

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

Case No: 83581/2017

In the application to be admitted as *Amicus Curiae*:

SAKELIGA NPC

(previously known as ~~SAKELIGA NPC~~)
AFRISAKE

Applicant

In re:



In the matter between:

RESILIENT PROPERTIES PROPRIETARY LIMITED

First Applicant

CHANGING TIDES 91 PROPRIETARY LIMITED

Second Applicant

RETRACTION PROPS 7 PROPRIETARY LIMITED

Third Applicant

MOGWELE TRADING 278 PROPRIETARY LIMITED

Fourth Applicant

and

ESKOM HOLDINGS SOC LIMITED

First Respondent

EMALAHLENI MUNICIPALITY

Second Respondent

**MEC: CO-OPERATIVE GOVERNANCE &
TRADITIONAL AFFAIRS (MPUMALANGA)**

Third Respondent

1


MINISTER OF ENERGY

Fourth Respondent

NATIONAL ENERGY REGULATOR OF SOUTH AFRICA

Fifth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

PIET LE ROUX

do hereby make oath and state as follows:

1.

I am an adult male and the Chief Executive Officer of SakeLiga NPC. The principal place of business and head office of SakeLiga NPC is situated at at the corner of D.F. Malan Avenue and Union Street, Kloofsig, Centurion.

2.

I am duly authorised to dispose to this affidavit on behalf of SakeLiga NPC.

3.

The facts set out in this affidavit fall within my personal knowledge. Where the facts do not fall within my personal knowledge they have become known to me by virtue of my position with SakeLiga NPC and in the course of my functions, which I verily believe to be true and correct. Where this affidavit contains legal submissions they are made on the advice of the legal representatives of SakeLiga NPC.

4.

CONDONATION:

- 4.1 In the event that the Honourable Court does not find strict compliance with Rule 16A of the Uniform Rules of the Court, I humbly seek condonation for the late filing of this application. I am mindful of the fact that the matter will be heard on 14, 15 and 16 August 2018, in accordance with a special allocation.
- 4.2 SakeLiga NPC is *bona fide* in the filing of this application and humbly apologises for any inconvenience that may be caused as a result of this application being filed outside of time.

5.

CONSENT OBTAINED IN RESPECT OF ADMISSION AS *AMICUS CURIAE*:

- 5.1 On 9 July 2018, the attorneys representing SakeLiga NPC (at that time still registered and known as AfriSake NPC) approached the Applicants and the Respondents in the main application, seeking their consent to be admitted as *Amicus Curiae* in the application. A copy of the letter dispatched to the respective parties is annexed, marked **Annexure "PLR1"**.
- 5.2 Save for the Third Respondent, being the MEC: Co-operative Governance & Traditional Affairs (Mpumalanga), all other parties have consented to the admission of SakeLiga NPC as *Amicus Curiae* in the main application.
- 5.3 The Fifth Respondent did not oppose the main application and as such, did not respond in respect of the request pertaining to the admission of SakeLiga NPC as *Amicus Curiae*. The Fifth Respondent's consent, therefore, is not strictly necessary.

- 5.4 I annex, marked **Annexure "PLR2"**, a copy of a letter received from Kokinis Inc. Attorneys, representing all four Applicants in the matter, from which the Honourable Court will note that the Applicants have consented to the admission of SakeLiga NPC as *Amicus Curiae*.
- 5.5 I also annex, marked **Annexure "PLR3"**, a copy of a letter from Ngeno & Mteto Inc Attorneys, indicating that the First Respondent consents to the admission of SakeLiga NPC as *Amicus Curiae*.
- 5.6 The Honourable Court is also referred to **Annexure "PLR4"**, being confirmation obtained from the Second Respondent's Attorneys Neuhoff Khoza Attorneys confirming that the Second Respondent consents to the admission of SakeLiga NPC as *Amicus Curiae*.
- 5.7 The State Attorney, acting on behalf of the Fourth Respondent, likewise granted consent, as appears from **Annexure "PLR5"**, annexed hereto.
- 5.8 The Fifth Respondent did not oppose the main application and as such, its consent in regard to the admission of SakeLiga as *Amicus Curiae* is not required.
- 5.9 I am advised that the attorneys for SakeLiga NPC made several enquiries to determine whether or not the Third Respondent opposes the application for admission as *Amicus Curiae*. To date hereof, confirmation has not yet been obtained, necessitating the filing of this application.

- 6.1 SakeLiga was established in 2011 under the name AfriSake NPC and formally incorporated and registered in terms of the Companies Act in 2012.
- 6.2 It has been recently resolved by the Board of Directors to change its name to "Sakeliga" and the name change was registered with the Companies and Intellectual Properties Commission (CIPC) on 23 July 2018.
- 6.3 SakeLiga is a non-profit company registered as such in terms of the company laws of the Republic of South Africa with registered address and principal place of business at the corner of D.F. Malan Avenue and Union Street, Kloofsig, Centurion.
- 6.4 SakeLiga is a business interest organisation with more than 12 000 members countrywide, consisting of a variety of businesses and proprietors or employees of businesses in the form of corporate businesses and other forms. It also has several individual members supporting its cause.
- 6.5 SakeLiga's main objective is the protection of constitutional rights and property rights. It also lobbies and promotes the free market and economic prosperity in order to create a favourable business environment in the interest of its members, as well as in the interest of the common good. In order to give effect to its main object, it also provides support to its members, which includes legal support.
- 6.6 SakeLiga has approached the above Honourable Court, *inter alia*, on several occasions in the past in order to enforce and protect the rights of its members and the wider community where its members conduct business, but also in the public interest.

