

**IN THE CONSTITUTIONAL COURT
HELD IN BRAAMFONTEIN**

CCT: 52/21

In the application of leave to intervene as Amicus Curiae:

Hola Bon Renaissance Foundation

Application for admission
as an Amicus Curiae

IN THE MATTER BETWEEN:

**Secretary of the Judicial Commission of Inquiry into
Allegation of State Capture, Corruption and Fraud**

In the public sector including Organs of State

1ST APPLICANT

AND

JACOB GEDLEYIHLEKISAZUMA

1ST RESPONDENT

MINISTER OF POLICE

2ND RESPONDENT

**NATIONAL COMMISSION OF THE
SOUTH AFRICAN POLICE SERVICE**

3RD RESPONDENT

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DATED at Johannesburg on this the 6th day of May 2021



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AND TO: STATE ATTORNEY JOHANNESBURG

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AND

Jacob Gedleyihlekisa Zuma and Others

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SOUTH AFRICAN POLICE SERVICE**

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NOTICE OF MOTION

KINDLY TO TAKE NOTICE The Applicant for admission as an amicus Curiae applies to this court for an order in the following terms:

1. HBRF is admitted as amicus Curiae in the above proceedings in terms of Rule 10 of the constitutional Court Rules
2. HBRF is granted leave to:
 - a. Submit written argument in the above
 - b. Adduce evidence as following that :
 - i. The respondent Jacob G Zuma is not in contempt of Court
 - ii. To declare the Applicant to be unjust
 - iii. The court to Direct the applicant to fully explore the **schedule regulations point 3** of the Rules governing proceedings of the Zondo Commission on Inquiry of State Capture which state that "*The Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of its functions, in a capacity other than of a member*".
 - iv. *The court to consider that there are pending complains at the Judiciary Conduct Committee against Judge Zondo in relation to the first Applicant "Mr Zuma" including other such as Brian Molefe, while is brought by the Hola Bon Renaissance Foundation, and Lucky Montana has a pending cases against Judge Zondo*
 - v. *The court not hamper the good work and responsibilities of JSC and JCC*
 - c. Furthermore and/or alternative relief

TAKE FURTHER NOTICE that the affidavit of Boutshitswe Preddy Mothopeng Msieleng and the annexure thereto will be used in support of these applications

TAKE FURTHER NOTICE that the applicant has appointed the address of its representative, at 88 Marshall Street, Marshalltown, Johannesburg, 2107, as the address at which it will accept notice and services of all process in the proceedings. The Applications representative will also accept electronic service at the following email address : hbrfoundation@gmail.com, info@hbrfoundation.org.za

DATED at Johannesburg on this the __6th__ day of May 2021



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Hola Bon Renaissance Foundation

Application for admission
as an Amicus Curiae

IN THE MATTER BETWEEN:

Secretary of the Judicial Commission of Inquiry into

Allegation of State Capture, Corruption and Fraud

In the public sector including Organs of State 1ST APPLICANT

AND

Jacob Gedleyihlekisa Zuma

1ST RESPONDENT

MINISTER OF POLICE

2ND RESPONDENT

**NATIONAL COMMISSION OF THE
SOUTH AFRICAN POLICE SERVICE**

3RD RESPONDENT

**NOTICE OF APPLICATION FOR ADMISSION AS AN AMICUS CURIAE IN
TERMS OF RULE 10(4)**

KINDLY TO TAKE NOTICE The Applicant for admission as an amicus Curiae
applies to this court for an order in the following terms:

1. Condoning the late filing of this application, to the extent that it is necessary
2. Admitting the applicant as an amicus curiae in the main applicant
3. Granting the applicant –
 - a. The right to file written submission in the main applications ; and
 - b. To the extent the Court requires, granting the applicant the right to present written argument.
 - c. Provided that such argument does not repeat matters set forth in the arguments of the parties and raises new contentions which may be useful to the court
4. Further and/or alternative relief

TAKE FURTHER NOTICE that the affidavit of Boutshitswe Preddy Mothopeng Msieleng and the annexure thereto will be used in support of this applications

