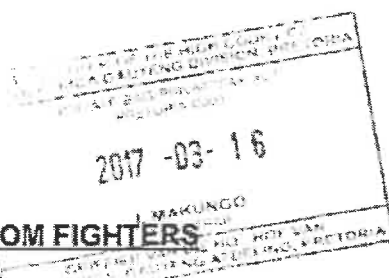
and

ECONOMIC FREEDOM FIGHTERS

JULIUS SELLO MALEMA

First Respondent

Second Respondent



DRAFT ORDER

After having read the documents filed and considering the matter and hearing argument on behalf of the Applicants

IT IS ORDERED

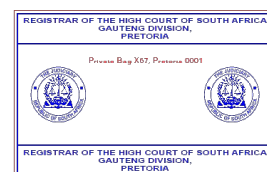
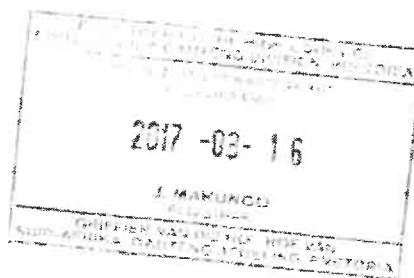
- 1) The First and Second Respondents are interdicted from inciting and/or instigating and/or commanding and/or procuring any individual/s to commit the crime of trespassing as described in the *Trespass Act*, 6 of 1959 and/or to enter any land belonging to or in control of any individual/s or entity/entities,

[Handwritten signature]

without the required permission of the land owner/s or lawful occupant/s of land, or a lawful entitlement to do so

- 2) The First and Second Respondents are ordered to pay the cost of the Application on an Attorney and Client scale, jointly and severally, the one paying the other to be absolved, which cost shall include the cost of two Counsel where so employed.

P.P. 
BY ORDER
THE REGISTRAR






Wian Spies

From: Heleen van der Merwe <h.vandermerwe@sakeliga.org.za>
Sent: Monday, 03 August 2026 08:46
To: Wian Spies
Subject: Beoogde minagtingsaansoek (Hofbevel Maart 2017 - Saaknommer: 89196/16)

Beste Wian,

Ek verwys na ons vorige korrespondensie rakende AfriForum se beoogde minagtingsaansoek.

Ons is geadviseer dat AfriForum sonder ons medewerke wel volledige *locus standi* het om 'n aansoek om minagting as enkel-applikant te kan bring, aangesien die bevel deur enige belanghebbende party afgedwing kan word.

Alhoewel afdwinging van die bevel belangrik is, sal Sakeliga ongelukkig nie in hierdie stadium in enige nuwe aansoeke as mede-applikant kan dien nie. Ons doen afstand van betekening in ~~soverein~~ Sakeliga 'n belang in die aangeleentheid het.



Alle voorspoed aan AfriForum met die aansoek.

Vriendelike groete

Heleen van der Merwe
Regsbeampte

Gebou A, Vloer 5, Loftus Park
 Kirknessweg 416, Pretoria
 Pleinstraat 43, Steilenbosch
 +27 12 880 1951
h.vandermerwe@sakeliga.org.za
sakeliga.org.za / (EN)
 Befonds ons Missie | Sakeliga



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION PRETORIA

POST

"FA3"

IN THE MATTER BETWEEN :

CASE NO : 89196/16

AFRIFORUM NPC
AFRISAKE NPC

1ST APPLICANT
2ND APPLICANT

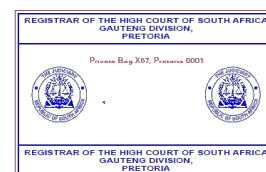
and
ECONOMIC FREEDOM FIGHTERS

1ST RESPONDENT

O R I G I N A L

(REG.NO. 4250141902)

RETURN OF SERVICE



On the 23RD DAY of MARCH 2017 at 11H48 and at
LEVEL 3 MINERALIA BUILDING, 78 DE KORTE STR, BRAAMFONTEIN, JHB
the annexed
COURT ORDER DATED 07/03/17
was served on 1ST RESPONDENT by delivering a copy thereof to
MR LINDE XAVIER MABENGWANE HEAD OF LEGAL
who is apparently over the age of 16 years and being a responsible
employee of 1ST RESPONDENT at 1ST RESPONDENT'S
place of business upon exhibiting the original and
explaining the nature and contents thereof, in terms of RULE 4(1)(a)(v))

Dated at Johannesburg this 24th March 2017

CG1

Fees set out as follows:

Service	55.00
Travelling	20.00
Registration	0.00
Return	20.50
Urgent Fee	350.00
DX/POST/PETTIES	21.93
FAX & PHONE	34.50

Attorneys : HURTER SPIES ATTORNEYS
P O BOX 14505
LYTTLETON 0140

0000

Your ref.: AF0024/TERTIUS KRUGER

Our ref.: 005/A44565/H44

INVOICE NO : 571761
SHERIFF JHB. NORTH - UNIT 01
51/61 ROSETTENVILLE ROAD
VILLAGE MAIN OFFICE PARK
P.O. BOX 9025 JHB 2000

Tel (011) 334-4397/90

Fees :R 517.93 R 72.51 Vat = R 590.44 Fax (011) 334-4320

"FA4"

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

In the matter between:

AFRIFORUM NCP

and:

MR JULIUS SELLO MALEMA

Case No – Saak No

59196/16

1ST APPLICANT

2ND RESPONDENT

Return in accordance with the provisions of the Supreme Court Act 59 of 1959, as amended

RETURN OF SERVICE: PERSONAL SERVICE (Rule 4(1)(a)(i)).

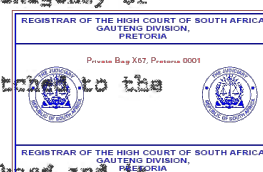
ORDER

On this 30th day of MARCH 2017 at 15:55 I served this ORDER upon MR JULIUS SELLO MALEMA, 2ND RESPONDENT personally at CONSTITUTIONAL COURT 1 HOSPITAL STREET BRAMFONTEIN JOHANNESBURG by handing to the abovementioned a copy thereof after explaining the nature and exigency of the said process. (Rule 4(1)(a)(i)).

Note:

The original return together with the original abovementioned process, is despatched to the mandator.

Note: Refused to accept service, document handed by means of touching it to his hand and it dropped on his feet.



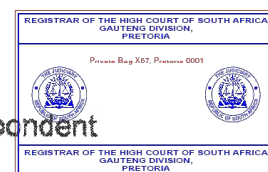
Invoice No. Dokument No.	Date Datum	31.03.2017	Tax Invoice Number Bulsaangfakture Nr.	I 175300
Description.			Qty	Vat Amount
Service			1	7.75 35.00
Return			1	7.99 28.52
Registration			1	0.00 0.00
Copies			1	0.45 1.80
Travelling			1	4.90 16.00
Emergency fee			1	43.00 150.00
Telephone call			1	12.00 40.00
Post/Express (V)			1	2.74 10.00
VAT / BTW				81.98
Total				667.55
VAT Reg No. BTW Reg No.	4020158368	You may require this account to be taxed and voided before payment. U kan versoek die Rekening revoqueer getekend en gestemp word voor betaling.		
HURTER SPIES ATT PO BOX 14505 LYTTTELTON 0140			Account No. * Rekening Nr. Your Reference * U Verwysing My Reference * My Verwysing Ref: 579143/2006/1	
			20075 VatReg TERTIUS KRUGER/AP002 	
			Registrar: GAUTENG DIVISION -PRETORIA	

"FA5"**THE HIGH COURT OF SOUTH AFRICA****GAUTENG DIVISION, PRETORIA****Case No:89196/16**

the matter between:

ECONOMIC FREEDOM FIGHTERS**First Applicant****JULIUS SELLO MALEMA****Second Applicant**

and

AFRIFORUM NPC**First Respondent****AFRISAKE NPC****Second Respondent****NOTICE OF APPLICATION – RESCISSION OF DEFAULT ORDER**

TAKE NOTICE that the applicants will make application to the above Honourable Court for the following Order:

- (a) rescinding the Order of Mabuse J dated 7 March 2017.
- (b) costs to be costs in the main application, save in the event of opposition, the party so opposing this rescission application be ordered to pay costs.
- (c) further and/or alternative relief.

TAKE NOTICE FURTHER that the attached affidavit of **JULIUS SELLO MALEMA** will be used in support of this application.

TAKE NOTICE FURTHER that the Applicants have appointed the offices of **MESSRS KWINANA & PARTNERS INC** of 119 First Avenue, Fairland,

2

Randburg, c/o **MASEKELA MASENYA ATTORNEYS**, Suite N503 – N504,
JSL Towers, 259 Pretorius Street, Pretoria Central as the address at which it
will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if the respondents intend opposing this application,
they must:

1. Notify the Applicants' attorneys thereof in writing within 5 days of receipt
hereof;
2. File their answering affidavit (if any) within 15 days after having given notice to
oppose the Application.



TAKE NOTICE FURTHER that if no Notice to Oppose is received, or if the
Answering Affidavit is not received in time, the Application will be heard on
08 June 2017 at 10:00 or so soon thereafter as counsel
may be heard.

SIGNED AND DATED at JOHANNESBURG on this 6th day of April 2017.