INTEREST OF SAKELIGA NPC AND ITS MEMBERS IN THE MAIN APPLICATION:

7.1 SakeLiga has an interest in the main application, by virtue of, *inter alia*, the following:

7.1.1 In addition to specific relief sought by the Applicants, general relief that seeks to interdict the First Respondent from implementing its decision to implement the bulk interruption of electricity supply to the Second Respondent, *inter alia*, is also being sought by the Applicants.

7.1.2 SakeLiga's members have an interest in the outcome of the application specifically by virtue of the fact that its members operate in the municipal boundaries of the Second Respondent. As such, SakeLiga's members are dependent upon the supply of electricity by the Second Respondent.

7.1.3 SakeLiga has approximately 100 members in the jurisdictional area of the Second Respondent which consist of members in their individual capacities and members representing businesses in which they have an interest.

7.1.4 Most of the businesses in Emalahleni rely heavily on electricity and/or electronic equipment in order to manage their affairs and also to render, produce, manufacture and/or distribute goods and services within the community of Emalahleni, but also within the broader South African economy.

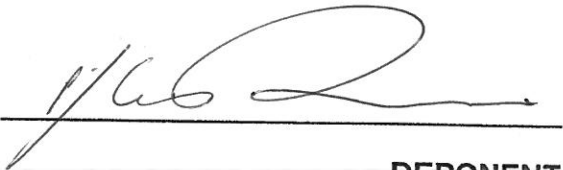
- 7.1.5 It is submitted that SakeLiga's members will be severely prejudiced by the intended action of the First Respondent in that they will suffer irreparable harm if the supply of electricity to their homes and/or businesses is interrupted.
- 7.1.6 It is submitted that the intended interruption of the supply of electricity will have a crippling effect on the local economy of Emalahleni. The intended interruption of electricity supply to the business community will result in significant financial losses, which may lead to businesses having to either retrench employees and/or moving its business activities outside of the boundaries of the Emalahleni Municipality. Many businesses may face the risk of having to close down.
- 7.1.7 The reduction in economic flow will not improve the Municipality's ability to pay its debts. To the contrary, the intended interruption, it is submitted, will serve to increase the Second Respondent's inability to pay its debt to the First Respondent;
- 7.2 I respectfully submit that the *Amicus Curiae's* Heads of Argument to be filed simultaneously with this application will reflect in more detail the contribution which is to be made and which SakeLiga NPC wishes to make with reference to the subject matter of the application.
- 7.3 The Heads of Argument on behalf of SakeLiga NPC contain several new contentions which I respectfully submit will be of assistance to the Court.
- 7.4 SakeLiga NPC does not intend to introduce any further facts in the matter. It also does not intend to make any submissions on any dispute of facts in the

matter. It may during the course of oral submissions should it be admitted as *Amicus Curiae* refer to existing evidence or common cause facts likely to strengthen the legal submissions which SakeLiga NPC wishes to make.

7.5 It is submitted that SakeLiga's application to be admitted as *Amicus Curiae* will be beneficial to the above Honourable Court, SakeLiga NPC's members as well as the general public.

8.

WHEREFORE I respectfully request the Honourable Court to grant the application on the terms as set out in the attached Notice of Motion.



DEPONENT

THUS SWORN AND SIGNED AT CENTURION ON THIS 31ST DAY OF JULY 2018, BEFORE ME AS 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:

TERTIUS PAULUS KRUGER
Kommissaris van Ede • Commissioner of Oaths
Praktiserende Prokureur RSA
Practising Attorney RSA
H/V D.F. Malanrylaan & Unionlaan
Kloofsig, Centurion

CAPACITY:

ADDRESS:





KRIEK WASSENAAR & VENTER ING
Prokureurs • Aktevervaardigers • Attorneys • Conveyancers

0
"PLR1"

Our ref: P Wassenaar /J Jordaan/QB0415

9 July 2018

KOKINIS INC
APPLICANTS' ATTORREYS
REF: SKOKINIS/ith/R573
C/O COUZYN HERTZOG & HORAK
321 MIDDEL STREET
BROOKLYN
PRETORIA
REF: MR D NEL/MD/kok9/0272

SONDER BENADELING
VAN REGTE
URGENT WITHOUT PREJUDICE

gvd 11/7/18
RECEIVED / ONTVANG
2018 -07- 09
COUZYN HERTZOG & HORAK

By e-mail: steven@kokinisinc.co.za
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By hand

NGENO & MTETO INC
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NGENO AND MTETO INCORPORATED
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Date: 9/7/18 Signature: [Signature]
Time: 11:37

