IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT Case No: 23/2023

HC Case No: 89196 / 16

In the application for leave to appeal of:

JULIUS SELLO MALEMA	First Applicant
ECONOMIC FREEDOM FIGHTERS	Second Applicant

and

AFRIFORUM NPC	First Respondent
AFRISAKE NPC **(currently SAKELIGA NPC)**	Second Respondent

FIRST AND SECOND RESPONDENTS'
ANSWERING AFFIDAVIT

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I, the undersigned,

ERNST ALEX ROETS

do hereby make oath and state the following:

1. I am an adult male and Head: Policy and Action of the First Respondent herein, with work address at AfriForum Building, 58 Union Avenue, Kloofsig, Centurion.

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.

3. I am duly authorized to depose to this affidavit on behalf of both Respondents.

LITIGATION HISTORY:

4. After the application was duly served the relevant interdict was granted by the Honourable Judge Mabuse in the

unopposed motion court on 7 March 2017. This order is already an Annexure to the Applicant's papers. The current Applicants then sought to rescind the order. They served an initial defective Notice of Motion for rescission of the default judgment on 7 April 2017, followed up by an amended Notice of Motion, also containing a prayer for condonation on 10 April 2017. I annex as copy of this amended Notice of Motion hereto as **Annexure "AFR1".**

5. The Applicants belatedly filed their Replying Affidavit in the rescission application and never sought condonation in this respect. The Applicants took no positive steps to set their rescission application down for hearing. This forced the hand of the current Respondents to apply for a hearing date.

6. The rescission application was set down for hearing (by the Respondents) before the Honourable Mr. Justice Baqwa on 12 September 2017. The Heads of Argument for the current Applicants were only filed shortly before the hearing.

Judge Baqwa was not inclined to hear the matter under those circumstances and postponed the rescission application *sine die* and ordered the current Applicants to pay the wasted cost on a punitive scale. This order is annexed hereto as **Annexure "AFR2".**

7. After this postponement caused by the Applicant's disregard for the Court process and practice directives, the Applicants again did not set the rescission application down for hearing. The Respondents again took the necessary steps to set it down. A Notice of Set Down was served on the Applicant's attorneys of record at the time. A copy of this notice is annexed hereto as **Annexure "AFR3".**

8. The rescission matter was eventually heard by the Honourable Acting Judge Nathan on 12 February 2018. Neither the Applicants, nor any of their (previous) legal representatives attended this hearing. The rescission application was dismissed with costs. I annex a copy of the relevant order in this regard hereto as **Annexure "AFR4".**

9. The order in terms of which the rescission application was dismissed was served on both Applicants as is evidenced by Returns of Service marked **Annexure "AFR5" and Annexure "AFR6"** respectively, as well as on their attorneys of record at the time in terms of the Filing Notice annexed hereto as **Annexure "AFR7".**

10. I pause to mention that although the order by Acting Judge Nathan was granted in Johannesburg, it was on the papers of the rescission application initiated in the High Court in Pretoria (the interdict was also granted in Pretoria). A practice existed at the time where the Judge President / Deputy Judge President transferred matters between the two High Courts in Pretoria and Johannesburg if they deemed matters more prudent to be dealt with in any specific High Court in Gauteng. Nothing turns on this.

11. The current Applicants thereafter approached the Gauteng Division, Pretoria, on an urgent basis to stay the execution

of the cost orders granted by Mabuse J and Nathan AJ, pending the outcome of the constitutional challenge launched, which was at the time scheduled for hearing on 12 and 13 December 2018 in the Gauteng Division, Pretoria. This is the constitutional challenge that was brought by the current Applicants that was at the time pending in the High Court against the Trespass Act and/or Righteous Assemblies Act, which eventually led to a hearing before this Honourable Court in the case referenced in the Applicants' Founding Affidavit.

12. The urgent relief sought was peculiar, since it sought to suspend the execution of cost orders that the Respondents had obtained, pending proceedings to which they were not parties. I annex a copy of the Notice of Motion in those urgent proceedings hereto as **Annexure "AFR8".** This attempt was struck from the Court roll for lack of urgency with costs by the Honourable Mr. Justice Louw. I annex the order in this regard hereto as **Annexure "AFR9".**

13. The belated application for leave to appeal (against the initial interdict granted by default) was only served on 13 November 2018 with only a partial explanation for the lengthy delay. The explanation tendered for the delay was found to be insufficient by the Honourable Mr. Justice Mabuse. The Applicants have in their current approach to this Honourable Court not provided any additional information or a better explanation that could justify such a lengthy delay.