KWINANA & PARTNERS INC

Applicants' Attorneys

119 First Avenue

Fairland

Johannesburg

PO Box 781276, Sandton, 2146

Tel: 011 057-1016/ 011 678 1816

Fax: 086 561 7741

3

E-mails: thabo@kp.co.za &
tendai@kp.co.za

Docex 48, Rosebank

Ref: Mr Kwinana/Ms Mrerwa

c/o MASEKELA MASENYA ATTORNEYS

Suite N503 – N504

JSL Towers

259 Pretorius Street

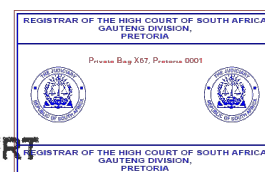
PRETORIA

Tel: 012 771 5832/ 012 772 3392

Fax: 086 516 7552

Email: alphy@maslaw.co.za

Ref: Mr ALPHY MASENYA



TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT
 PRETORIA

AND TO: HURTER SPIES INCORPORATED
 Respondents' Attorneys
 1st Floor, Afriforum Building
 Cnr of DR Malan and Union Avenue
 Kloofsig
 Centurion
 Tel: 012 941 9239
 Fax: 012 644 1997
 Email: tertius@hurterspies.co.za
 Ref: AF0028

Ontvang Sonder Benadeling
 Received Without Prejudice
 Hurter Spies Ing / Inc

Received copy hereof on 7
 day of April 2017 9:56

[Signature]
 For: Respondents' Attorneys

[Signature]
[Signature]

1(a)

"FA6"

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No:89196/16

In the matter between:

ECONOMIC FREEDOM FIGHTERS

First Applicant

JULIUS SELLO MALEMA

Second Applicant

and

AFRIFORUM NPC

First Respondent

AFRISAKE NPC

Second Respondent



SUPPLEMENTARY NOTICE OF MOTION – RESCISSION OF DEFAULT ORDER

TAKE NOTICE that the applicants will make application to the above Honourable Court for the following Order:

- (a) condoning the late filing of the Applicants' rescission application.
- (b) rescinding the Order of Mabuse J dated 7 March 2017.
- (c) costs to be costs in the main application, save in the event of opposition, the party so opposing this rescission application be ordered to pay costs.
- (d) further and/or alternative relief.

TAKE NOTICE FURTHER that the attached supplementary affidavit of THABO SINDISA KWINANA will be used in support of this application.

1(b)

TAKE NOTICE FURTHER that the Applicants have appointed the offices of **MESSRS KWINANA & PARTNERS INC** of 119 First Avenue, Fairland, Randburg, c/o **MASEKELA MASENYA ATTORNEYS**, Suite N503 – N504, JSL Towers, 259 Pretorius Street, Pretoria Central as the address at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if the respondents intend opposing this application, they must:

1. Notify the Applicants' attorneys thereof in writing within 10 days of receipt hereof;
2. File their answering affidavit (if any) within 15 days after having given notice to oppose the Application.



TAKE NOTICE FURTHER that if no Notice to Oppose is received, or if the Answering Affidavit is not received in time, the Application will be heard on 08 June 2017 at 10:00 or so soon thereafter as counsel may be heard.

TAKE NOTICE FURTHER that the attached supplementary affidavit of **THABO SINDISA KWINANA** will be used in support of this application.

SIGNED AND DATED at JOHANNESBURG on this 10th day of April 2017

[Handwritten signature] 1(c)

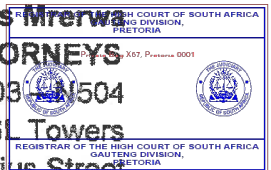
KWINANA & PARTNERS INC
Applicants' Attorneys

119 First Avenue
Fairland
Johannesburg
PO Box 781276, Sandton, 2146
Tel: 011 057-1016/ 011 678 1816
Fax: 086 561 7741
E-mails: thabo@kp.co.za &
tendai@kp.co.za
Docex 48, Rosebank

Ref: Mr Kwinana/Ms Mmerwa
c/o MASEKELA MASENYA ATTORNEYS

Suite N503 - N504
JSL Towers
259 Pretorius Street
PRETORIA

Tel: 012 771 5832/ 012 772 3392
Fax: 086 516 7552
Email: alphy@maslaw.co.za
Ref: Mr ALPHY MASENYA



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

AND TO: HURTER SPIES INCORPORATED
Respondents' Attorneys
1st Floor, Afriforum Building
Cnr of DR Malan and Union Avenue
Kloofsig
Centurion
Tel: 012 941 9239
Fax: 012 644 1997

Ontvang sonder enige beswaarsêding
Received Without Prejudice
Email: tertius@hurterspies.co.za

Received copy hereof on 10
day of April 2017 11:59

[Handwritten signature]
For: Respondents' Attorneys

Hurter Spies Ing / Inc

"FA7"

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2018/04832
P/H NO: 0

JOHANNESBURG, 12 February 2018
BEFORE THE HONOURABLE ACTING JUDGE NATHAN

In the matter between:-

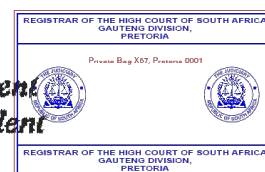
**ECONOMIC FREEDOM FIGHTERS
JULIUS SELLO MALEMA**

*1st Applicant
2nd Applicant*

and

**AFRIFORUM NPC
AFRISAKE NPC**

*1st Respondent
2nd Respondent*

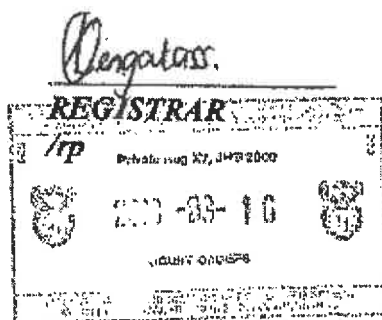


HAVING read the documents filed of record and having considered the matter:-

IT IS ORDERED THAT:-

1. Draft Order marked "X" signed and dated 12 February 2018, is made an Order of Court.

BY THE COURT



[Handwritten signature]
[Handwritten signature]

X' ~~Call~~ 12/8/2018

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION & PRETORIA

Case No 89196/16.

Before the Honourable
Justice Nathan AJ

In the matter between

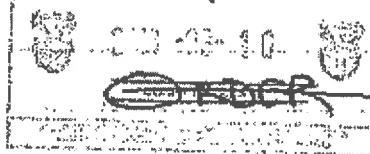
ECONOMIC FREEDOM FIGHTERS

1st Applicant

JULIUS SELLO MOHEMBA

2nd Applicant

And



AFRIFORUM NPC
AFRAAKE NPC

1st Respondent
2nd Respondent

ORDER

After hearing Counsel for the Respondent
and having considered the matter

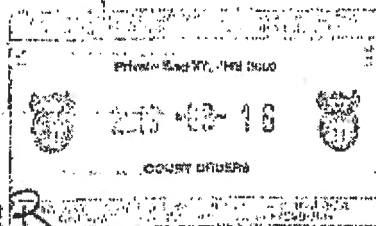
It is Ordered

- 1) The application for rescission of the judgment of 7 March 2017 is dismissed with costs - which costs shall include the costs of two counsel where no employee
- 2) Applicants to pay the costs jointly and severally, the one paying the other to be absolved.

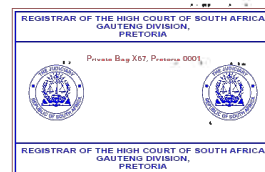
[Handwritten signature]

By ORDER

Deputy
REGISTRAR



12 FEBRUARY 2018



[Handwritten signature]

"FA8"

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION JOHANNESBURG

POST

IN THE MATTER BETWEEN :

CASE NO : 4832/18

ECONOMIC FREEDOM FIGHTERS

1ST APPLICANT

and
AFRIFORUM NPC
AFRISAKE NPC

1ST RESPONDENT
2ND RESPONDENT

ORIGINAL

(REG. NO. 4250141902)

RETURN OF SERVICE



On the 26TH DAY of MARCH 2018 at 09H46 and at
78 DE KORTE STR, JHB
the annexed
COURT ORDER DATED 12/02/18 & DRAFT ORDER
was served on 1ST APPLICANT by delivering a copy thereof to
ME NOMOHLE HUMAN RESOURCES MANAGER
who is apparently over the age of 16 years and being a responsible
employee of 1ST APPLICANT at 1ST APPLICANT's principal
place of business upon exhibiting the original and
explaining the nature and contents thereof, in terms of RULE 4(1)(a)(v))

Dated at Johannesburg this 29th March 2018

E61

Fees set out as follows:

Service	55.00
Travelling	20.00
Registration	10.00
Return	33.50
Urgent Fee	350.00
DX/POST/PETTIES	23.95
	.00

Attorneys : HURTER SPIES ATTORNEYS
P O BOX 14505
LYTTTELTON 0140

0000

Your ref.: AF0028/T KRUGER

Our ref.: 005/863093/H44

Fees R 492.45 R 68.94 Vat = R 561.39 Fax (011) 334-4320

INVOICE NO : 609103
SHERIFF JHB-NORTH - UNIT B1
51/61 ROSETTEVILLE ROAD
VILLAGE MAIN OFFICE PARK
P.O. BOX 9025 JHB 2000

Tel (011) 334-4397/98

"FA9"

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION JOHANNESBURG

POST

IN THE MATTER BETWEEN :

JULIUS SELLO MALEMA

CASE NO 14832/18

2ND APPLICANT

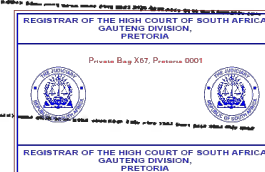
and
AFRIFORUM NPC
AFRISAKE NPC

1ST RESPONDENT
2ND RESPONDENT

ORIGINAL

(REG. NO. 4250141902)

RETURN OF SERVICE



On the 26TH DAY of MARCH 2018 at 09H46 and at
78 DE KORTE STR, JHB
the annexed
COURT ORDER DATED 12/02/18 & DRAFT ORDER
was served on 2ND APPLICANT by delivering a copy thereof to
ME NOMGHELE HUMAN RESOURCES MANAGER
who is apparently over the age of 16 years and being a responsible
employee of 2ND APPLICANT at 2ND APPLICANT'S
place of business upon exhibiting the original and
explaining the nature and contents thereof, in terms of RULE 4(1)(a)(v))
NOTE
UNABLE TO SERVE PERSONALLY

Dated at Johannesburg this 29th March 2018

E61

Fees set out as follows:

Service	55.00
Travelling	.00
Registration	.00
Return	33.50
DX/POST/PETTIES	.00
	.00

Attorneys : HURTER SPIES ATTORNEYS
P O BOX 14505
LYTTTELTON 0140

Your ref.: AF0020/T KRUGER

Our ref.: 005/863893/H44

Fees :R 88.50 R 12.39 Vat = R 100.89 Fax (011) 334-4320

INVOICE NO : 609104
SHERIFF JHB. NORTH - UNIT B1
51/61 ROSETTENVILLE ROAD
VILLAGE MAIN OFFICE PARK
P.O. BOX 9025 JHB 2000

Tel (011) 334-4397/98

"FA10"