TAKE FURTHER NOTICE that the applicant has appointed the address of its representative, at 88 Marshall Street, Marshalltown, Johannesburg, 2107, as the address at which it will accept notice and services of all process in the proceedings. The Applications representative will also accept electronic service at the following email address : hbrfoundation@gmail.com, info@hbrfoundation.org.za

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Hola Bon Renaissance Foundation

Application for admission
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IN THE MATTER BETWEEN:

**SECRETARY OF THE JUDICIAL COMMISSION
OF INQUIRY INTO ALLEGATION OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

1ST APPLICANT

AND

JACOB GEDLEYIHLEKISAZUMA

1ST RESPONDENT

MINISTER OF POLICE

2ND RESPONDENT

**NATIONAL COMMISSION OF THE
SOUTH AFRICAN POLICE SERVICE**

3RD RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,
Bontshitswe Preddy Mothopeng Msieleng

Do hereby make oath and state –

1. I am a chairperson of Hola Bon Renaissance Foundation (HBRF), the African Empowerment and defender of the human race, herein shall be referred to as HBRF. I am duly authorized by the board to Institute this application and to depose to this affidavit on behalf.
 - a. I am a chairperson of Hola Bon Renaissance Foundation (HBRF), the African Empowerment and defender of the human race, herein shall be referred to as HBRF. I am duly authorized by the board to Institute this application and to depose to this affidavit on behalf. HBRF objectives are set out in the constitution which is an organization that advance Social justice, equal justice, the rule of law, the African empowerment and defender of Democracy
 - b. Since its inception Hola Bon Renaissance (HBR) Foundation “The African Empowerment” in 2004, it has been a Non-Profit Organization and also non Political aligned/affiliated organization, which aims to address and encourage equal justice for all
 - c. HBR Foundation is a voluntary association which is essentially defined by its constitution. Voluntary associations derive their character from their constitutions. (wilken v Brebner& others 1935 AD 175 at 90). The constitution of the voluntary association will as a rule be construed benevolently and not narrow or restrictively the object is to empower and not to dis-empower the voluntary association from functioning efficiency and effectively (Deutsche Evangelishsche Kirschezu Pretoria v Hoepner 1911 TDP 218 at 232)
 - d. I have been duly authorized to submit this application on behalf of HBRF with the Constitutional Court

2. The facts set out in this affidavit are within my personal knowledge and are to the best of my knowledge, true and correct, unless appears otherwise from the context.
3. The Facts of which I depose are true and correct and are within my personal knowledge, except where it is apparent from the context a that they are not. Where I make submissions of law.

INTRODUCTION AND PURPOSE OF THIS APPLICATION

4. This is an application in terms of Rule 10 of the Rules of the Constitutional Court (“the Rules”), in terms of Which HBRF seeks leave to be admitted as an amicus curiae under the above case number, instituted by the **Secretary Of The Judicial Commission Of Inquiry Into Allegation Of State Capture, Corruption And Fraud In The Public Sector Including Organs Of State (“the Commission” or “the Applicant”)** against a retired South Africans, **Mr Jacob Gedleyihlekisa Zuma (“Mr Zuma” or “the Respondent”)**.
5. **The Commission has made application to this court for an order declaring that Mr Zuma is Guilty of Contempt of Court in that he intentionally and unlawfully disobey this court order in Commission vs Zuma .**
6. On Thursday, 28 January 2021 at 10h00, the Constitutional Court handed down judgment in an urgent application filed directly in this Court by the Secretary of the Judicial Commission of Inquiry into Allegations of State Capture (the Commission).

7. On 20 October 2020, the Commission summoned former President Jacob Zuma to appear before it on 16 November to 20 November 2020 to give evidence and be questioned on various matters that are subject of the Commission's investigations. Mr Zuma attended the Commission's proceedings on 16 and 17 November 2020.
8. On 16 November 2020, during his attendance at the Commission's proceedings, Mr Zuma moved an application for the recusal of the Chairperson.
9. The ruling was given on 19 November 2020 and the Chairperson dismissed the recusal application. Thereafter, Mr Zuma's legal team informed the Chairperson that Mr Zuma had decided to "excuse himself" from the proceedings.
10. The application was also was after the Chairperson "Judge Zondo" who confirmed in a public television that he and the respondent had a cordial relationship for years in the chairperson commission response of why he could not recuse himself.
11. Suddenly The Commission sought to compel Mr Zuma to comply with the summons issued by the Secretary of the Commission, directing him to appear before the Commission on specified dates in January and February 2021.
12. It also sought an order declaring Mr Zuma's conduct, leaving the Commission without permission in November 2020, to be unlawful and in breach of section 3(1) of the Commissions Act irrespective that the Chairperson has a in conflict of interest.