14. The current Applicants have duly paid the taxed cost orders in respect of the orders granted by the Honourable Mr. Justice Baqwa, Madam Acting Justice Nathan and Mr. Justice Louw. Accordingly, the Applicants accepted defeat in their rescission application and have also never taken any further steps to challenge that outcome.

GENERAL REMARKS:

15. The current Respondents (as Applicants in the High Court) sought an interdict. In this regard the founding papers addressed the normal requirements for a final interdict. The interdict was not only premised on the conduct being criminal, but also on violation of Constitutional rights and a threat to the rule of law.

16. This Honourable Court has already held that self-help associated with land invasions cannot be tolerated.[1] Our courts have recognized that land invasions and acts of trespassing are matters of public interest and an attack on the rule of law.[2] In neighbouring Zimbabwe the Supreme Court issued a declaratory order to the effect that the rule of law has persistently been violated in commercial farming

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[1] ***Government of the Republic of South Africa & Others v. Grootboom & Others,*** **2001 (1) SA 46 (CC) paragraph 2.**

[2] ***Groengras Eiendomme (Pty) Ltd & Others v. Elandsfontein Unlawful Occupants & Others,*** **2002 (1) SA 125 (T) paragraph 30.**

areas of Zimbabwe because of uncontrolled land invasions and acts of trespassing.[3]

17. I annex a copy of the first page of the Founding Affidavit and the relevant pages on which the Applicants at the time (current Respondents) dealt with the clear right and reasonable apprehension of irreparable harm hereto as **Annexure "AFR10".** The default judgement was granted on these papers.

18. The relief sought is/was clearly not dependent on the conduct complained of and various incidents mentioned being criminal. It is, however, submitted that the various incidents were trespassing and land invasions were instigated by the current Applicants (as alluded to in the founding papers) are criminal and this would normally dictate that a Court of law should not allow such conduct to continue.[4]

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[3] ***Commercial Farmers Union v. Minister of Lands, Agriculture and Resettlement, Zimbabwe & Others,*** **2001 (2) SA 925 (ZS).**

[4] ***Lester v. Ndlambe Municipality & Another,*** **2015 (6) SA 283 (SCA) paragraph 24 to 27**

19. The eventual order sought in the current application is peculiar, to say the least. Relief is sought that the orders are *"vacated and are of no force and effect".* If the Applicants had been successful in rescinding the judgment, the case would merely have been reopened at that point in time. The Applicants seek to be placed in a better position compared to what the position would be if rescission had succeeded.

20. The Applicants are effectively seeking to sway the outcome in default judgment proceedings *ex post facto* where they did not attend the hearing. It is also important to note that in the rescission application that was dismissed the current Applicants also unsuccessfully raised alleged intrusions of the right of freedom of expression.

SERIATIM RESPONSE AND ANSWER TO APPEAL GROUNDS:

21. I now turn to deal *seriatim* with the Founding Affidavit of Mr. Julius Sello Malema. If I do not specifically address an aspect in his affidavit, the intention is to deny that aspect. I have read his affidavit and respond thereto as follows:

22. **AD PARAGRAPH 1 TO 4:**

I deny that the content falls within the personal knowledge of the deponent or that same is true and correct in all material respects. I note that he reacts on legal advice. The correctness of the said advice is disputed.

23. **AD PARAGRAPH 5 TO 9:**

It is denied that the interdict order contains any unjustified limitation. It is submitted that it will normally be justified to curtail conduct where anyone is propagating violating important Constitutional rights of others. I have already

dealt with the fact that the clear right does not only emanate from the legislation contravened.

24. **AD PARAGRAPH 9 TO 12:**

It is denied that there is any unjustified infringement *in casu*. The interdict is still operational and should be respected, as is the case with all prohibitory interdicts. In this regard I can point out that the notice seeking leave to appeal in the High Court was fatally flawed. It departed from the starting point that the Trespass Act allegedly impermissibly curtailed free speech. The Trespass Act does not limit any form of speech. I annex a copy of the Notice for Leave to Appeal that served before the High Court hereto as **Annexure "AFR11"** hereto and respectfully refer to the grounds of appeal.