1

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 89196/16

In the matter between

ECONOMIC FREEDOM FIGHTERS

FIRST APPLICANT

JULIUS SELLO MALEMA

SECOND APPLICANT

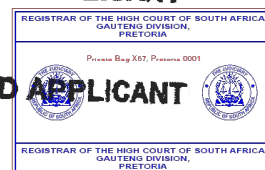
and

AFRIFORUM NPC

FIRST RESPONDENT

AFRISAKE NPC

SECOND RESPONDENT



FILING NOTICE

DOCUMENT: COURT ORDER DATED 7 MARCH 2017 & 12 FEBRUARY 2018

FILED BY:

HURTER SPIES INC
Attorneys for the Respondent
First Floor, Amiforum Building
Corner of the DF Malan Drive
Kloofsig, Cape Town
Tel: (012) 664 0788
Fax: (012) 644 1997
Ref: T Kruger/cvv/AF0028

2

TO: THE REGISTRAR OF THE HIGH COURT
Pretoria

AND TO: KWINANA & PARTNERS INCORPORATED
Applicants' Attorneys
119 First Avenue, Fairland
Johannesburg

Tel: (011) 057 1016/(011) 678 1816

Fax: (086) 561 7741

E-mails: thabo@kp.co.za & tendai@kp.co.za

Ref: Mr. Kwinana/Ms Mrerwa

C/O MESSRS NKOME ATTORNEYS

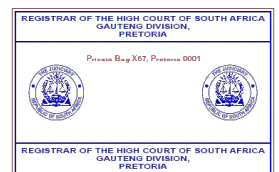
Suite 204 Hatfield Forum East

1077 Arcadia Street

Hatfield

Tel: (012) 342 6009

Ref: Mr. A Nkome



WITHOUT PREJUDICE

Received Copy Hereof:	
Date:	17/04/2018
Name:	
Signature:	

10109

"FA11"

1

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 89198/16

In the application for the temporary stay of proceedings of:

JUULIUS SELLO MALEMA

First Applicant

ECONOMIC FREEDOM FIGHTERS

Second Applicant

and

AFRIFORUM NPC

First Respondent

AFRISAKE NPC

Second Respondent

THE SHERIFF (JOHANNESBURG NORTH)

Third Respondent



In the matter between:

AFRIFORUM NPC

First Applicant

AFRISAKE NPC

Second Applicant

and

ECONOMIC FREEDOM FIGHTERS

First Respondent

JUULIUS SELLO MALEMA

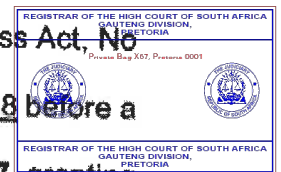
Second Respondent

NOTICE OF MOTION
APPLICATION FOR TEMPORARY STAY OF PROCEEDINGS

TAKE NOTICE THAT on Wednesday, 14 November 2018 at 10h00 or so soon thereafter as the matter may be heard, the first and second applicants (Julius Sello

Malema and the Economic Freedom Fighters, respectively) will make application to the Court at the hearing for the application for contempt in case number 89196/16, the for the following orders:

1. Dispensing with the forms and notices and time periods as set out in rule 6(5) of the above Honourable Court and enrolling and hearing this matter as a matter of urgency;
2. That pending the outcome of the constitutional challenge to the Trespass Act, No 6 of 1959, presently scheduled for hearing on 12 and 13 December 2018 before a Full Bench of this Division with case numbers 89196/16 and 45666/2017, granting a temporary stay of proceedings to the extent that the first to third respondents (Afriforum NPC, Afrisake NPC, and the Sheriff (Johannesburg North), respectively), seek to attach and/or execute the taxed bills of costs in case number 89196/16, in relation to the following costs orders:
 - 2.1. The costs order granted by Mabuse J on 7 March 2017; and
 - 2.2. The costs order granted by Nathan AJ on 12 February 2018.
3. Costs be awarded to the applicants, being the costs of two counsel on the scale as between attorney-and-client, in the event of opposition to this application;
4. Alternatively to prayer 3 above, costs be made costs in the cause.
5. Further or alternative relief .



TAKE NOTICE THAT the accompanying founding affidavit of **JULIUS SELLO MALEMA** together with annexures thereto will be used in support of this application.

TAKE NOTICE FURTHER THAT the applicants have appointed the office of **IAN LEVITT ATTORNEYS** as the address at which they will accept notice and service of all process in these proceedings (as set out further below), and via email at: angelike@ianlevitt.co.za.



TAKE NOTICE FURTHER THAT if you intend opposing this application you are required to:

- (a) Notify applicant's attorney in writing on or before Tuesday, 13 November 2018 at 18h00;
- (b) to file your answering affidavit, if any, on or Tuesday, 13 November 2018 at 18h00; and
- (c) appoint in such notification an address at which you will accept notice and service of documents in these proceedings.

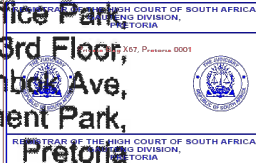
If no such notice of intention to oppose is given, the applicant will request that the matter is heard as an unopposed application.

DATED AT Sandton THIS THE 13th DAY OF November 2018.



Applicants' Attorneys
IAN LEVITT ATTORNEYS
19th Floor, Office Towers
Sandton City
Cnr of 5th Street and Rivonia
Sandton
Tel: 011 784 3310
Fax: 011 784 3309
Ref: MAT
Email: angelike@ianlevitt.co.za; ian@ianlevitt.co.za
C/O FRIEDLAND HART SOLOMON & NICOLSON

Monument Office Park
Block 4, 3rd Floor,
79 Steenbok Ave,
Monument Park,
Pretoria



Tel: 012 424 0200
Fax: 012-424 0207
Email: va@fhsn.co.za; cem@fhsn.co.za

To:

**The Registrar of the High Court,
Pretoria**

And to:

HURTER SPIES INC
First & Second Respondent's Attorneys
First Floor, Afriforum Building
Cnr Union & Df Malan Drive
Kloofsig, Centurion
Tel: (012) 664 0708
Fax: (012) 644 1997
Ref: T Kruger / AF0028
Email: tertius@hurterspies.co.za , mariorie@hurterspies.co.za ;
celesta@hurterspies.co.za



AND TO:

**The Sheriff of the Court
Johannesburg North
Third Respondent
51 & 61 Rosettenville Road
Unit B1,
Village Main
Industrial Park,
Johannesburg**



A handwritten signature in black ink, consisting of stylized, overlapping letters, located in the bottom right corner of the page.

"FA12"

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

CASE NO. 89196/16

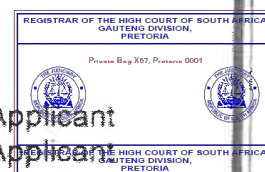
PRETORIA 14 NOVEMBER 2018

BEFORE THE HONOURABLE MR JUSTICE LOUW

In the application for the temporary stay of proceedings of:

JULIUS SELLO MALEMA
ECONOMIC FREEDOM FIGHTERS

1st Applicant
2nd Applicant



And

AFRIFORUM NPC
AFRISAKE NPC
THE SHERIFF (JOHANNESBURG NORTH)

1st Respondent
2nd Respondent
3rd Respondent

In the matter between:

AFRIFORUM NPC
AFRISAKE NPC

1st Applicant
2nd Applicant

And

ECONOMIC FREEDOM FIGHTERS
JULIUS SELLO MALEMA

1st Respondent
2nd Respondent

HAVING read the documents filed of record, heard counsel and considered the matter:

IT IS ORDERED THAT:

The application is hereby struck off the roll with costs.

Private Bag 957, Pretoria 0001

2018-11-23

Attorney: IAN LEVITT

BY THE COURT

REGISTRAR
AM



"FA13"

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 89196/16

In the application for leave to appeal:

JULIUS SELLO MALEMA

First Applicant

ECONOMIC FREEDOM FIGHTERS

Second Applicant

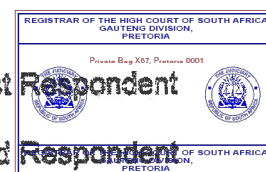
and

AFRIFORUM NPC

First Respondent

AFRISAKE NPC

Second Respondent



In the matter between:

AFRIFORUM NPC

First Applicant

AFRISAKE NPC

Second Applicant

and

ECONOMIC FREEDOM FIGHTERS

First Respondent

JULIUS SELLO MALEMA

Second Respondent

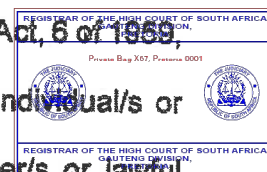
NOTICE OF APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE THAT the first and second applicants (Mr Julius Sello Malema and the Economic Freedom Fighters, respectively) hereby apply for leave to appeal to the Full Bench of the High Court against the order and judgment granted by default of His

Lordship, Mr Justice Mabuse, in the matter with case number **89196/16** on the 7 March 2017.

PLEASE TAKE NOTICE THAT the Court *a quo* granted the following orders:

1. The First and Second Respondents are interdicted from inciting and/or instigating and/or commanding and/or procuring any and individual/s to commit the crime of trespassing as described in the Trespass Act, 6 of 1959, and/or to enter any land belonging to or in control of any individual/s or entity/entities, without required permission of the land owner/s or lawful occupant/s of land, or a lawful entitlement to do so.
2. The First and Second Respondents are ordered to pay the cost of the Application on an Attorney and Client scale, jointly and severally, the one paying the other to be absolved, which cost shall include the cost of two Counsel where so employed.



PLEASE TAKE NOTICE THAT the applicants will seek an order setting aside the order of the Court *a quo* and replacing it with an order in the following terms:

1. The application is dismissed with costs, including the costs of two counsel.

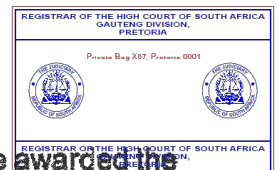
TAKE FURTHER NOTICE THAT the application for leave to appeal will be made on a date and at a time to be arranged in conjunction with the Registrar and the first and second respondents' attorney of record (Afriforum NPC and Afrisake NPC, respectively).