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Direkteure/ Directors: Johan Kriek (B Proc, LLM), Pieter Johannes Wassenaar (LLB)
Bygestaan deur/assisted by Tertia Johanna Wassenaar (LLB); Jani Jordaan (LLB);
Konsultante / Consultants: Catherina Elizabeth Pienaar (BA, BCur, LLB, LLM, PhD), Sylvia Adriana Venter (LLB)
• Reg: 2012/030418/21
DocDate 2018/04/09

By hand

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SECOND RESPONDENT
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ASHLEA GARDENS
PRETORIA
REF: C BRANDT/LK/CN0397



By e-mail: henrik@nk.co.za

By hand

MEC: CO-OPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS
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THIRD RESPONDENT
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316 THABO SEHUME STREET
PRETORIA

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MINISTER OF ENERGY
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By hand

**NATIONAL ENERGY REGULATOR OF SOUTH AFRICA
FIFTH RESPONDENT
C/O STATE ATTORNEY
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PRETORIA**

By e-mail: bnkosi@justice.gov.za

By hand

Sir / Madam

**RESILIENT PROPERTIES (PTY) LTD & 3 OTHERS / ESKOM HOLDING SOC LTD & 4 OTHERS
AMICUS CURIAE: AFRISAKE NPC (AFRIBUSINESS)**

1. We refer to the abovementioned matter and confirm that we act on behalf of AfriSake NPC ("AfriSake").
2. It is our instructions to seek your client/s consent that our client as an interested party be admitted as an *amicus curiae* in terms of rule 16A(2) of the Uniform Rules.

AFRISAKE'S INTEREST IN ISSUES RAISED

3. AfriSake is a non-profit company focused on protecting the constitutional rights of its members and the communities in which they reside, operate and conduct business. It is our client's mandate to protect the economic prosperity of the communities in which AfriSake's members operate and to ensure that a favourable business environment is created. It is part of the mandate of our client to ensure that these rights are, enforced and protected.
4. AfriSake exists to act in the interest of its members and the wider community where its members conduct business in order to ensure a constitutional order, free market, property rights, economic prosperity and a favourable business environment.



5. Afrisake has in the past in order to enforce and protect aforementioned rights made application to court not only in its own interest or in the interest of its members, but also in the public interest.
6. The present application, to which our client seeks to be admitted as *amicus curiae*, is of significant public importance where various constitutional rights are at stake of which most prominently the right to basic municipal services such as electricity and constitutional obligations by local government and Eskom to provide such services and which our client seeks to protect.
7. The application also brings various other statutory provisions into play such as the Electricity Regulation Act and its interpretation, the role of the regulator (NERSA) the Local Government: Municipal Systems Act, the Local Government: Municipal Finance Management Act and the Constitutional principles of co-operative governance between organs of state. Even though specific relief is sought against the first five respondents, general relief that seeks to interdict Eskom from implementing its decision to implement the bulk interruption of electricity supply to Emalahleni Municipality is also being sought. As *amicus curiae*, Afrisake shall not only assist the court and the parties by placing the matter within the perspective of the business community, but will also provide valuable submissions on constitutional issues in amplification and from a fresh perspective over and above that provided by the parties to the litigation.

SUBMISSIONS TO BE MADE AS AMICUS CURIAE

9. Our client and its members have a direct interest in the matter, as our client's members operate in the Municipality's municipal boundaries and rely heavily on the supply of electricity by the Municipality. Our client's members will be severely prejudiced by the intended action of Eskom and will suffer irreparable harm if the supply of electricity to their homes and/or businesses is interrupted.
10. It is our client's view that the intended interruption of the supply of electricity is not in the local, provincial or national interest, as it will have a devastating effect to the local economy of Emalahleni. Our client is further of the view that the interruption of the bulk supply of electricity to the Municipality will only increase the Municipality's inability to repay its debt.
11. The Municipality generates income from its residents and its local economy. Most of the local businesses rely heavily on electronic equipment in order to not only manage their affairs, but also to render, produce, manufacture and/or distribute local goods and services within not only the Emalahleni community, but also within the broader South African economy.
12. The interruption of electricity supply to the business community will result in significant financial losses, which will lead to many businesses having to either retrench workers and/or moving its business



activities outside of the boundaries of the Municipality. This reduction in economic flow will all but improve the Municipality's ability to pay. Some businesses might suffer such irreparable harm that they face the risk having to close down.

13. Our client is of the view that there are various alternative legislative and Constitutional remedies available which will actually address the systemic and root causes of the Municipality's failure to properly meet its obligations. Our client is of the view that the solution to this problem lies in proper co-operative governance and in accordance with the constitutional principles that require such co-operation on the highest levels.
14. As an organ of state in terms of Section 239 of the Constitution of South Africa, Eskom is required to act in the best interests of the country and to ensure that constitutional order is not undermined. Our client is of the view that Eskom has taken an extremely narrow and short sighted approach to the systemic and institutional problem underpinning the failure by various municipalities to meet their obligations to Eskom. It is our client's view that Eskom is required to consult with not only the municipality, but also provincial and national spheres of government and NERSA in order to try and resolve the looming national crisis which will only worsen as a result of Eskom's specific approach to the municipal debt problem.
15. Our client demands that Eskom petition not only the Provincial Government, but also the National Government (with specific reference to the Department of Cooperative Governance and the Treasury), to assist it in seeking a constitutional and economically sensible resolution to the problem. We are of the view that Eskom not only has the right to petition the various spheres of government to intervene in the municipal crisis, but a duty as an organ of State to prevent irreparable harm to society and the economy and especially to those diligent and paying businesses and members of society who irrespective of them paying stand to be denied the right to basic municipal services such as electricity.