25. **AD PARAGRAPH 13 TO 16:**

The conduct complained of is, with respect, still regarded as criminal if regard is had to the guidelines provided in the relevant previous judgment of this Honourable Court as referenced by the Applicant. The clear right does not only emanate from the criminality. Trespassing constitutes a serious crime. This Honourable Court has already pronounced on the issue and it appears that at the time the current Applicants elected not to alert this Honourable Court (or the High Court hearing the constitutional challenge) to the interdict which was already in place against them at the time. This was done despite the fact that they approached the Urgent Court in Pretoria to halt execution of the cost orders pending the constitutional challenge, to which the current Respondents were not made parties. There is, with respect, nothing in the order that is legally impermissible and contrary to the interest of justice.

26. **AD PARAGRAPH 17 TO 21:**

I note to which order this application relates. The affidavit mentions that leave to appeal is sought only against the initial interdict, whilst the application itself shows that subsequent dismissal of the application for leave to appeal by the Honourable Mr. Justice Mabuse (in respect of the default judgement) is also under attack.

27. **AD PARAGRAPH 22 TO 23:**

Not all the relevant background facts were mentioned in the judgement of the Honourable Mr Justice Mabuse. It is material that the Applicants did not even bother to attend the hearing of the rescission application that they had initiated and that the cost order in respect of the dismissal of that application has duly been paid by them.

28. **AD PARAGRAPH 24 TO 34.1.6:**

28.1. I have already dealt with the fact that the order is not only premised on the conduct being criminal. The conduct, however, remains criminal after the earlier judgment of this Honourable Court if regard is had to the various guidelines provided. To incite the crime of trespassing remains a serious crime. If regard is had to the judgment of this Honourable Court in ***Economic Freedom Fighters & Another v. Minister of Justice and Constitutional Development & Another,*** **2021 (2) SA 1 (CC) at paragraph 51**, it becomes clear that:

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

28.2. Acts of trespassing on land lead to serious harm and danger to property, the economy, landowners or lawful occupants of land and public order.

28.3. In paragraph 63 this Honourable Court held that incitement of all crimes that are *"potentially serious"* could still be prohibited.

28.4. In paragraph 71 this Court indicated that serious offences could include those listed in, *inter alia,* schedule 1 of the Criminal Procedure Act, Act 51 of 1977. This schedule includes *"any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment whereof* ***may be*** *a period of imprisonment exceeding* ***six months without the option of a fine****".* (own underlining)

28.5. Section 2(1) of the Trespass Act lists the possible sanctions as being a fine not exceeding R2,000.00 or imprisonment for a period not exceeding two years, or both such fine and imprisonment.

28.6. It is thus an option available to a Presiding Officer who convicts a person of trespassing to elect to impose a custodial sentence without the option of a fine. Such a custodial sentence can be for a period of up to 2 years. In fact, such custodial sentence and a fine can be imposed (without any option). The possible imprisonment of two years equates to four times the threshold of six months listed in Schedule 1 of the Criminal Procedure Act, Act 51 of 1977.

28.7. The Trespass Act is constitutionally sustainable and serves a valuable purpose – to ensure that rights to property are not arbitrarily infringed on. The Trespass Act limits no form of speech. The Constitutional right not to be arbitrarily deprived of

rights to property is a value that is held most dear by society.

29. **AD PARAGRAPH 34.2 TO 46:**

29.1. A quotation from a Government Gazette containing proposed legislative amendments is hardly a persuasive precedent. In fact, the legislative amendments propose to replace trespass with a very similar crime. Trespassing is a serious crime and has a serious effect to the Constitutional right enshrined in Section 25 of the Constitution of the Republic of South Africa, 1996. The Trespass Act should be interpreted with this in mind.

29.2. I have already dealt with the fact that imprisonment without the option of as fine (or imprisonment and a fine) can be imposed for the crime of trespassing.

29.3. Legislation has to be adhered to even if the Applicants view it as "irrelevant".

29.4. This High Court correctly held that the Respondents had a clear right and the Respondents were, with respect, entitled to the interdict granted. Leave to appeal was also correctly refused.

30. **AD PARAGRAPH 47 TO 57:**

30.1. All the requirements for an interdict were proven at the default judgment stage. The Respondents brought the litigation in their own interest and the interest of their members and in public interest. Various instances where actual land invasions materialized after same were instigated / arranged by the Economic Freedom Fighters, or where the organization played a role therein, were mentioned in the Founding Affidavit. This caused expensive litigation and volatile situations.