TAKE FURTHER NOTICE THAT the applicants contend that there is a reasonable prospect that another Court will come to a different conclusion. The reasons upon which the judgment granted by default will be appealed are as follows:



1. The Trespass Act, No 6 of 1959 ("the Act"), is unconstitutional to the extent that it impermissibly serves to curtail free speech as guaranteed by section 16 of the Constitution.
2. Specifically, the Act is unconstitutional to the extent that it creates an overly-broad and overly-inclusive category of prohibited speech that is at odds with the limited categories of prohibited speech as contained in section 16(2) of the Constitution.
3. The Act, which is a pre-constitutional statute, thus, has the effect of extending the terms of the Constitution to categories of speech that the drafters of the Constitution never intended to be included in the prohibited categories of speech.
4. The Act, which is subservient to the Constitution, is, thus, unconstitutional to the extent that it is *ultra vires* the Constitution.
5. In particular, the effect of the Act is so severe that it serves to limit speech *in toto*, and not only where there is an imminent threat of violence or harm. This means that no matter how academic or remote speech may be, it is susceptible to be banned on account of the fact that the terms of the Act are overly inclusive.

6. The Act, thus, serves to criminalise thoughts and ideas.
7. The Act does not survive a limitations clause type test (as contained in section 36 of the Constitution).
8. Thus, any factual findings that speech uttered by or conduct attributable to the applicants is patently incorrect. There is no legal basis, on the facts pleaded, to prohibit such speech. There was/is no imminent harm and the respondents were in no way targeted as the subjects of unlawful conduct.



TAKE FURTHER NOTICE THAT the applicants will seek an award that it be **awarded the** costs of this application for leave to appeal, and the appeal itself, in the event of opposition.

DATED at PRETORIA on this the 13TH day of November 2018.

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To:

The Registrar of the High Court
Pretoria

And to:

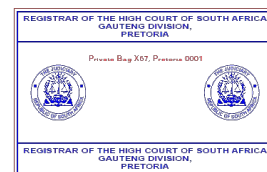
HURTER SPIES INC
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First Floor, Afriforum Building
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celeste@hurterspies.co.za

*Ontvang Sonder Benadeling
Received Without Prejudice*

DJ Zloff

14:15 13 November 2018.

Hurter Spies Ing / Inc



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"FA14"

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

CASE NO: 89196/2016

PRETORIA 17 JANUARY 2023
BEFORE THE HONOURABLE MR JUSTICE MABUSE

In the application for leave to appeal:

**JULIUS SELLO MALEMA
ECONOMIC FREEDOM FIGHTERS**

AND

**AFRIFORUM NPC
AFRISAKE NPC**

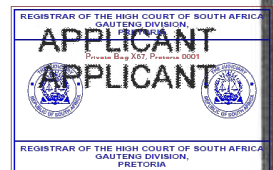
In the matter between:

**AFRIFORUM NPC
AFRISAKE NPC**

AND

**ECONOMIC FREEDOM FIGHTERS
JULIAS SELLO MALEMA**

1ST
2ND



1ST
2ND

**RESPONDENT
RESPONDENT**

1ST
2ND

**APPLICANT
APPLICANT**

1ST
2ND

**RESPONDENT
RESPONDENT**

HAVING HEARD counsel for the parties and having read the application for leave to appeal against the judgment of the Honourable Justice **MABUSE** delivered on **7 MARCH 2017**

IT IS ORDERED THAT

JUDGMENT

The application for leave to appeal is hereby dismissed, with costs.

BY THE COURT

REGISTRAR

HH
ATT: IAN LEVITT INC

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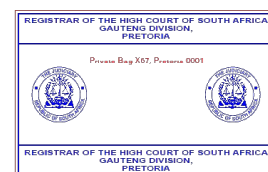
"FA15"



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES / NO
(3) REVISED
2023-01-17
DATE

SIGNATURE



In the matter between

CASE NUMBER: 89196/2016

Date: 17 January 2023

JULIUS SELLO MALEMA

First Applicant

ECONOMIC FREEDOM FIGHTERS

Second Applicant

and

AFRIFORUM NPC

First Respondent

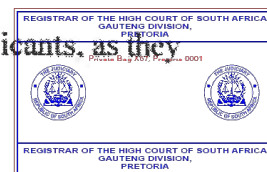
AFRISAKE NPC

Second Respondent

JUDGMENT

MABUSE J

[1] This is an application by the Applicants for leave to appeal against the Court order (the order) that was granted by default against them on 7 March 2017. The said order was granted in favour of the current Respondents, who were the Applicants in the application that led to the said order. This application is opposed by the Respondents who were the Applicants on 7 March 2017. The current Applicants were the Respondents in that matter. For purposes of convenience, the parties herein shall be referred to as in the original application, in other words, the Applicants in this matter will be referred to as the Respondents, as they were cited in the original application, and the current Respondents will be referred to as the Applicants, as they were cited in the original application.



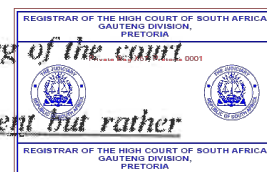
[2] The parties herein did not have any reasons for the order of 7 March 2017. For reasons that I will point out later in this judgment, they were both prepared notwithstanding, to proceed with the application for leave to appeal against the said order. I found this to be at odd with convention. The furnishing of reasons by this court would have been otiose or without any useful purpose, as will be demonstrated herein below.

[3] In his heads of argument, advocate K Premhid, counsel for the Respondents, who appeared in this application with advocate as S Mhlongo and Suhail Mohammed, a pupil, had stated, inter alia, that although the order was granted on 7 March 2017 to date no reasons for the order have been delivered to the parties. He stated furthermore that the respondents sought reasons for the order on 20 April 2021 pursuant to the Applicants' insistence. Of paramount importance he stated that despite the absence of reasons for the order, the application for leave to appeal was still competent. In other words, the court could proceed to hear the application for leave to appeal against a Court order even if no reasons were furnished for such an order. His motivation was that it is a trite principle that an appeal lies against an order of the court and not the reasons for that order. In this regard he found support in the following judgments:

[3.1] **SA Metal Group (Proprietary) Ltd v The International Trade Administration Commission & Another** [2070] ZASCA 14 (17 March 2017) at para [15].

[4] Paragraph [15] of SA Metal Group judgement on which counsel for the Respondents relies states as follows:

"[15] In my view, this case plainly falls into the latter of the two categories alluded to. As best as I could discern the argument, the discrete legal issue alluded to harked back to the price preference system, which, as I already pointed out, had been specifically disavowed on the papers. What is more, as the orders had become moot and relief prayed for was no longer competent, the attack, in truth, became one that was directed at the reasoning of the court below. However, an appeal does not lie against the reasons for the judgement but rather against the substantive order made by a court." (My own underlining)



The underlined sentence supports the approach adopted by counsel for the Respondents in this matter that an appeal lies against an order and not the basis for the order. For this purpose, the reasons are not required.

[3.2] **Neotel (Pty) Ltd v Telkom Soc and Others** [2017] ZASCA 47 (31 March 2017) in paragraph [15]. He also found support in paragraph [15] of the judgement of Neotel which referred to the judgment of **Western Johannesburg Rent Board v Ursula Mansions (Pty) Ltd** 1948 (3) SA 352 (A). In the said paragraph [15] the Court had the following to say:

"[15] While accepting that an appeal does not lie against the reasons for the order....."

[3.3] In **Western Johannesburg Rent Board v Ursula Mansions (Pty) Ltd** 1948 (3) SA 352 (A), the Court observed that:

".....It is clear that an appeal can be noted not against the reasons for judgment but against the substantive order made by a Court."

[4] The Respondents' counsel concluded by stating that, although reasons are important, the absence of reasons does not on its own render an otherwise appealable matter unappealable. He enlarged his argument and stated that although the Respondents are entitled to a fully reasoned judgement, they have been denied such reasons because the Applicants persisted with a threat of execution of an order that is the subject to this application for leave to appeal.

[5] Counsel for the Applicants, Advocate J G C Hamman, seemed to have been less intrigued by the absence of the reasons for the order. He was instead more focused on the special defences the Applicants have raised in opposing the application for leave to appeal. He also was unconcerned about the argument by Premhid relating to the reasons of the order.



[6] It is important though to point out that based on the judgments referred to above, the view expounded by Mr Premhid prevails. In summary, where an appeal is directed against an order of court and not the reasons for the order, the reasons are not required. Although the reasons for the judgment or order are important, the absence of such reasons does not prevent a court from hearing an appeal or an application for leave to appeal against such an order of court.

[7] As pointed out earlier, the Respondents in this matter seek leave to appeal against an order granted by default against them. The matter originally came before the court on 17 March 2017. The papers before the court then were in order. The Applicants in that matter were Afriforum NPC, the first applicant and Afrisake NPC, the second applicant. They sought the following order against Julius Sello Malema (Mr Malema), then the first respondent and Economic Freedom Fighters (the EFF), then the second respondent:

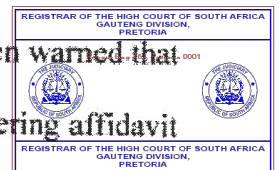
"1. That the First and Second Respondents are interdicted from inciting and/or instigating and/or commanding and/or procuring any individual/s to commit the crime of trespassing as

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described in Trespass Act 6 of 1959 and or to enter any land belonging to or in control of any individual or entity/entities without the required permission of the landowner/s or lawful occupants of land or a lawful entitlement to do so.;

2. The First and Second Respondents are ordered to pay the cost of the application on attorney client scale jointly and severally the one paying the other to be absolved, which cost shall include the cost of two counsel where so employed."

[8] Despite the fact that copies of the application had been served on the Respondents on 16 November 2016, despite furthermore the fact that the Respondents had both been warned that if they failed to deliver their Notice to Oppose the application, or, if their answering affidavit was not delivered in time, the application would be heard on 7 March 2017 at 10h00, there was no appearance for both Respondents on 17 March 2017 nor had the Respondents filed their papers. As under those circumstances nothing prevented to Applicants' application from proceeding, the court heard the matter accordingly and granted the order sought by the Applicants by default.