13. The proceedings adjourned for a break, after which it transpired that Mr Zuma and his legal team had left without the Chairperson's permission. This led to the Commission's urgent application in this Court.
14. In a unanimous judgment penned by Jafta J, this Court granted direct access on the ground of urgency. In doing so, it considered the prejudice in the public interest in the Commission's investigations, the fact that the matter was not opposed and that it bore reasonable prospects of success. The Court held that section 3 of the Commissions Act empowered the Commission to compel witnesses to appear before it and that failure by those summoned to obey laws that govern the Republic amounted to a direct breach of the rule of law, one of the values underlying the Constitution and which forms part of the supreme law.
15. The Court further held that Mr Zuma was entitled to the privileges envisaged in section 3(4) of the Commissions Act, including the privilege against self-incrimination. However, Mr Zuma was not entitled to the right to remain silent, as this right, guaranteed by section 35 of the Constitution, is only available to arrested and accused persons, and not witnesses appearing before a commission of inquiry. The Court directed that Mr Zuma appear and testify at the Commission.
16. The Court did not take into account of an unjust law against the applicant, this affidavit is made in support of the application for leave to be admitted as Amicus Curiae in the proceedings and is structured as Follows:

FACTUAL BACKGROUND

17. HBRF became aware of direction of the Court via media,

18. On the 24 February 2021, Hola Bon Renaissance Foundation lodge a formal complaint with the Judiciary Conduct Committee “JCC”
19. HBRF complaint is against the chairperson “Deputy Chief Justice Raymond Zondo” , in his capacity as the presiding judge of the Judiciary commission of inquiry into allegations of State capture, corruption and fraud in the public organs of State in terms Proclamation NO 3 of 2018 published in Gazatte 41403 “referred to as Zondo Commission” (Annexure LH6)
20. On the 12 March 2021, HBRF became aware of direction of the Court via media
21. On the 13 March 2021,HBRF wrote a letter to notify the Constitutional Court however the Constitutional Court response was that it does not engage in correspondence of such nature (Annexure LH4) and the court responded that it does not engage in such request (See Annexure LH 5)
22. HBRF having to have the opportunity to consider and read the founding papers and written submission by the Applicant, HBRF took the necessary Steps as expeditiously as possible to begin the process of being admitted as Amicus Curiae, which include consulting varies legal representative with no assistance.
23. In March 2021 HBRF wrote a letter to Consent parties in this matter seeking to be admitted to the admission of HBRF as amicus Curiae (See Annexure LH1)
24. In March 2021, the applicant attorneys responded that they are awaiting directives from the client (See Annexure LH3)

25. There after HBRF received no substantive response in relation to Granting of Consent
26. In the 25 March 2021, HBRF heard on the media of an ongoing the court hearings of this matter
27. When the Court reserved the order HBRF continue to advance that every South African should be represented and fairly trialed
28. The HBRF thus proceedings to draft and file this application to ensure compliance with rules 10 of the court rules
29. On 26 March 2021 the JCC respond by confirming that complain against the chairperson of the Commission is receiving attention (See Annexure LH7)
30. Due to no funding or financial support as a Non Profit Organization, and the effect of Covid19 disaster management regulations which has had a serious effect in our South African lives, created a hardship in preparing our participation in this matter and furthermore with limited time before the order is announce, HBRF has endeavored to set forth the thrust of its written submission

**HBRF HAS NOT OBTAINED CONSENT FROM THE APPLICANTS TO BE ADMITTED
AS AMICUS CURAE**

31. HBRF has written to the Applicants in the main matter seeking their consent in terms of Rule 10(1) of the Rules of this Court, and proposing terms and conditions to be agreed upon. A copy of the letter is attached at annexure HBRF1

32. The Applicants has not consented to the HBRF entering as amicus curiae. A copy of the letter is attached at annexure HBRF2.
33. HBRF also sent a letter to each of the Respondents seeking their consent in terms of Rule 10(1) of the Rules of this Court. No response was received from any of the Respondents. The letters are attached hereto as
34. The HBRF therefore makes this application to the Chief Justice of the Constitutional Court in terms of section 10 of the Rules of this Court.