CONCLUSION

16. The application will have an immense impact on the economy. The nature and complexity of the case is such that the court can only benefit from additional submissions by interested parties. It will be a monumental task to decide on this matter. We are of the opinion that, due to the effect that this case will have on society, the people and specifically business owners that AfriSake represents, deserve to be heard at the hearing of the matter.
17. The Registrar published the Applicants' rule 16A notice on 11 June 2018 and potential *amici curiae* are required to submit their request to be joined by 9 July 2018. Our client hereby request in terms of rule



16A that the parties consent to the joinder of AfriSake as an *amicus curiae* on the following terms and conditions:

- 17.1. That AfriSake be joined as *amicus curiae* in the matter;
 - 17.2. That AfriSake as *amicus curiae* be allowed to file its written submissions by no later than 31 July 2018;
 - 17.3. That the *amicus curiae* be allowed to present oral argument at the hearing of the matter in amplification of the written submissions.
18. We request that all parties agree to these terms by no later than 12 July 2018, failing thereto our client will be required to bring a substantive application for joinder as amicus, which will be enrolled for hearing on the first day on which the matter will be heard. We trust that all of the parties would prefer not to waste the limited time before court with such applications and we gladly await your confirmation and acceptance of AfriSake's joinder.

Yours faithfully,


KRIEK WASSENAAR & VENTER INC
PÉTER WASSENAAR – DIRECTOR
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Elektronies gesien
Elektronies versend





KRIEK WASSENAAR & VENTER ING

Prokureurs • Aktevervaardigers • Attorneys • Conveyancers

Our ref: P Wassenaar /J Jordaan/QB0415

9 July 2018

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REF: MR D NEL/MD/kok9/0272

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ATTORNEY FOR ESKOM HOLDINGS SOC LTD

FIRST RESPONDENT

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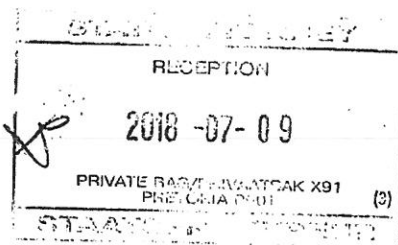
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By e-mail: henrik@nk.co.za

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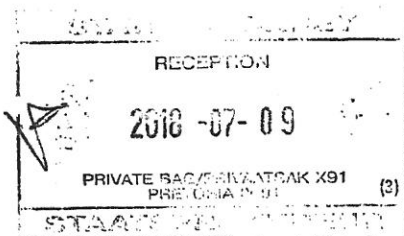
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526 MADIBA STREET,

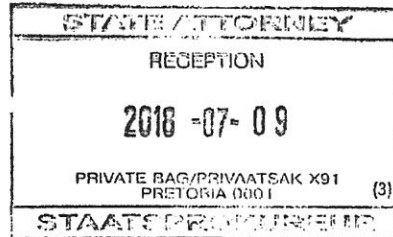
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C/O STATE ATTORNEY

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By hand

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13. Our client is of the view that there are various alternative legislative and Constitutional remedies available which will actually address the systemic and root causes of the Municipality's failure to properly meet its obligations. Our client is of the view that the solution to this problem lies in proper co-operative governance and in accordance with the constitutional principles that require such co-operation on the highest levels.
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- 17.2. That AfriSake as *amicus curiae* be allowed to file its written submissions by no later than 31 July 2018;
- 17.3. That the *amicus curiae* be allowed to present oral argument at the hearing of the matter in amplification of the written submissions.
18. We request that all parties agree to these terms by no later than 12 July 2018, failing thereto our client will be required to bring a substantive application for joinder as amicus, which will be enrolled for hearing on the first day on which the matter will be heard. We trust that all of the parties would prefer not to waste the limited time before court with such applications and we gladly await your confirmation and acceptance of AfriSake's joinder.

Yours faithfully,


KRIEK WASSENAAR & VENTER INC
PÉTER WASSENAAR – DIRECTOR
(f) 086 596 8516
(e) peter@kriekprok.co.za





KRIEK WASSENAAR & VENTER ING

Prokureurs • Aktevervaardigers • Attorneys • Conveyancers

Our ref: P Wassenaar /J Jordaan/QB0415

9 July 2018

KOKINIS INC

URGENT

APPLICANTS' ATTORREYS

REF: SKOKINIS/ith/R573

C/O COUZYN HERTZOG & HORAK

321 MIDDEL STREET

BROOKLYN

PRETORIA

REF: MR D NEL/MD/kok9/0272

By e-mail: steven@kokinisinc.co.za

stevenpa@kokinisinc.co.za

By hand

NGENO & MTETO INC

ATTORNEY FOR ESKOM HOLDINGS SOC LTD

FIRST RESPONDENT

UNIT C - C50

BROOKLYN OFFICE PARK

488 FEHRSEN STREET

BROOKLYN

PRETORIA

REF: MR T NGENO/8146/LIT

By e-mail: liwalam@ngenomtetoinc.co.za

tando@ngenomtetoinc.co.za

www.kwv-inc.com

(t) (+27) 12 756 7566 • (f) (+27) 86 596 8799 (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria 0184
(p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Lede van die Vereniging van Regslui vir Afrikaans