30.2. A threat to the rule of law will normally be capable of being interdicted. The same applies to threatened infringement of important Constitutional rights.

30.3. There is, with respect, no ongoing injustice to the current Applicant and the earlier judgment of this Honourable Court in the erstwhile Constitutional challenge by the Applicants does not preclude the interdict.

31. **AD PARAGRAPH 58 TO 62:**

Although this matter touches on Constitutional aspects, it is submitted that this Honourable Court should not currently entertain this application, especially by way of direct access, since this Honourable Court has already been ceased with similar argument and the current case does not raise an arguable point of law in public interest. When this Honourable Court previously granted a hearing to the

Applicants this occurred in circumstances where a (partial) declaration of invalidity by the High Court also had to be confirmed and decided on. There are also, with respect, currently no prospects of success.

32. **AD PARAGRAPH 63 TO 71:**

32.1. A direct approach to this Honourable Court is not justified *in casu*. It is not necessary for this Honourable Court to interpret its own previous order and judgment. Lower courts interpret the judgments of this Honourable Court on essentially a daily basis.[5] This is also what was done by Judge Mabuse and can also be done by the Supreme Court of Appeal.

32.2. It is no excuse for the Applicants to circumvent the Supreme Court of Appeal because they believe that they will not be successful there. The Supreme Court of Appeal can deviate from its own previous

[5] ***In re Amaqumu Community Claim (Land Access Movement South Africa) & Others as amici curiae,* 2017 (3) SA 409 (LCC) paragraph 44 and 45.**

judgments if it is convinced that the matter was incorrectly decided. It is, however, respectfully contended that the ***Pitelli***-judgment was correctly decided.

32.3. ***Pitelli***[6] confirms that default judgments are not appealable because it held at paragraph 36 that *"the orders that were made in this case were clearly susceptible to rescission. In those circumstances they are not appealable, notwithstanding the application for rescission failed, and this Court ought not to have allowed the appeal …"*.

32.4. It is the accepted legal position that default judgments are not appealable.[7]

32.5. By not pursuing a rescission application (or an appeal therein) a litigant can effectively escape

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[6] **2010 (5) SA 171 (SCA)**

[7] See **Herbstein & Van Winsen, The Civil Practice of the Superior Courts of South Africa, 6th Edition, Volume 1, page 23 – 40.**

having to explain and deal with various obstacles, such as condonation, wilful default and/or good cause that needs to be shown. This Honourable Court warned that litigants should not be encouraged to after they had had their day in Court (or the opportunity to have had their day in Court), but nevertheless found themselves with an order against them, approach this Honourable Court to reconsider the merits of their case.[8] This warning was specifically made in relation to rescission attempts, but it is submitted that it also finds application in the current circumstances.

33. **AD PARAGRAPH 75 TO 82:**

The judgment in ***United Democratic Movement & Another v. Lebashe Investment Group (Pty) Ltd & Others,*** **2023 (1) SA 353 (CC)** referred to by the Applicants as *"Holomisa"*

[8] ***Zuma v. Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State,*** *2021 JDR 2069 (CC) paragraph 99.*

is no authority for default judgments being appealable or not. Instead, that matter relates to the appealability of *interim* interdicts. The High Court duly weighed all considerations and found it justifiable to restrict the incitement of the conduct complained of. Despite the admission in paragraph 79.3 of the Founding Affidavit that condonation was not granted, a better case for condonation is not made out by the Applicants in the current Court papers. The Applicants cannot get passed the adverse findings on the condonation attempt. The interest of justice does not lean towards appealability of default judgments. The Applicants did not provide a full disclosure of what occurred in the entire period of delay. The law has not been amended and the Applicants have had to adhere to it throughout. This is, with respect, not a matter that this Honourable Court should directly entertain (or entertain at all). I have already alluded to the fact that the Supreme Court of Appeal can possibly overturn its judgment in the ***Pitelli***-matter. The judgment was however correctly decided.

34. **AD PARAGRAPH 83:**

I note that the Applicants will not approach the Supreme Court of Appeal. The Respondents accept this. A litigant should not attempt to persuade any specific Court to hear its case by indicating that it refuses to approach another Court within the Constitutionally enshrined Court structure.