REQUEST FOR CONDONATION :

35. I am advised that, In terms of Rule 10 of the rules , an application for admission as an amicus Curiae must be filed not later than five days after lodging of the respondents written submission
36. It is my understanding that the first Respondent written submission were filed on or about April 2021, I am further advised that certain of the respondent have not yet filed their head of argument
37. HBRF had considered it prudent to wait until all of the participating Respondents responded to the Constitution

38. HBRF therefore request condonation for the late filing of this application. In this regard HBRF submit to the court , the timeframes proposed above are adequate to afford all the parties and the court adequate time to engage with the propose submission

APPLICATION TO BE ADMITTED AS AMICUS CURIAE IN TERMS OF RULE 10

39. HBRF now seeks to be admitted as amicus curiae in the main matter.

40. HBRF is aware that an amicus curiae is not a party to the proceedings and does not have the same procedural rights as a person who has a direct and substantial right to intervene.

Minister of Public Works and Others v Kyalami Ridge Environmental Association and Another (Mukhwevho intervening) 2001 (3) SA 1151 (CC) at para 30.

41. It is therefore submitted that if the HBRF is not admitted as amicus curiae in the appeal in this matter the court may lack a full range of arguments to consider .

42. HBRF will, if admitted as amicus curiae, advance arguments in relation to all the points raised by the applicant mentioned in the notice of motion and to such other relevant issues as written in our submission

43. In essence, the HBRF will argue that the majority of the Commission did not err in its judgment and its application to the court, and that the application should not succeed.
44. Accordingly, I submit that the arguments that the HBR wishes to advance will plainly be relevant to the determination of this matter and different to that advanced by the parties currently involved in this matter. At this stage, it appears that only the applicants will present argument this Court, contending of course that the majority of the Commission erred.
45. The HBRF therefore seeks an order admitting it as amicus curiae with leave to present a written argument.

Moise v Greater Germiston Transitional Local Council: Minister of Justice & Constitutional Development Intervening (Women's Legal Centre as amicus curiae) 2001 (4) SA 491 (CC), 2001 (8) BCLR 765 (CC).

Ex Parte Women's Legal Centre: In re Moise v Greater Germiston Transitional Local Council 2001 (4) SA 1288 (CC).

46. HBRF in its submission , will rely on some of the evidence that was given in the affidavit filed on record in order to show that treatment against the respondent was not only unlawful but it was unfair , discriminating and unjust on the basis of a fair trial or hearing.

47. HBRF seeks to make written submission on the constitutionality on non-discrimination , fair hearing, non biasness, the duty of the court is to respect, protect , promote and fulfill the bill of Rights and the impact of the non- enforcement of rights specifically in the interest of ordinary South Africans , in this case – Abuse of Pensioner. HBRF wishes to add how patriarchy in relation to judges against ordinary people is an inherent instrument for the advancement of violation of rights of ordinary South Africans contrary to the laws of the republic of South Africa.
48. That this Court should also consider its decision may affect the work of the judiciary Conduct committee.
49. The applicant refused to use and follow the commission guidelines in order to address conflict of interest, thereby opting to ignore the Schedule Regulations point 3 of the Rules governing proceedings of the Zondo Commission on Inquiry of State Capture which state that “***The Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of its functions, in a capacity other than of a member.***”
50. If the applicant had explored the Schedule Regulation point 3, the applicant would have appointed an independent chairperson only the purpose of the hearing

51. Already the applicant has exhausted his budget which comes from tax payers, for the applicant to pursue this application is a sign of revenge and/or witchcraft to which in the interest of public it appears to be a personal and selfish driven act.
52. The doctrine of recusal has its origin in the rules of natural justice, which requires that a person accused before a court should have a fair trial. This common law position has since been entrenched in the Constitution of the Republic of South Africa (“the Constitution”).