FURTHER DEVELOPMENTS AFTER THE DEFAULT ORDER OF 7 MARCH 2017

[9] On 7 April 2017 the Respondents delivered a Notice of Application- Rescission of Default Order. In the said Notice of Application, the Respondents had sought the following order:

- “(a) rescinding the order of Mabuse J dated 7 March 2017.*
- (b) costs to be costs in the main application, save in the event of opposition the party so opposing this recession application be ordered to pay the costs*
- (c) further and or alternative relief.”*

The application for rescission was predicated on the founding affidavit of Julius Sello Malema (Mr Malema) and furthermore on the supplementary affidavit by Thabo Sindisa Kwinana (Mr

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Kwinana) an adult male practitioner of the firm Kwinana and Partners Inc (KPI) ; then Respondents' attorneys of record.

[10] On 13 April 2017 the Applicants delivered their notice of intention to oppose the Respondents' application for rescission. It was followed by the answering affidavit of one Catherina Cornelia Cooks (Ms Cooks), an adult female employed by the Applicants as safety coordinator, delivered on 5 May 2017.

[11] On 11 June 2017 the Respondents served their replying affidavit on the Applicants' attorneys. It would appear that subsequently, the application for rescission was enrolled for hearing on 17 September 2017 and that the parties were aware of that date.



[12] On 17 September 2017 the application for rescission was postponed *sine die*. The Respondents, the Applicants in that application for rescission, were ordered to pay the wasted costs on attorney and client scale, such costs to include the costs of two counsel. The reason for the postponement was, according to the Applicants' counsel, the failure by the Respondents' attorneys to file their counsel's heads of argument.

[13] On 12 February 2018, the Respondents' application for rescission under case number 89196/16 was dismissed with costs, by the Court. The following order was made:

"1) The application for rescission of the judgment of 7 March 2017 is dismissed with costs which costs shall include the costs of two counsel where so employed.

2) Applicants to pay the costs jointly and severally the one paying other to be absolved."

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[14] On 13 November 2018 the Respondents delivered their application for leave to appeal against the order and judgment of 7 March 2017. The grounds upon which the Respondents sought such leave are set out in their application for leave to appeal as follows:

"PLEASE TAKE NOTICE that the applicants will seek an order setting aside the order of the court a quo and replacing it with an order in the following terms:

(1) The application is dismissed with costs, including the costs of two counsel.

TAKE FURTHER NOTICE that application for leave to appeal will be made on a date and at a time to be arranged in conjunction with the Registrar and the first and second respondents' attorney of record (Afriforum NPC and Afrisake N PC, respectively)

TAKE FURTHER NOTICE that applicants contend that there is a reasonable prospect that another court will come to a different conclusion. The reasons upon which the judgment granted by default will be appealed are as follows:



- 1. The Trespass Act NO. 6 of 1959 [the Act] is unconstitutional to the extent that it impermissibly serves to curtail free speech as guaranteed by section 16 of the Constitution.*
- 2. Specifically, the Act is unconstitutional to the extent that it creates an overly broad and overly inclusive category of prohibited speech that is at odds with the limited categories of prohibited speech as contained section 16[2] of the Constitution.*
- 3. the Act, which is a pre-Constitutional statute, thus, has the effect of extending the terms of the Constitutional to categories of speech that the drafters of the Constitution never intended to be included in the prohibited categories of speech:*
- 4. the Act, which is subservient to the Constitution, is, thus, unconstitutional to the extent that it is ultra vires the Constitution.*

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In particular, the effect of the Act that it serves to limit speech in toto, and not only where there is an imminent threat of violence or harm. This means that no matter how academic or remote speech maybe, it is susceptible to be banned on account of the fact that the terms of the Act are overly inclusive.

5. *The Act, thus, serves to criminalise thoughts and ideas.*
6. *The Act does not survive a limitations clause type test (as contained in section 36 of the Constitution).*
7. *Thus, any factual findings that speech uttered by or conduct attributable to the applicants is patently incorrect. There is no legal basis, on the facts pleaded, to prohibit such speech. There was/is not imminent harm, and the respondents were in no way targeted as the subjects of unlawful conduct."*



From the stage of the application for leave to appeal, the Respondents' attorneys were Ian Levitt Attorneys. The application for leave to appeal was accompanied by an affidavit by a certain Angelike Charalambous which served as the founding affidavit for an application for condonation for the late filing of the application for leave to appeal.

[15] On an unknown date, the Respondents sought reasons in terms of Rule 49 of the Uniform Rules of Court for the order of 7 March 2017. The reasons for the order were not forthcoming. That however, as shown above, did not deter the Respondents from proceeding with the appeal. But for the reasons that I now turn to, the Respondents hold the view, and it was so submitted on their behalf by their counsel, that the court should grant leave to appeal as another court seized with the facts of this matter, will decide it differently.

THE RESPONDENTS' CASE

[16] It is the Respondents' case that in the main application the Applicants sought a final interdict that was anchored on the 'clear right' created by the combined operation of section 18 (2) (b) of the Riotous Assemblies Act 17 of 1956 (s 18(2) (b)) and section 1(1) of the Trespass Act 6 of 1959 (the TA). According to counsel for the Respondents section 18(2)(b) provided, in its original formulation, as follows:

"Any person who-

(b) incites, instigates, commands, or procures another person to commit,

any offence whether at common law or against a statute or statutory regulation, shall be guilty of an offence and liable on conviction for punishment to which a person convicted of actually committing that offence would be liable."



This section quite obviously created a prohibition against incitement.

At the time s 1(1) of the TA provided as follows:

"Any person who without permission-

(a) of the lawful occupier of any land or any building or part of a building; or

(b) of the owner or person in charge of any land or any building or part of the building that is not lawfully occupied by any person,

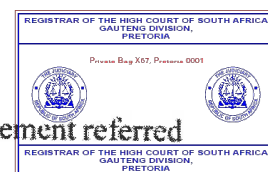
enters or is upon such land or enters or is in such building or part of a building, shall be guilty of an offence unless he has lawful reason to enter or be upon such land or enter or be in such building or part of a building."

This subsection created the crime of trespassing. These two sections, in other words, section 18 (2)(b) and subsection 1(1) of the TA, represented the applicable law in force as at 7 March 2017. This is the law that the court applied on 7 March 2017 when the court granted the impugned order. There was at the time no other interpretation of the law as there is now.

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[17] The cornerstone of the Respondents' case is the change in the law brought about by the judgment of **Economic Freedom Fighters and Another v Minister of Justice and Correctional Services 2020 ZACC 25** (EFF judgment), paragraph [25] thereof. Drawing support from the said judgment Mr Premhid stated as follows in his heads of argument that:

"But in the time between Mahuse J's order and now (meaning the day the judgment in the EFF appeal was delivered) s18(2)(b) of the Riotous Assemblies Act has been declared unconstitutional on the basis that it constitutes an unjustifiable infringement on the right to freedom of expression."



[18] In the EFF judgment the Constitutional court characterised the form of incitement referred to in section 18 (2)(b) as a form of expression ordinarily protected by section 16 of the Constitution. In paragraph [25] the court had the following to say:

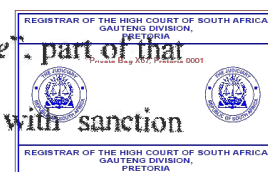
"Section 18(2)(b) of the Riotous Assemblies Act criminalises incitement to commit "any offence". And that kind of incitement is undoubtedly a form of expression that is ordinarily protected by section 16(1) in of the Constitution. It therefore constitutes a limitation of protected expression. Whether that limitation is reasonable and justifiable in an open and democratic side based on the values of human dignity equality and freedom is the question we must now wrestle with. And

"All of the above leave us with no choice but to invalidate section 18(2)(b) to the extent of the disproportionality of its societal benefit to its vast invasion of free expression and consequential inconsistency with section 16(1) of the Constitution. It is not reasonable and justifiable to limit free expression on the basis of crime prevention in circumstances where the criminalization of incitement of only serious offences would constitute a less restrictive means and help achieve the same objective."

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[19] The Constitutional Court was obviously unhappy with the provisions of s 18(2)(b) to the extent that it criminalised the “incite” of another person to commit “any offence”. The basis for such unhappiness was that the crime it created offends against the Constitutional right to freedom of expression, in other words, it is inconsistent with section 16(1) of the Constitution. The Constitutional Court contended that s 1(1) of the TA sought to be interpreted with reference to the provisions of section 26(3) of the Constitution and also s 39(2) of the Constitution and Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE).

[20] The Constitutional Court’s target in s 18(2)(b) was the words “any offence” – part of that section. The High Court had declared part of section 18(2)(b) that deals with sanction constitutionally invalid because it contended that it compelled a court to impose the same sentence on the person inciting others to commit a crime, just like on the person who commits the crime.



[21] What the Constitutional Court did in this matter was simply to invalidate the expression “any offence”. It found that the expression “any offence” in the said section would be out of proportion to the objective of crime prevention which could still be realised without any overly invasive provision that gives no recognition to the expression. The Court was alive to the fact that:

“[41] Despite its unjust foundations section 18(2)(b) of the Riotous Assemblies Act is, broadly speaking, one of many instruments suited to the achievement of a goal of crime prevention.”

(One may add that it is an instrument that is best suited to prevent lawlessness in the country).

The Court found that:

[42] Free expression is thus a right or freedom so dear to us and critical to our democracy and healing the divisions of the past that it ought not to be interfered with lightly- especially where no risk of serious harm or danger exists.”

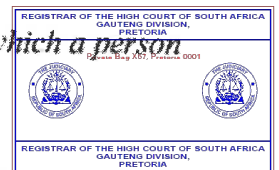
[22] It is of paramount importance to point out that all that the Constitutional Court did regarding 18(2)(b) was to put the word “serious” between the words “any” and “offence” in the section so that the proposed new section will read as follows:

“(2) any person who-

.....

(c) incites, instigates, commands, or procures any other person to commit,

any serious offence whether at common law or against a statute or statutory regulation shall be guilty of an offence and liable on conviction to punishment to which a person convicted of actually committing that offence would be liable.”