Direkteure/ Directors: Johan Kriek (B Proc, LLM), Péter Johannes Wassenaar (LLB)
Bygestaan deur/assisted by Tertia Johanna Wassenaar (LLB); Jani Jordaan (LLB);
Konsultante / Consultants: Catherina Elizabeth Pienaar (BA, BCur, LLB, LLM, PhD), Sylvia Adriana Venter (LLB)

• Reg: 2012/030418/21

DocDate 2018/04/09

By hand

**NEUHOFF KHOZA INC
ATTORNEY FOR EMALAHLENI MUNICIPALITY
SECOND RESPONDENT
C/O VORSTER & BRAND INC
161 GARSFONTEIN ROAD
ASHLEA GARDENS
PRETORIA
REF: C BRANDT/LK/CN0397**

By e-mail: henrik@nk.co.za

By hand

**MEC: CO-OPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS
MPUMALANGA
THIRD RESPONDENT
C/O STATE ATTORNEY
SALU BUILDING
316 THABO SEHUME STREET
PRETORIA**

By e-mail: bnkosi@justice.gov.za

By hand

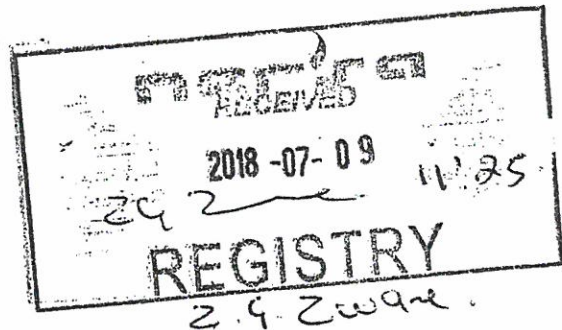
**MINISTER OF ENERGY
FOURTH RESPONDENT
C/O STATE ATTORNEY
SALU BUILDING
316 THABO SEHUME STREET
PRETORIA**

By e-mail: bnkosi@justice.gov.za

Handwritten signatures in black ink, located in the bottom right corner of the page. There are two distinct signatures, one above the other.

By hand

NATIONAL ENERGY REGULATOR OF SOUTH AFRICA
FIFTH RESPONDENT
526 MADIBA STREET,
ARCADIA, PRETORIA.



By hand

Sir / Madam

RESILIENT PROPERTIES (PTY) LTD & 3 OTHERS / ESKOM HOLDING SOC LTD & 4 OTHERS
AMICUS CURIAE: AFRISAKE NPC (AFRIBUSINESS)

1. We refer to the abovementioned matter and confirm that we act on behalf of AfriSake NPC ("AfriSake").
2. It is our instructions to seek your client/s consent that our client as an interested party be admitted as an *amicus curiae* in terms of rule 16A(2) of the Uniform Rules.

AFRISAKE'S INTEREST IN ISSUES RAISED

3. AfriSake is a non-profit company focused on protecting the constitutional rights of its members and the communities in which they reside, operate and conduct business. It is our client's mandate to protect the economic prosperity of the communities in which AfriSake's members operate and to ensure that a favourable business environment is created. It is part of the mandate of our client to ensure that these rights are, enforced and protected.
4. AfriSake exists to act in the interest of its members and the wider community where its members conduct business in order to ensure a constitutional order, free market, property rights, economic prosperity and a favourable business environment.
5. AfriSake has in the past in order to enforce and protect aforementioned rights made application to court not only in its own interest or in the interest of its members, but also in the public interest.

6. The present application, to which our client seeks to be admitted as *amicus curiae*, is of significant public importance where various constitutional rights are at stake of which most prominently the right to basic municipal services such as electricity and constitutional obligations by local government and Eskom to provide such services and which our client seeks to protect.
7. The application also brings various other statutory provisions into play such as the Electricity Regulation Act and its interpretation, the role of the regulator (NERSA) the Local Government: Municipal Systems Act, the Local Government: Municipal Finance Management Act and the Constitutional principles of co-operative governance between organs of state. Even though specific relief is sought against the first five respondents, general relief that seeks to interdict Eskom from implementing its decision to implement the bulk interruption of electricity supply to Emalahleni Municipality is also being sought. As *amicus curiae*, Afrisake shall not only assist the court and the parties by placing the matter within the perspective of the business community, but will also provide valuable submissions on constitutional issues in amplification and from a fresh perspective over and above that provided by the parties to the litigation.