35. **AD PARAGRAPH 84:**

It is respectfully denied that a case has been made out for the relief sought. There are, with respect, no prospects of success. A proper case has also not been made out for direct access.

CONCLUSION:

36. Effectively the Applicants seek direct access from this Honourable Court under the following circumstances:

36.1. The interdict order was granted by default and is not appealable;

36.2. The Applicants unsuccessfully attempted to rescind the default judgment and did not appear at the hearing of their own application;

36.3. The Applicants accepted the outcome and dismissal of their rescission application and duly paid the cost order granted therein and took no further steps in relation to that application;

36.4. The Applicants unsuccessfully tried to hold up the current Respondents (from recovering cost orders) pending its Constitutional challenge whilst it did not make them parties in therein;

36.5. It appears that the Applicants did not reveal the existence of the interdict order to this Honourable Court when it argued its Constitutional challenge;

36.6. The Applicants could not sufficiently explain their excessive delay in launching the application for leave to appeal in the High Court and have not made any better attempt before this Honourable Court.

37. There is accordingly, with respect, no sufficient reason/s for this Honourable Court to entertain the current application, especially by way of direct access.

38. The Respondents accordingly respectfully pray that direct access should not be granted, with cost and/or that the application for leave to appeal should be dismissed with cost.

ERNST ALEX ROETS
DEPONENT

THUS SWORN AND SIGNED AT PRETORIA ON THIS THE 21st DAY OF FEBRUARY 2023, BEFORE ME, Aimée Nel, 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.

BEFORE ME:

COMMISSIONER OF OATHS

NAME:

CAPACITY:

ADDRESS:

Aimée Nel
LLB(SA)
Commissioner of Oaths(RSA)
Cnr. D.F. Malan Dr. & Eendracht St.
Kloofsig Centurion 0046

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.

002-6

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 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.

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

002-7

KWINANA & PARTNERS INC
Applicants' Attorneys
119 First Avenue
Fairland
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Ref: Mr Kwinana/Ms Mrerwa
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Suite N503 – N504
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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 Buiding
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 Beraadslaging
Received Without Prejudice
Hurter Spies Ing / Inc

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

For: Respondents' Attorneys

002-8

CASE NO: 89196/2016

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

PRETORIA 12 SEPTEMBER 2017

BEFORE THE HONOURABLE MR JUSTICE BAQWA, J

In the matter between:

ECONOMIC FREEDOM FIGHTERS	1ST APPLICANT
JULIUS SELLO MALEMA	2ND APPLICANT

AND

AFRIFORUM NPC	1ST RESPONDENT
AFRISAKE NPC	2ND RESPONDENT

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

IT IS ORDERED THAT:

Ex tempore judgment

1. The application is postponed sine die.
2. The applicant is to pay the wasted costs on an attorney and client scale, costs to include the costs of two counsel.

BY THE COURT

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA
EM PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001
2017 -10- 10
R.T MADOU
REGISTRAR
GRIFFIER VAN DIE HOË HOF VAN SUID-AFRIKA, GAUTENG AFDELING, PRETORIA

Attorney: NKOME INC.

☐

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**

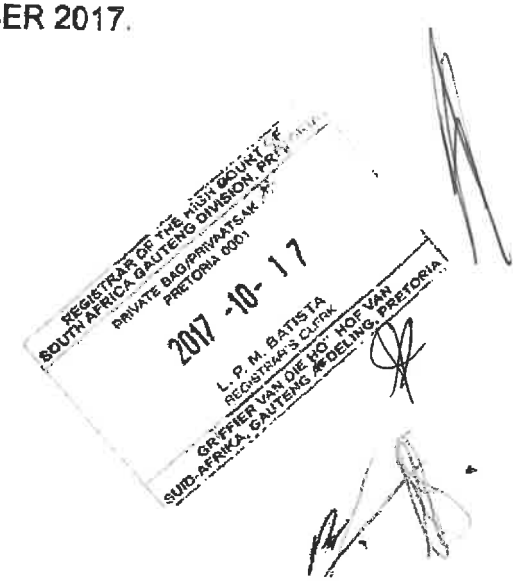
and

AFRIFORUM NPC	**FIRST RESPONDENT**
AFRISAKE NPC	**SECOND RESPONDENT**

NOTICE OF SET DOWN

KINDLY TAKE NOTICE THAT the matter is hereby set down on the opposed motion roll for **12 FEBRUARY 2018**, at 10h00 or as soon thereafter as Counsel may be heard.