In par. [49] the constitutional Court gave the following justification for its proposition of adding the word “serious” as pointed out above:

[49] Section 18(2)(b) is sought to be saved from invalidation merely because, like all other criminal legislation, it serves the common or ordinary purpose of crime prevention. What is, however, required is that the purpose of criminal legislation, like the Riotous Assemblies Act, be much more than the ordinary need to protect society from potential ‘harm,’ to pass constitutional muster. Additional to being legitimate, the purpose must still be specific, pressing, and substantial for that legislation to be regarded as reasonable and justifiable in its limitation of free expression.

[50] There can be no doubt that we need the criminalization of certain categories of incitement. What all matters is that the nature, extent, or effect of what others are being invited to do must be serious to save legislation from invalidation. The prohibition of incitement is thus to be countenanced in circumstances where it seeks to prevent the commission of a serious offence. The limitation must demonstrably be in the interest of

the public and appropriately tailored so as not to deny citizens their fundamental rights where this could have been avoided.

[23] The Constitutional court provided some guidance in paragraph [71] as to what would be considered as a serious crime. It referred to schedule 1,2 (parts II and III) and 5-8 of the Criminal Procedure Act 51 of 1977 (CPA). It then added a rider that its attempt at defining "serious offences" might not include the complete list of the relevant offences. The crime of trespassing though is still to be regarded as such for the purposes of crime incitement. In paragraph [51] the Constitutional Court held that"

[51] The limitation must not extend to minor offences or offences that threaten no serious harm or danger either individuals, society or public order, property, or the economy...."



Quite clearly this is an indication that the limitation could and should extend to cases where serious harm and danger was threatened to the property, the economy, individuals, or public order.

[24] In paragraph [63] it was held that the incitement of crimes that are "potentially serious" could still be justified. The Court had the following to say:

"[63] It must be emphasised that a less restrictive means for proscribing constitutionally objectionable incitement is the exclusion from its range, of those offences that are minor but not necessarily de minimis in character. As stated, that could be achieved by criminalising the incitement of only those offences that are potentially serious. Perpetrators of any offence would still be prosecuted and punished. Accomplices would still face the wrath of the common law. The exclusion of inciters of minor or lesser offences and targeting inciters of serious offences cannot undermined the important objective of crime prevention as feared by the state. The value of circumscribing this limitation is that the right to free expression would be protected,

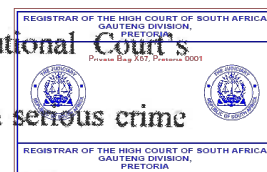
respected, promoted, and fulfilled as the Constitutional Court demands of the state, and serious crime would still be effectively combated.

Schedule 1 of the CPA determines the seriousness of an offence by the type of sentence that a court may impose on conviction of a person who committed such an offence.

It states as follows:

"Any offence except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment wherefor maybe a period of imprisonment exceeding six months without option for fine."

According to the Schedule 1 of the CPA, according to the Constitutional Court's interpretation, incitement of the crime of trespassing still constitutes a serious crime despite considerations of free speech. Section 2(1) of the TA provides as follows



"2(1) Any Person convicted of an offence under section 1 shall be liable to a fine not exceeding R2000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment."

Therefore, imprisonment without the option of a fine that exceeds six months in duration, can still be imposed for the crime of trespassing without the alternative option of a fine.

[25] In my view, there is no merit in the Respondents' counsel argument that the underlining crime of incitement has been curtailed and found to be constitutionally impossible. One merely must look at paragraph 5 of the Court Order to see how flawed Mr Premhid' argument is. The phrase *"inciting and/or instigating and/or commanding and/or procuring any individual /to commit"* has not been abolished. It still constitutes part of the proposed section 18(2)(b). The Constitutional Court has made it abundantly clear that the arguments by counsel for the Respondents have no merit.

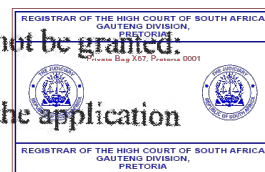
[26] The conclusion therefore is inescapable that there are no reasonable prospects success that, if granted leave to appeal, the Respondents would have any reasonable prospects of success.

OTHER GROUNDS UPON WHICH THE APPLICATION SHOULD BE REFUSED.

[27] The Applicants contend, upon other grounds, that the Respondents' application for leave to appeal should be refused. They have mentioned the following further grounds as the reason they contend that the application for leave to appeal should not be granted.

[27.1] lack of a proper application for condonation for the late filing of the application for leave to appeal coupled with lack of proper, and complete explanation for the delay.

[27.2] no appeal lies against a judgement or order granted by default.



CONDONATION

[28.1] This part of the judgment deserves the background of the matter.

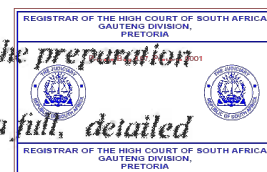
[28.2] The history to this matter is dealt with in paragraphs [8] to [16] supra. In paragraph 14 supra I pointed out that on 13 November 2018 the Respondents delivered their application for leave to appeal against the order of 7 March 2017. Firstly, this application for leave was out of time, hence an attempt at bringing an application for condonation for the late filing of the application for leave to appeal. According to counsel for the Applicants there are two fatal problems with the application for for leave to appeal. Firstly, there was no notice of motion accompanying the affidavit of Angelike Charalambous and secondly, the said affidavit was characterised by a paucity of essential details.

[28.3] an application for condonation must satisfy the following requirements:

[28.3.1] it must be clear, succinct and to the point

[28.3.2] the applicant must furnish all such information as may be necessary to enable the court to decide the application. In this disregard see in **Uitenhage Transitional Local Council v so South African revenue services [2003] 4 ALL SA 37; 2004(1) SA 292 (SCA) par 6**. In this paragraph the court per Heher JA, and Zulman and Nugent JJA agreed with him, had to say the following:

“[6] One would have hoped that the many admonitions concerning what is required of an application in a condonation application and affidavit in a condonation application would be trite knowledge among practitioners who are entrusted with the preparation of appeals to this court: condonation is not to be had for the asking ; a full, detailed and accurate account of the causes of the delay and their effects must be furnished so as to enable the court to understand clearly the reasons and assess their responsibility. It must be obvious that, if the non-compliance is time related then the date, duration, and extent of any obstacle on which reliance is placed must be spelt out”



[28.4] The principle set out in the foregoing paragraph does not apply to applications for condonation or appeals only. It is a principle of general application. It applies in all instances involving all sorts of applications for condonation, including the instant application.

[28.5] As I pointed out earlier the Respondents' condonation application is predicated on affidavit by one Angelike Charalambous, an attorney in the offices of the Respondents' attorneys of record. According to counsel for the Applicants, this affidavit is not accompanied by any notice of motion. I deal with this aspect later in this judgment. The said affidavit states as follows:

008-17

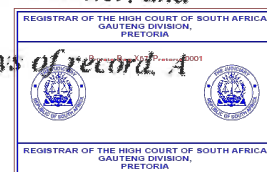
"1. I am an appointed attorney of record for the First and Second respondent in this application, in the employ of Ian Levitt Attorneys, situated at 19th Floor, Sandton City Office Towers, corner 5th and Rivonia Roads, Sandton.

2. The allegations contained in this affidavit are true and correct. They also fall within my person knowledge and belief, except where the context indicates otherwise.

.....

.....

13 Later that day, the mandate of Kwinana Attorneys was terminated in the matter, and they were requested to urgently file a Notice of Withdrawal of Attorneys of record. A copy of the termination letter is attached thereto as 'AC7'.



14. On Monday, 12 November 2018, we arranged a consultation with the attorneys who were previously dealing with the matter, Kwinana Attorneys as well as the applicants (who by this time, had become our clients in this matter] in order to determine what had transpired in regard to this Application and the non-filing of an Application for Leave to Appeal. With thereafter were immediately instructed to draft an Application for Leave to Appeal and proceed act on behalf of our clients.

15. We proceeded to serve and file our client's Application for Leave to appeal the very next day being Tuesday, 13 November 2018 and same will be filed with the registrar of the High Court by the morning of 14 November 2018.

16 We accordingly seek condonation for the late filing of our client's Application for Leave to Appeal and request that the Court allow for the late filing of same."

[28.6] The Respondents' attorneys became involved in this matter only on 12 November 2018, when they were instructed to file an application for leave to appeal, which they did on 13 November 2018. The affidavit of Charalambous only covers the delay from 12 November 2018. There is no affidavit from the Respondents' erstwhile

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attorneys in which they explain the delay up to the 11 November 2018. I found it very strange that the current attorneys of the Respondents have not taken any steps to obtain from former attorneys of the Respondents an affidavit in which such attorneys explain the delay in filing an application for leave to appeal while they were still overseeing the Respondents' matter. This is even though they consulted with such attorneys on 12 November 2018. For this reason, the explanation why, there was delay in timeously filing an application for leave to appeal is incomplete. Based on the evidence of Charalambous there is no acceptable explanation why the application for leave to appeal was not filed within 15 days as required by the rules of court. This vital information should, in my view, have been covered by the affidavit from KPI. In terms of Rule 49(1)(b) the Uniform Rules of court:



"When leave to appeal is required and it has not been requested at the time of the judgement or order, application for such leave shall be made and the grounds therefor shall be furnished within 15 days after the date of the order appealed against; Provided that when the reasons or the full reasons for the court's order are given on a later date than the date of the order, such application may be made within 15 days of such later date; provided further that the court may upon good cause extend the aforementioned periods of 15 days."

[28.7] We now know that the Respondents did not require the reasons for the order to appeal. They had only intended to appeal against the court order. They did not need reasons for that purpose. If the Respondents intended appealing against the order of 7 March 2017 only, as they claim that was their intention, they were obliged to file their application for leave to appeal within 15 days after 7 March 2017, which they failed to do. The affidavit of Charalambous fails to explain why there was such a long delay to file the application for leave to appeal between 7 March 2017 and 12 November 2018.

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As shown in **Beweging vir Christelike-Volkseie Onderwys v Minister of Education [2012] 2 ALL SA 462 (SCA)**, an application for condonation must explain the delay.

It must furnish the court with a complete, reasonable, and acceptable explanation for the delay. The explanation must cover the whole period of the delay. The affidavit of Charalambous falls dismally short of this requirement. In my view, just on this point alone the application for condonation cannot succeed.