SUBMISSIONS TO BE MADE AS AMICUS CURIAE

9. Our client and its members have a direct interest in the matter, as our client's members operate in the Municipality's municipal boundaries and rely heavily on the supply of electricity by the Municipality. Our client's members will be severely prejudiced by the intended action of Eskom and will suffer irreparable harm if the supply of electricity to their homes and/or businesses is interrupted.
10. It is our client's view that the intended interruption of the supply of electricity is not in the local, provincial or national interest, as it will have a devastating effect to the local economy of Emalahleni. Our client is further of the view that the interruption of the bulk supply of electricity to the Municipality will only increase the Municipality's inability to repay its debt.
11. The Municipality generates income from its residents and its local economy. Most of the local businesses rely heavily on electronic equipment in order to not only manage their affairs, but also to render, produce, manufacture and/or distribute local goods and services within not only the Emalahleni community, but also within the broader South African economy.
12. The interruption of electricity supply to the business community will result in significant financial losses, which will lead to many businesses having to either retrench workers and/or moving its business activities outside of the boundaries of the Municipality. This reduction in economic flow will all but improve the Municipality's ability to pay. Some businesses might suffer such irreparable harm that they face the risk having to close down.



13. Our client is of the view that there are various alternative legislative and Constitutional remedies available which will actually address the systemic and root causes of the Municipality's failure to properly meet its obligations. Our client is of the view that the solution to this problem lies in proper co-operative governance and in accordance with the constitutional principles that require such co-operation on the highest levels.
14. As an organ of state in terms of Section 239 of the Constitution of South Africa, Eskom is required to act in the best interests of the country and to ensure that constitutional order is not undermined. Our client is of the view that Eskom has taken an extremely narrow and short sighted approach to the systemic and institutional problem underpinning the failure by various municipalities to meet their obligations to Eskom. It is our client's view that Eskom is required to consult with not only the municipality, but also provincial and national spheres of government and NERSA in order to try and resolve the looming national crisis which will only worsen as a result of Eskom's specific approach to the municipal debt problem.
15. Our client demands that Eskom petition not only the Provincial Government, but also the National Government (with specific reference to the Department of Cooperative Governance and the Treasury), to assist it in seeking a constitutional and economically sensible resolution to the problem. We are of the view that Eskom not only has the right to petition the various spheres of government to intervene in the municipal crisis, but a duty as an organ of State to prevent irreparable harm to society and the economy and especially to those diligent and paying businesses and members of society who irrespective of them paying stand to be denied the right to basic municipal services such as electricity.

CONCLUSION

16. The application will have an immense impact on the economy. The nature and complexity of the case is such that the court can only benefit from additional submissions by interested parties. It will be a monumental task to decide on this matter. We are of the opinion that, due to the effect that this case will have on society, the people and specifically business owners that AfriSake represents, deserve to be heard at the hearing of the matter.
17. The Registrar published the Applicants' rule 16A notice on 11 June 2018 and potential *amici curiae* are required to submit their request to be joined by 9 July 2018. Our client hereby request in terms of rule 16A that the parties consent to the joinder of AfriSake as an *amicus curiae* on the following terms and conditions:
 - 17.1. That AfriSake be joined as *amicus curiae* in the matter;



- 17.2. That AfriSake as *amicus curiae* be allowed to file its written submissions by no later than 31 July 2018;
- 17.3. That the *amicus curiae* be allowed to present oral argument at the hearing of the matter in amplification of the written submissions.
18. We request that all parties agree to these terms by no later than 12 July 2018, failing thereto our client will be required to bring a substantive application for joinder as amicus, which will be enrolled for hearing on the first day on which the matter will be heard. We trust that all of the parties would prefer not to waste the limited time before court with such applications and we gladly await your confirmation and acceptance of AfriSake's joinder.

Yours faithfully,


KRIEK WASSENAAR & VENTER INC
PÉTER WASSENAAR – DIRECTOR
(f) 086 596 8516
(e) peter@kriekprok.co.za



Subject: RESILIENT PROPERTIES (PTY) LTD & 3 OTHERS / ESKOM HOLDING SOC LTD & 4 OTHERS,AMICUS CURIAE: AFRISAKE NPC (AFRIBUSINESS) - URGENT
From: Jani Jordaan <jani@kriekprok.co.za>
Date: 2018/07/09 08:41 VM.
To: steven@kokinisinc.co.za, stevenpa@kokinisinc.co.za

Good day

Please find attached letter for your urgent attention.

Regards

--



Jani Jordaan

Kriek Wassenaar & Venter Ing

Prokureur / Attorney

• (t) [\(+27\) 12 803 4719](tel:+27128034719) • (f) [\(+27\) 86 596 8801](tel:+27865968801)

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

• (p) Postnet Suite # A7, Privaatsak / Private Bag X592, Silverton, 0127 • BTW Reg: 4020260685 • Reg: 2012/030418/21



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— Attachments: —

Amicus Curiae Final Letter - 2018-07-09.pdf

608 KB

Subject: RESILIENT PROPERTIES (PTY) LTD & 3 OTHERS / ESKOM HOLDING SOC LTD & 4 OTHERS, AMICUS CURIAE: AFRISAKE NPC (AFRIBUSINESS)
From: Jani Jordaan <jani@kriekprok.co.za>
Date: 2018/07/09 08:43 VM.
To: liwalam@ngenomtetoinc.co.za, tando@ngenomtetoinc.co.za

Good day

Please find attached for your urgent attention.

