

**Atten: CONSTITUTIONAL COURT
To: CHIEF JUSTICE**

Constitution Hill,
1 Hospital St,
Braamfontein, 2017
Tel: 011 359 7400
By email: director@concourt.org.za

No. 338 -98 Ndaba Street
Cnr. Kunene Street
Protea North
Soweto
P.O Box 786366
Sandton
2146
Tel: (082) 6900 580
Fax2email: 086 270 9099
E-mail: Admin@kdmagabeneinc.co.za
DM/CONC/00123

Dear Sirs

JACOB GEDLEYIHLEKISA ZUMA v JUDICIAL COMMISSION INQUIRY INTO ALLEGATIONS OF STATE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE AND OTHERS (DEMOCRACY IN ACTION INTERVENING)

A. Applicant

- 1 We act for Democracy in Action (DIA) in this matter, a Non-Profit Organization whose offices are situated at Kwa-Mhlanga in Mpumalanga Province.
- 2 Our client is keen to intervene as amicus in the Constitutional Court and seeks to secure the parties' written consent as required by Rule 10 of the Constitutional Court rules.

B. DIA's interest

- 3 DIA is a Civil Society Organization whose mandate and purpose is to advance, support and defend democratic principles and values in the Republic of South Africa.
- 4 It is the DIA's view that the judgment of the Constitutional Court will have far-reaching implications and adverse effects on the fair trial rights of litigants in civil contempt of court proceedings. It will also have far-reaching implications for this Honourable Court as an apex court of the country.

C. DIA's Position and Submissions

- 5 If admitted as an *amicus curiae* DIA will make five principal submissions. First, DIA argue that it is constitutionally untenable to impose a prison term on a contemnor in civil contempt proceedings without a coercive order requiring him or her to purge the contempt first.
- 6 Second, DIA will argue that if this Honourable Court were minded imposing a prison term upon a contemnor without a coercive order requiring his or her to purge the contempt first, then it should afford the contemnor full trial rights envisaged in section 35(3) of the Constitution.
- 7 Third, DIA will argue that a direct prison term imposed without affording a contemnor full trial rights envisaged in section 35(3) of the Constitution is in breach of section 12(1)(b), which is binding on this Honourable Court by virtue of section 1(c), 2 and 8(1) of the Constitution.
- 8 Fourth, DIA will argue that because of these constitutional violations this Honourable Court should have undertaken a section 36 analysis before deciding upon a direct the prison term.
- 9 Fifth, DIA will finally argue that this Honourable Court should have undertaken the interpretative exercise required by section 39(2), which would involve amongst others promotion of the rights set out in section 35(3) of the Constitution.
- 10 Lastly, DIA if admitted as amicus and permitted to advance written and oral argument, will rely on SA and international case law for the guidance of the court to some which no reference has been made by either party and by the Court.

D. DIA's request

- 11 We thus seek your written consent by 16h00 today, Thursday 08 July 2021 for admission of DIA as amicus in the proceedings before the Constitutional Court.

Yours faithfully

Electronically Signed

.....

KD MAGABANE & ASSOCIATES INC.

As per Doc. Magabane