DATED at PRETORIA on this the 16th day of OCTOBER 2017.



HURTER SPIES INC
Attorneys for the Applicant
First Floor, AfriForum Building
Cnr Union and DF Malan Drive
Kloofsig, Centurion
Tel: (012) 664 0708
Fax: (012) 644 1997
Ref: T Kruger/AF0028

TO: **THE REGISTRAR OF THE HIGH COURT**
Pretoria

AND TO: **KWINANA & PARTNERS INCORPORATED**
Applicants' Attorneys
119 First Avenue, Fairland
Johannesburg
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Fax: (086) 561 7741
E-mails: thabo@kp.co.za & tendai@kp.co.za
Ref: **Mr. Kwinana/Ms Mrerwa**
C/O NKOME INC.
Suite 204
Hatfield Forum East
1077 Arcadia Street
Hatfield
Pretoria
Tel: 012 342 6009
Ref: Mr. A Nkome

Received copy hereof:
Date: 17/10/2011
Time: 10:01
Signature:

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	*1st Applicant*
JULIUS SELLO MALEMA	*2nd Applicant*

and

AFRIFORUM NPC	*1st Respondent*
AFRISAKE NPC	*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

REGISTRAR
hp

863893

002-142

'X' 12 Q/ 2018 -

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION - PRETORIA

Case No 89196/16.

Before the Honourable
Justic Nathan A.J.

In the matter between

ECONOMIC FREEDOM FIGHTERS 1st Applican
JULIUS SELLO ...MALEMA 2nd Applican

And

AFRIFORUM NPC 1st Respondent
AFRISAKE NPC 2nd Respondent

ORDER

After hearing Council 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 council when so employed

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

002-143

BY ORDER

Delegated.
REGISTRAR
12 FEBRUARY 2018

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION JOHANNESBURG

POST

IN THE MATTER BETWEEN :

CASE NO :4832/18

ECONOMIC FREEEDOM FIGHTERS

1ST APPLICANT

and
AFRIFORUM NPC
AFRISAKE NPC

1ST RESPONDENT
2ND RESPONDENT

O R I G I N A L

(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 NOMGHLE 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
LYTTELTON 0140
0000

Your ref.: AF0028/T KRUGER

Our ref.: 005/863893/H44

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

Tel (011) 334-4397/98

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

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION JOHANNESBURG POST

IN THE MATTER BETWEEN :

CASE NO :4832/18

JULIUS SELLO MALEMA 2ND APPLICANT

and
AFRIFORUM NPC 1ST RESPONDENT
AFRISAKE NPC 2ND RESPONDENT

O R I G I N A L (REG. NO. 42501141902)

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 NOMGHLE 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

ees 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
LYTTELTON 0140
0000
Your ref.: AF0028/T KRUGER

Our ref.: 005/863893/H44

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

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

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, AfriForum Building
Cnr Union and DF Malan Drive
Kloofsig, Centurion
Tel: (012) 664 0788
Fax: (012) 644 1997
Ref: T Kruger/cvv/AF0028

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:
10:09

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

CASE NUMBER: **89196/16**

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

004-5

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.**

004-7

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 , marjorie@hurterspies.co.za ;
celeste@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

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	1st	Applicant
ECONOMIC FREEDOM FIGHTERS	2nd	Applicant

And

AFRIFORUM NPC	1st	Respondent
AFRISAKE NPC	2nd	Respondent
THE SHERIFF (JOHANNESBURG NORTH)	3rd	Respondent

In the matter between:

AFRIFORUM NPC	1st	Applicant
AFRISAKE NPC	2nd	Applicant

And

ECONOMIC FREEDOM FIGHTERS	1st	Respondent
JULIUS SELLO MALEMA	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 X67, Pretoria
2018 -11- 23

BY THE COURT

REGISTRAR
AM

Attorney: IAN LEVITT

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 89196/2016

In the matter between:

AFRIFORUM NPC	First Applicant
AFRISAKE NPC	Second Applicant

and

ECONOMIC FREEDOM FIGHTERS	First Respondent
JULIUS SELLO MALEMA	Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

CATHARINA CORNELIA COOKS

declare under oath as follows:

001-5

Should the content be disputed, I will make the video material available to anyone who wishes to see it, including the Honourable Court.