Regards

--



Jani Jordaan

Kriek Wassenaar & Venter Ing

Prokureur / Attorney

• (t) [\(+27\) 12 803 4719](tel:+27128034719) • (f) [\(+27\) 86 596 8801](tel:+27865968801)

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608 KB

Subject: RESILIENT PROPERTIES (PTY) LTD & 3 OTHERS / ESKOM HOLDING SOC LTD & 4 OTHERS, AMICUS CURIAE: AFRISAKE NPC (AFRIBUSINESS)

From: Jani Jordaan <jani@kriekprok.co.za>

Date: 2018/07/09 09:08 VM.

To: henri@nk.co.za, litigasie2@nk.co.za

Good day

Please find attached for your urgent attention.

Regards

--



Jani Jordaan

Kriek Wassenaar & Venter Ing

Prokureur / Attorney

• (t) [\(+27\) 12 803 4719](tel:+27128034719) • (f) [\(+27\) 86 596 8801](tel:+27865968801)

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608 KB

Subject: RESILIENT PROPERTIES (PTY) LTD & 3 OTHERS / ESKOM HOLDING SOC LTD & 4 OTHERS, AMICUS CURIAE: AFRISAKE NPC (AFRIBUSINESS)

From: Jani Jordaan <jani@kriekprok.co.za>

Date: 2018/07/09 08:50 VM.

To: bnkosi@justice.gov.za

Good day

Please find attached for your attention.

Regards

--



Jani Jordaan

Kriek Wassenaar & Venter Ing

Prokureur / Attorney

• (t) [\(+27\) 12 803 4719](tel:+27128034719) • (f) [\(+27\) 86 596 8801](tel:+27865968801)

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

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Subject: RESILIENT PROPERTIES (PTY) LTD & 3 OTHERS / ESKOM HOLDING SOC LTD & 4 OTHERS, AMICUS CURIAE: AFRISAKE NPC (AFRIBUSINESS)

From: Jani Jordaan <jani@kriekprok.co.za>

Date: 2018/07/09 08:54 VM.

To: bnkosi@justice.gov.za

Good day

Please find attached for your urgent attention.

Regards

--



Jani Jordaan

Kriek Wassenaar & Venter Ing

Prokureur / Attorney

• (t) [\(+27\) 12 803 4719](tel:+27128034719) • (f) [\(+27\) 86 596 8801](tel:+27865968801)

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— Attachments: —

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608 KB



"PLR2"

Kokinis Inc.
Attorneys, Notaries & Conveyancers

Our Ref: Mr S Kokinis/ith/R573

Your Ref: P Wassenaar/J Jordaan/QB0415

Date: 10 July 2018

Erex House
Cnr. Geneva & Eileen Roads
Blairgowrie

P O Box 718 Pinegowrie 2123
Docex 1 Randburg
Lodgment No. 1211

Website: www.kokinisinc.co.za

Telephone: (011) 781-8900
Fax: (011) 781-8909

E-Mail: steven@kokinisinc.co.za

**ATTENTION: PETER WASSENAAR
KRIEK WASSENAAR & VENTER INC**

E-mail address: peter@kriekprok.co.za

Dear Sirs,

**RE: RESILIENT PROPERTIES PROPRIETARY LIMITED & 3 OTHERS // ESKOM
HOLDINGS SOC LIMITED, EMALAHLENI LOCAL MUNICIPALITY & OTHERS
AMICUS CURIAE: AFRISAKE NPC (AFRIBUSINESS)**

1. We refer to your letter dated 9 July 2018.
2. We are instructed that our clients (i.e. the applicants in the proceedings) consent to the joinder of Afrisake as an *amicus curiae* on the terms and conditions set out in paragraph 17 of your letter under reply.
3. As all the parties to the application wish this application to proceed without any delays on the dates on which it has been enrolled for hearing, we urge all the other parties to favourably consider providing Afrisake with their required consents to their joinder to these proceedings and thereby avoid any unnecessary delays.

Directors: Steven Kokinis BA, LLB, LLM (Corporate Law), Dip. Insolvency
Claudine Kokinis B. Proc, LLB
Trent Richmond BSoc Sci, LLB

Office Manager: Vanessa Bles

Accounts Manager: Irene Viljoen

Kokinis Inc. Reg No. 2004/032549/21
VAT No. 4430233322

4. Trusting the above is in order.

Yours faithfully


KOKINIS INC.

Per: S KOKINIS

- cc ATTENTION: LIWALAM JAFTE
NGENO & MTETO INC
ATTORNEY FOR ESKOM
E-MAIL ADDRESS: liwalam@ngenomtetoinc.co.za
- cc ATTENTION: HENRI
NEUHOFF KHOZA INC
ATTORNEY FOR EMALAHLENI MUNICIPALITY
E-MAIL ADDRESS: henri@nk.co.za
- cc ATTENTION: B NKOSI
THE STATE ATTORNEY
ATTORNEY FOR MEC: CO-OPERATIVE GOVERNANCE & TRADITIONAL AFFAIRS
(MPUMALANGA) an MINISTER OF ENERGY
E-MAIL ADDRESS: bnkosi@justice.gov.za





"PLR3"

NGENO & MTETO INC.
Attorneys, Notaries & Conveyancers

Unit C-C50, BLOCK C Brooklyn Office Park, 488 Fehrnsen Street, Brooklyn. Tel No: 012 004 0424. Fax No: 012 004 0430
P.O. BOX 4875 PRETORIA 0001.