HBRF INTEREST IN THE PROCEEDINGS

53. The Submission of HBRF seeks to make in the proceedings should it be admitted as amicus curiae In line with HBRF particulars areas of interest and cognizant not to repeat any of the submissions that have already been canvassed by the parties, HBRF proposed submission are narrowly tailored to two key issues of relevance to the present matter
54. The main objective of the HBRF is to contribute within its means to establish and promote the Equal justice in South African community and within the Judiciary, more particularly to use the law as an instrument to advance such interests:
 - a) It is in the public interest and

- b) In the interest of Justice that the constitutional court should preserve the integrity of judiciary including of any implicated and/or alleged Judge who is official reported at the JCC
 - c) the Constitution is the supreme law of the Republic ; law or conduct inconsistence with it is invalid and the obligation imposed by it must be fulfilled
 - d) The rule of law be applicable
 - d) The law must not be unjust
 - e) Uphold the Constitution of the Republic of South Africa
 - f) The applicant failed to explore other avenue before approaching the court
55. Yet, at present, this Court will only be presented with argument by one party. Given that the party has a direct interest in the matter, that argument is, of necessity, unlikely to assess fully the broader effect of this matter on the public interest.
56. The HBRF submits that it is against this background that its application for admission as an amicus curiae must be assessed.

APPLICATION TO ADDUCE FURTHER EVIDENCE

57. In this Court, the applicants have applied for leave to introduce certain further evidence. The evidence that the Applicants seek to place before

this Court relates largely to the unfair hearing and unfair treatment by the court. In the event that this Court is minded to allow the applicants to adduce such evidence and admits the HBRF as amicus curiae, the HBRF seeks permission from this Court to adduce further evidence of its own on these issues.

58. In particular, the HBRF seeks leave to adduce evidence on affidavit relating to:

- i. The respondent Jacob G Zuma is not in contempt of Court
- ii. To declare the Applicant to be unjust
- iii. The court to Direct the applicant to fully explore the schedule regulations point 3 of the Rules governing proceedings of the Zondo Commission on Inquiry of State Capture which state that “The Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of its functions, in a capacity other than of a member”.
- iv. The court to consider that there are pending complains at the Judiciary Conduct Committee against Judge Zondo in relation to the first Applicant “Mr Zuma” including other such as Brian Molefe, while is brought by the Hola Bon Renaissance Foundation, and Lucky Montana has a pending cases against Judge Zondo

- v. The court not hamper and undermine the constitutional work and responsibilities of JSC “Judiciary Service Commission” and that of JCC “Judiciary Conduct Committee”
59. HBR Rely on the Constitutional of the Republic of South Africa more specifically :
- i. Chapter 1 , there to referring specifically ot the value of human Dignity, the achievement of equality and advancement of human rights and freedom , together with the value of Supremacy of the constitution and the rule of law
 - ii. Chapter 2 of the constitution of the Republic of South Africa (the Bill of Right) which specifically provides for equality before the law and the right to equal protection and the benefit of the law. In particular Sections 9(2)(3)(4) and (5) there to be of significant reference.
 - iii. Chapter 2 of the constitution of the Republic of South Africa (the Bill of Right) and in particular Section 10 , Section 12
 - iv. Chapter 2 of the constitution of the Republic of South Africa (the Bill of Right) and in particular Section 12 (1)a and (e)

- v. Chapter 2 of the constitution of the Republic of South Africa (the Bill of Right) and in particular Section 35 (3) j and l
 - vi. Chapter 2 of the constitution of the Republic of South Africa (the Bill of Right) and in particular Section 136, that the commission has no powers to impose limitation of rights
 - vii. In terms of Courts and Administration of Justice Chapter 8, Section 165(1) a- A judge may be removed from office only if—
 - (a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct;
 - viii. HBRF has lodge an application which is underway and the outcome will be heard soon.
 - ix. In fact the President Should have removed the chairperson of the Commission based on of Courts and Administration of Justice Chapter 8, Section 165(3), which is a general procedure
60. HBRF submit that all these rights must not be assessed in isolation but cumulatively
61. The procedure followed by the Children’s Court in light of the decision by this Court in Minister of Welfare and Population Development v Fitzpatrick and Others 2000 (3) SA 422 (CC).