Thirdly and finally, the applicant must, in his application for leave to appeal, deal with the merits of the case as far as is necessary for the purpose of explaining and supporting his grounds upon which the application is sought. The purpose of this exercise would have been to determine whether or not the appeal has any prospect of success. The explanation must be contained in the affidavit. Affidavits contain facts. These facts may be disputed in other affidavits. The affidavit of Charalambous does not deal with the merits of the case. It does not explain and support the grounds upon which the condonation is sought.



NO NOTICE OF MOTION FOR THE APPLICATION FOR CONDONATION

In the place of notice of motion, the respondent had filed a document called:

FILING SHEET: AFFIDAVIT IN SUPPORT OF THE LATE FILING OF THE FIRST AND SECOND APPLICANT'S APPLICATION FOR LEAVE TO APPEAL.

This document stated as follows;

"Kindly take notice that the 1st and 2nd applicants here by present for service and filing , affidavit in support of the late filing of the first and second applicant's application for leave to appeal."

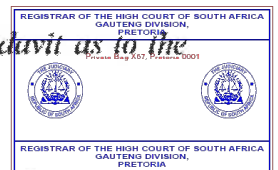
Quite obviously the affidavit that was intended to be used in support of the late filing of the application for leave to appeal was not even identified in the filing sheet. The

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filing sheet was then followed by an affidavit by the said Charalambous that was used in support of the application for condonation for the late filing of the application for leave to appeal.

[30] According to counsel for the Applicants, the feet of clay with a so-called application for leave to appeal is that there was no notice of motion. This was contrary to the rules of court in particular rule 6(1) of the Uniform Rules of Court which provides that:

"Save where proceedings by way of petition are prescribed by the law, every application shall be brought on notice of motion supported by an affidavit as to the facts upon which the applicant relies for relief."



[31] According to Mr Hamman, in bringing their application for condonation the Respondents should have followed the procedure set out in Rule 6(1). They should have brought it on a notice of motion supported by an affidavit. The contention by Mr Hamman is not correct. The application for condonation was brought in terms of Rule 6(11) of the Uniform Rules of Court which provides as follows:

"Notwithstanding the foregoing sub-rules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as the case may require and set down at the time assigned by the register or as the directed by a judge."

Notice does not mean "notice of motion." According to **Yorkshire Insurance Co. Ltd v** in sub rule 6(11) as opposed to the **Reuben 1967 (2) 263 [E.L.D] 265E-G**, the court stated as follows:

"There is to my mind a substantial difference between an application being brought on notice and an application brought on notice of motion. It could never have been intended when parties are already engaged in litigation and have complied with such formalities as appointing attorneys and giving addresses for service of documents in the proceedings. that in further

applications incidental to such proceedings, the parties would be required to go through all the same formalities again with all concomitant and unnecessary expense.

I am satisfied that the use of the word 'notice' "notice of motion" in other sub-rule to Rule 6 indicates clearly that interlocutory and other applications incidental to pending proceedings were not intended to be brought by way of formal notice of motion in the same way as applications initiating proceedings. I am also satisfied that rule 6(11) was not enacted solely for the purpose of prescribing a different procedure as regards set down as has been suggested by Mr Melunsky and that the use of the word "notice" in contra-distinction to notice of motion was a deliberate one."

All that is required is notice to the other side stating that an application will be brought on a date assigned by the register or directed by a judge. In this current matter the application for condonation would be heard on the day on which the application for leave to appeal would be heard. It was therefore incidental to the pending proceedings. The Respondents' attorneys had made it clear when they stated in the application for leave to appeal that the application would be heard on the date arranged with the registrar.

[32] I am therefore satisfied that it was not necessary for the Respondents to follow the procedure set out in Rule 6(1) when they brought this application for condonation and that they have followed correctly the procedure set out in Rule 6(11) of the Uniform Rules of Court. There is no merit therefore, in Mr Hammond's contention that the Respondents should have brought their application for condonation in terms of rule 6(1).

DEFAULT ORDER NOT APPEALABLE

[33.1] It is the Applicants' case that it is trite law that the orders granted by default cannot be appealed against. In support of this principle, they put reliance on **Pitelli v Evergreen Gardens Projects CC, 2010 (5) SA 171 (SCA) (Pitelli)**, the unanimous judgment by the Supreme Court of appeal.

[33.2] On 7 March 2017 the main application came before court for hearing. The matter was unopposed as the Respondents had not filed their papers even though copies of the application had been properly served on them nor was there any appearance for them. The Applicants took the order unopposed. Default judgement was therefore granted against the Respondents accordingly.

[33.3] Immediately thereafter, and on 5 April 2017, the Respondents brought their application to rescind or set aside that order. That application was opposed by the Applicants who filed not only their notice to oppose but also their answering affidavit on 5 May 2017.

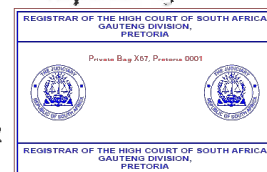
[33.4] The application for rescission was set down for hearing on 12 September 2017 before Baqwa J. On the 12th of September 2017, the matter was postponed by order of court *sine die*. The Respondents were ordered to pay the wasted cost on attorney and client scale. Such costs were to include costs of two counsel. It is important to point out that the matter was postponed on 12 September 2017 primarily because the Respondents' attorneys had failed to file their counsel's heads of argument.

[33.5] The application was again re-enrolled for hearing on 12 February 2018. On this day still there was no appearance for the Respondents despite having been notified of the date of hearing. On this day Acting Judge Nathan dismissed, with costs the Respondents' application for rescission of the order of 7 March 2017. The order was therefore obtained by default.

[33.6] In paragraph [27] the Court in Pitelli made the following statement:

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'An order is not final for the purposes of an appeal merely because it takes effect unless it is set aside. It is final when the proceedings of the court of first instance are complete, and that court is not capable of revisiting the order. That leads ineluctably to the conclusion that an order taken in the absence of a party is ordinarily not appealable (perhaps there might be cases in which it is appealable, but for the moment I cannot think of one). It is not appealable because such an order is capable of being rescinded by the court that granted it, and it is thus not final in its effect. In some cases, an order that is granted in absence of the party might be rescindable under rule 42 (1)(a) and if it is not covered by that rule it is in any event capable of being rescinded under the common law.'



The SCA cited other judgments with approval. For instance, it stated as follows:

"[28] That an order granted in absence of a party is not appealable was held as clearly as 1877 in *Ross v Dramat* 1877 Buch.132 at 13 when De Villiers CJ said, in respect of such an order, that

"the defendant is premature in applying to this court [to appeal against the order] until the Magistrate has been asked and has refused to re-open the case." See also **Sparks v David Pollack & Co. (Pty) Ltd** 1963 (2) SA 491 (T) (Pitelli).

[29] By launching an application for rescission of the default judgement on 5 April 2017, the Respondents acted appropriately for at that stage, according to Pitelli, the court order could still be set aside. The proceedings that led to the order of 7 March 2017 were not complete. The court was still at large to revisit them and set the order aside. But once the court dismissed the application for rescission on 12 February 2018, those proceedings were complete and confirmed. From that stage there was no way other than through Rule 42 (1)(a) of the Uniform Rules of Court or under common law that the order could be rescindable. No appeal lies against such an order:

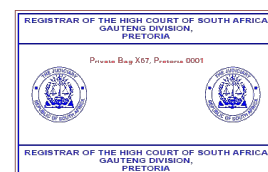
008-23

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"an order taken in the absence of a party is ordinarily not appealable." See Pitelli above.

[30] The judgement of Pitelli strikes a death knell to the Respondents' application for leave to appeal. It dissipates any hope the Respondents might have of claiming that they have reasonable prospects that, if granted leave, they would have reasonable prospects of success. I am satisfied that the application for leave to apply stands to be dismissed. Accordingly, I make the following order:

The application for leave to appeal is hereby dismissed, with costs.



PM Mabuse

P M MABUSE

JUDGE OF THE HIGH COURT

Appearances

Counsel for the Applicants

Adv.Kameel Premhid

Silindile Mhlongo

Suhail Mohammed(pupil)

Attorneys for the Applicants :

Ian Levitt Inc:

Counsel for the Respondents

Adv. J.G.C Hamman

Attorneys for the Respondents

Hurter Spies Inc.

Matter heard on

13 December 2022

Judgment handed down on

17 January 2023



Case CCT 23/23

AFRISAKE NPC

Second Applicant

Second Respondent

ORDER

The Constitutional Court has considered the application for leave to appeal directly to it. It has concluded that the application should be dismissed as it bears no reasonable prospects of success. Consequently, leave to appeal directly must be refused.. The Court has decided not to award costs.

Order: Leave to appeal is refused.

**SIBUSISO MAPOSSA
REGISTRAR
CONSTITUTIONAL COURT**

used.

Filing XI Confidentiality Declaration 2017

2023-03-22

CC-001

TO: IAN LEVITT ATTORNEYS

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Fax: 086 579 5368

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Ref: A CHARALAMBOUS/MAT2519

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Arcadia

PRETORIA

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C/o NELSON BORMAN

3rd Floor

Blackheath Mews

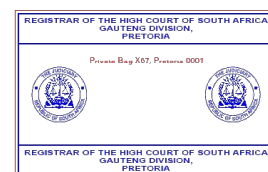
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"FA17"

Supreme Court of Appeal, Registrar's Office • PO Box 258, Bloemfontein, 9300 • c/o Elizabeth- &
President Brand Street, Bloemfontein •
Tel (051) 4127 400 • Fax (051) 4127 449 • www.supremecourtsofappeal.gov.za

Enquiries: Ms C L De Wee

Date: 19 JUNE 2023

Ref: 275/2023

YOUR REF: C13875*Mr Yazbek/mn/AD62/23YOUR REF: HUR12/0051 (JHC/AB)

Symington De Kok Attorneys
P O Box 12012
BLOEMFONTEIN
9300

Hendre Conradie Inc
P O Box 13772
NOORDSTAD
9302



Mr/Ms

APPLICATION FOR LEAVE TO APPEAL
J S MALEMA & ANOTHER v AFRIFORUM NPC & ANOTHER

With reference to the application lodged in this office on 28 MARCH 2023 this Court ordered on 12 JUNE 2023 that the application be dismissed as per attached order:-

Yours faithfully


C L DE WEE (Ms)
REGISTRAR

REGISTERED POST

(H/B/D/O)

YOUR REF: 89196/2016

Mabuse J (Court a quo)

Registrar of the High Court
Private Bag X 67
PRETORIA
0001

Copy for your information.