Date: 16 July 2018

Our ref: Mr Jafta/8146/LIT

Your ref: P Wassenaar/ J Jordaan/QB0415

TO: Kriek Wassenaar & Venter ING

For Attention: Peter Wassenaar

PER Email: peter@kriekprok.co.za

Sirs

RE: RESILIENT PROPERTIES (PTY) LTD & 3 OTHERS / ESKOM HOLDINGS SOC LTD & 4 OTHERS AMICUS CURIAE: AFRISAKE NPC (AFRIBUSINESS)

1. We acknowledge receipt of your letter dated 9 July 2018.
2. The First Respondent consents to the joinder of your client as *amicus curiae* in line with your paragraph 17 of your aforesaid letter.

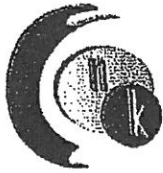
Yours faithfully

SIGNED ELECTRONICALLY

NGENO & MTETO INC.
PER. MR L JAFTA

DIRECTORS:
DIRECTOR: TANDO NGENO: BProc, Post Graduate Diploma in Corporate Law, LLM (Commercial Law), Notary & Conveyancer,
DIRECTOR: EARL LIWALAM JAFTA: BJuris, LLB, Certificate in Prospecting and Mining Law.
Senior Associate: Mhlangabezi Malwa: LLB
Consultant: Leander Kock: BA, LLB

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a smaller, more complex signature.



NEUHOFF KHOZA
PROKUREURS | ATTORNEYS INC.

Telephone: 013 656 5244
Fax: 013 656 5247
Direct Fax: 086 582 7383
Email: akte@nk.co.za
Address: 35 Linden Street
Modelpark, Witbank 1035
Postnet P53, Private Bag X7260
Witbank 1035
VAT No: 4640236693
Reg No: 20070080921

Ons verw. / Our ref.
MR NEUHOFF/MK/MAT4557

U verw. / Your ref.
P WASSENAAR/J JORDAAN/QB0415

16 July 2018

"PLR4"

KRIEK WASSENAAR & VENTER INC.
PRETORIA
PER EMAIL: peter@kriekprok.co.za


Dear Sir/Madam,

RE: RESILIENT PROPERTIES // ESKOM HOLDINGS // EMALAHLENI LOCAL MUNICIPALITY AND OTHERS
CASE NO: 83581/2017

Your letter dated 9 July 2018 refers.

The Second Respondent hereby gives consent to your client's joinder as *amicus curiae* in the above mentioned matter.

Yours faithfully,



NEUHOFF KHOZA ATTORNEYS
HJN Neuhoff

Direkteure / Directors: Henri Neuhoff & Desmond Khoza



peter@kriekprok.co.za

From: Jansie Swart <kontak@kriekprok.co.za>
Sent: Wednesday, 18 July 2018 08:05
To: Peter Wassenaar
Subject: Fwd: RE: Afrisake NPC / Resilient Properties (Pty) Ltd

"PLR5"

----- Forwarded Message -----

Subject: RE: Afrisake NPC / Resilient Properties (Pty) Ltd

Date: Tue, 17 Jul 2018 15:18:55 +0000

From: Nkosi Barbara <BNkosi@justice.gov.za>

To: Jansie Swart <kontak@kriekprok.co.za>, steven@kokinisinc.co.za <steven@kokinisinc.co.za>, stevenpa@kokinisinc.co.za <stevenpa@kokinisinc.co.za>, liwalam@ngenomtetoinc.co.za <liwalam@ngenomtetoinc.co.za>, tando@ngenomtetoinc.co.za <tando@ngenomtetoinc.co.za>, henrik@nk.co.za <henrik@nk.co.za>

Dear Sir,

The above matter and your letter dated 9th July 2018 refers.

The fourth respondent gives consent to your client's joinder as amicus curie.

Kind regards,

Gabisile Nkosi
For state attorney Pretoria
[Email:BNkosi@justice.gov.za](mailto:BNkosi@justice.gov.za)
Tel: 012 309 1659

From: Jansie Swart [<mailto:kontak@kriekprok.co.za>]
Sent: 17 July 2018 11:05 AM
To: steven@kokinisinc.co.za; stevenpa@kokinisinc.co.za; liwalam@ngenomtetoinc.co.za; tando@ngenomtetoinc.co.za; henrik@nk.co.za; Nkosi Barbara
Subject: Afrisake NPC / Resilient Properties (Pty) Ltd

Attached letter for your attention.



JANSIE BRITS
Kriek Wassenaar & Venter Ing
Regsekretaresse / Legal Secretary

• (t) (+27) 12 803 4719 • (f) (+27) 86 596 8797

• (a) 1ste Vloer / 1st Floor, Norex Huis / House, Rauchlaan 79 Rauch Avenue, Georgeville, Pretoria, 0184

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