50.

I also annex a copy of an article from Timeslive in relation to the utterances made by the Second Respondent at the Court building in Newcastle hereto and mark it as **Annexure "AFR19"**.

CLEAR RIGHT:

51.

The Respondents' conduct is a threat to the rule of law, law and order, democracy and especially the constitutional right as envisaged in Section 25 of the *Constitution*.

52.

I am advised that a Court of Law such as this Honourable Court will not countenance unlawful and illegal conduct.

53.

It is in the interest of the Applicants, its members and the general public of South Africa that criminal conduct should not be allowed.

54.

Section 1(1) of the *Trespass Act*, 6 of 1959 reads as follows:

> *" (1) Any person who without the 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 a 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."*

55.

Section 18(2) of the *Riotous Assemblies Act*, 17 of 1956 reads as follows:

> *" (2) Any person who-*
> *(a) conspires with any other person to aid or procure the commission or to commit; or*

(b) incites, instigates, commands, or procures any other 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 to the punishment to which a person convicted of actually committing that offence would be liable."

56.

It is thus clear that the conduct complained of is also criminal and should not be tolerated.

57.

In terms of Section 2 of the *Constitution*, the *Constitution* is the supreme law of in the Country that should be upheld and all conduct in contravention thereof is invalid.

REASONABLE APPREHENSION OF IRREPARABLE HARM OR ACTUAL HARM SUFFERED:

58.

The response received to the letter of demand makes it clear that the Respondents have no intention to stop their unlawful conduct and that the conduct will continue.

001-37

59.

It is also clear that various individuals supporting the EFF have in fact acted criminally after being incited and/or commanded and/or procured to invade land. The threat of further land invasions is very much alive and a reality. With political tension as it is the Applicants fears that, because of the aforementioned conduct of the Respondents, a stage will be reached where people are going to take the law into their own hands with catastrophic results.

60.

As mentioned above, the conduct of the Respondents threatens the rule of law and constitutional democracy.

61.

It appears that several of the matters where actual EFF inspired land invasions took place are still in the process of being sorted out. All the affected landowners confirm that the unlawful land invaders are aggressive and threatening towards them. There is a very real risk of violence erupting, with dire consequences.

62.

001-38

It is difficult for landowners or organisations such as the Applicants to fund litigation. The criminal conduct should be stopped at its source before expensive litigation is required and the trespassers enjoy the fruit of their criminal conduct in the interim. In the instance of the land grab near Bronkhorstspruit mentioned above, Mr Marius van Wyk confirms that the land invaders were violent when entering the land and lawful occupants of the land were assaulted by them. Various death threats were also made to Mr van der Merwe by the unlawful land invaders when the land grab took place on his farm near Marikana.

NO OTHER EFFECTIVE ALTERNATIVE REMEDY:

63.

The Applicants and their members do not have any other effective alternative remedy available to them. The Respondents refuse to refrain from the unlawful conduct, even in the face of criminal prosecution.

PUNITIVE COST ORDER:

64.

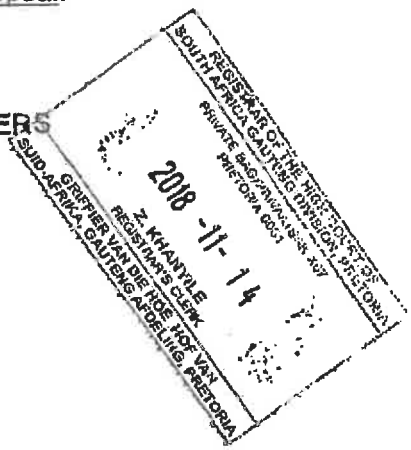
25
FRIEDLAND HART SOLOMON& NICOLSON

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

003-1

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 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.
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.**

Applicant's Attorneys
IAN LEVITT ATTORNEYS
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Sandton City
Cnr of 5th Street and Rivonia
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Tel: 011 784 3310
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C/O FRIEDLAND HART SOLOMON & NICOLSON
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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:

Ontvang Sonder Benadeling
Received Without Prejudice
DJ Zloff
14:15 13 November 2015
Hurter Spies Ing / Inc

HURTER SPIES INC
Respondents Attorneys
First Floor, Afriforum Building
Cnr Union & Df Malan Drive
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Tel: (012) 664 0708
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celeste@hurterspies.co.za