SUPREME COURT OF APPEAL OF SOUTH AFRICA

CASE NO: 275/2023
GP CASE NO: 89196/2016

BEFORE THE HONOURABLE JUSTICES MBATHA AND MEYER JJA

On the 12th JUNE 2023

In the application between:

JULIUS SELLO MALEMA
ECONOMIC FREEDOM FIGHTERS

and

AFRIFORUM NPC

AFRISAKE NPC



1st Respondent

2nd Respondent

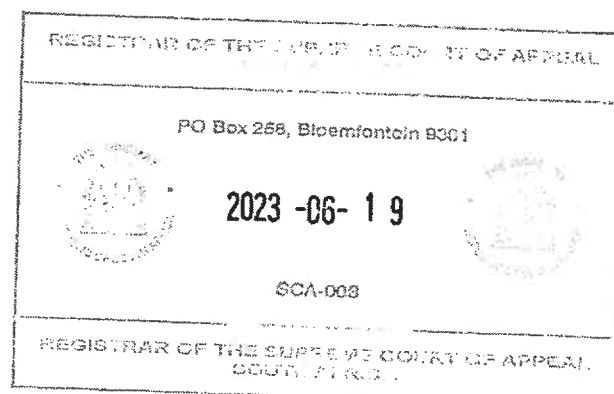
Having considered the Notice of Motion and the other documents filed.

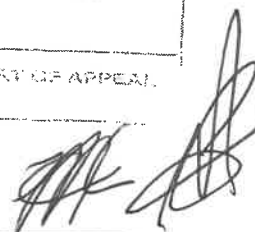
IT IS ORDERED THAT:

1. Condonation as applied for is granted. The applicant for condonation is to pay the costs of the application.
2. The application for leave to appeal is dismissed with costs on the grounds that there is no reasonable prospect of success in an appeal and there is no other compelling reason why an appeal should be heard.

BY ORDER OF THIS COURT


COURT REGISTRAR
C L DE WEE (Ms)





"FA18"



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 201/23

In the matter between:

JULIUS SELLO MALEMA

ECONOMIC FREEDOM FIGHTERS

and

AFRIFORUM NPC

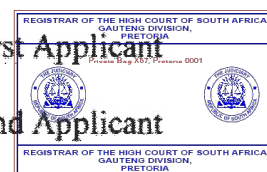
AFRISAKE NPC

First Applicant

Second Applicant

First Respondent

Second Respondent



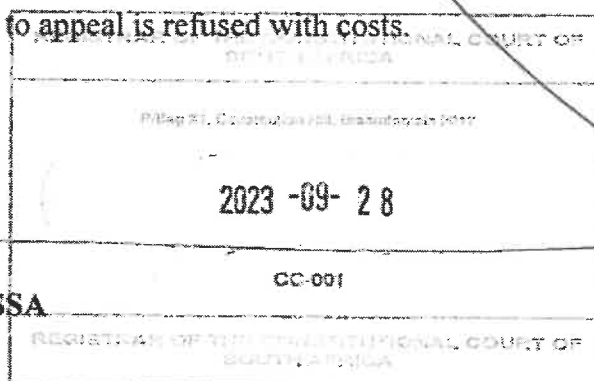
ORDER

CORAM: Maya DCJ, Kollapen J, Mathopo J, Mhlantla J, Rogers J, Schippers AJ, Theron J, Tshiqi J and Van Zyl AJ.

The Constitutional Court has considered the application for leave to appeal and has concluded that the application for leave to appeal is *res judicata*, the Court having on 22 March 2023 dismissed an earlier application for leave to appeal brought by the applicant under case number CCT 23-23. Consequently, leave to appeal must be refused. The Court has decided to award costs.

Order: Leave to appeal is refused with costs.

SIBUSISO MAPOSSA
REGISTRAR



CONSTITUTIONAL COURT

TO: IAN LEVITT ATTORNEYS

Attorneys for the Applicant

The Leonardo

Office level 12

75 on Maude Street

Sandton

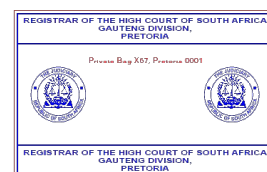
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Ref: MvS/JV/MAT64

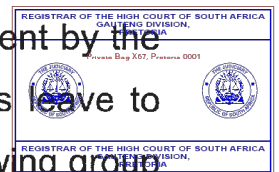


"FA19"

EFF STATEMENT ON THE CONSTITUTIONAL COURT DECISION TO DISMISS LEAVE TO APPEAL INTERDICT IN MATTER RELATING TO "INCITEMENT" OF LAND INVASIONS

Thursday, 28 September 2023

The Economic Freedom Fighters (EFF) has noted the judgement by the Constitutional Court, which has decided to dismiss the EFF's leave to appeal of an interdict, in the matter brought by the racist right-wing group Afriforum, which seeks to deny the legitimate cry by African people for the occupation return of the land.



The matter which has been before our courts has now reached finality, with a disappointing and frankly ahistorical judgement, that criminalises a practical expression of the demands to reverse the sins of colonialism and land theft. It is our considered view, that the call for Africans to occupy land should they have the need to do so, either for residential or agricultural purposes, is part of the very identity of our nation and our history.

The Freedom Charter, a cornerstone document in South Africa's liberation history and a foundational document to our very Constitution, States categorically that ***"Restriction of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it, to banish famine and land hunger;"***. The Freedom Charter goes

further to state that, ***“All shall have the right to occupy land wherever they choose;”***.

The EFF is therefore once again being targeted by a gang of racist land thieves in the form of Afriforum, who are determined to undermine the liberation history of South Africa both in form and in content, and to achieve this nefarious mission, they have weaponised the courts against liberation.

It is an undeniable fact that land ownership in South Africa **remains** restricted on a racial basis, as a result of failures in land reform due to the ***willing buyer willing seller principle*** and a ruling elite that has no appetite to reverse the ownership of South Africa's land by a white minority at the expense of the black majority.



The EFF has sought to reverse this through an amendment of Section 25 of the Constitution to allow for land expropriation without compensation. The EFF is therefore first and foremost a true custodian of this demand by the Freedom Charter, a revolutionary document that has been the anchor of the demands for an alternative society post-apartheid.

The call for those who are deprived of land to occupy a piece of land should they need to do so, is in line once again with a demand by the Freedom Charter, in that the land has never been the preserve of the individual, but an asset of all people. Since the demands of the liberation struggle of equitable distribution of land have not been achieved, this demand remains relevant and ought to remain, until a capable state is in a position to distribute land equitably.

Therefore, the interdict which has been upheld by the Constitutional Court is not a defeat for the EFF, but a criminalisation of our liberation history that all progressive forces of society ought to condemn. Racists in the form of Afriforum have succeeded in having the demands of the generation that gathered in Kliptown on the 26th of June 1955, as criminal and unlawful.

The EFF will never tire or retreat in the fight for the return of our land to the African majority, and this can be achieved through legislative, protest or any other means necessary. No one must ever feel that they are a criminal, for occupying a piece of land in the land of their birth and the land of their ancestors.



The land is everything and it must be returned to the people!

ISSUED BY THE ECONOMIC FREEDOM FIGHTERS

Sinawo Thambo (National Spokesperson) 072 629 7422

Leigh-Ann Mathys (National Spokesperson) 082 304 7572

✉ communications@effonline.org

🌐 <http://www.effonline.org>

🐦 @EFFSouthAfrica

📺 @EFFSouthAfrica

📺 Economic Freedom Fighters

THE YEAR OF MASSIVE

POLITICAL EDUCATION AND VOTER REGISTRATION

TO REGISTER TO VOTE: DIAL: *134*20024#

"FA20"



Economic Freedom Fighters @EFFSouthAfrica · Apr 6, 2025

◆ In Pictures ◆

EFF Land Reclamation Day Rally addressed by the Secretary General
@DlaminiMarshall at Harold Cressy High School, District 6 in Cape Town.

-After today, right at this moment, our people must go get the land.
Occupy everywhere where they need to farm and build
Show more



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7.5K



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 2026-_____

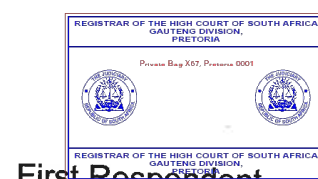
In the matter between:

AFRIFORUM NPC

Applicant

and

ECONOMIC FREEDOM FIGHTERS



First Respondent

JULIUS SELLO MALEMA

Second Respondent

NOTICE IN TERMS OF RULE 41A

TAKE NOTICE THAT, in terms of Rule 41A of the Uniform Rules of this Honourable Court, the applicant opposes the referral of this matter to mediation, on the following grounds:

1. The purpose of the application is to seek relief declaring the First and/or Second Respondents in contempt of court.
2. The Applicant contends that the Respondents' contemptuous conduct, despite its obvious unlawfulness, violates citizens' existing property rights and rights to lawful occupation.

3. Since the application concerns the unlawful and unconstitutional conduct of the Respondents, it would be inappropriate to expect the Applicant and Respondents to engage in *bona fide* mediation.
4. The Respondents' clear disregard to the court ordered, despite proper knowledge thereof, further nullifies the possibility of *bona fide* mediation.
5. This matter is therefore not reasonably capable of being resolved by way of mediation.

SIGNED AND DATED AT **PRETORIA** ON THIS THE 11 DAY OF **AUGUST 2026**



HURTER SPIES INC.
Attorneys for Applicant
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Groenkloof
Pretoria
Tel: 012 941 9239
Email: wian@hurterspies.co.za
tharina@hurterspies.co.za
Ref: W Spies/MAT6997

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

AND TO: FIRST RESPONDENT
Winnie Madikizela Mandela House,

119 Marshall Street,
Marshalltown,
Johannesburg

(Service by sheriff)

AND TO: SECOND RESPONDENT

Winnie Madikizela Mandela House,
119 Marshall Street,
Marshalltown,
Johannesburg

(Service by sheriff)