62. HBRF point out, for the sake of completeness, that the HBRF has not sought the consent of the applicants in relation to leading such new evidence. This is because the bulk of the evidence that the HBRF wishes to adduce only came to its attention while this application was being drafted and after the Applicants had consented to the HBRF being admitted as amicus curiae.
63. The HBRF submits that the evidence it wishes to adduce is directly relevant to the issues to be determined by this Court. It would, moreover, be unfortunate if the applicants were allowed to adduce new evidence before this Court but this Court was not furnished with the full range of evidence.
64. It is respectfully submitted that the starting point is the constitution of the Republic of South Africa, 1996("the constitution").The constitution prohibits unfair discrimination and rule of law. It does not prohibit discrimination simpliciter. That is why section 9(2) and (3) of the constitution provides for "legislative and other measures "to be put in place to advance categories of persons who have been disadvantaged by unfair discrimination with a view ultimately to bringing about equality.
65. If admitted as an amicus curiae, wise will endeavors persuade this court to consider this case on its own facts because the facts are not only wanting and selective, and we will demonstrate why, but in the effect ,the facts are

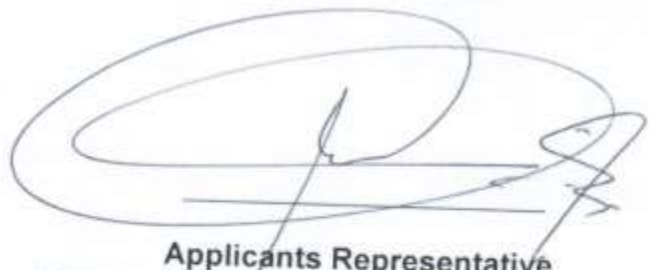
a true reflection of the negligence of the Applicant which results in the advancement of discrimination and punishment of those who are in direct conflict with the Chairperson of the Commission

66. While it serves a panaceas purpose to some when compared with the limited prospects of the past, equality and rule of law is considered with foreboding by others who view it as “reverse discrimination.
67. On whichever side this divide one stands the judgment of the this court, will respect simply constitutionally draw the much-needed distinction on what constitutes secondary victimization in the face of the negligence of the Commission in its handling of inquiry and conflict of interest with its chairperson and the effects thereof on the Commission duty to respect, protect, promote and fulfill the Bill of Rights.
68. HBRF argues firstly that the Applicant did not within its scope of responsibility, explore relevant guidelines when approaching this matter with the respondent in an integrated and coordinated manner and neither did it promote, give effect to and within their scope of responsibility enforce the rights as illustrated in Point 3 of the Scheduling regulations of the rules governing the the Zondo Commission of inquiry state that “ ***The Chairperson may designate one or more knowledgeable or experienced persons to assist the Commission in the performance of its functions, in a capacity***”.

69. HBRF respects that “judges are bound by precedent but cannot ignore cultural changes. A court ought not to be affected by weather of the day but will be by the climate era”. The climate of the era is that South Africa has the highest imprisonment of innocent people in the world and the court ought to take this in consideration when assessing the Court duty to protect its most vulnerable citizens being elders and children.
70. A fair trial means that both sides need to be given an equal chance to present their case. Since the balance of power is unequal and favors Judges, a fair chance is seldom given to ordinary South Africans,
71. Since Apartheid to date, there are thousands of cases in South Africa where ordinary South Africans are imprisoned or rights violated because of unfair hearings due to conflicts with the presiding judge
72. It is this court that must bring a balance and natural justice

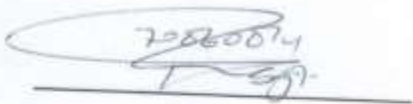
CONCLUSION

73. In light of the above, I pray for an order in terms of the notice of motion.



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REF NO:JZ2021/7

I CERTIFY that this Affidavit was SIGNED and SWORN to before me at JHB Central on this the 06 of May 2021, after the Representative declared that he is familiar with the contents of this affidavit, and regards the prescribed oath as binding on his/her conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258 dated 21 July 1972 (as amended)



COMMISSIONER OF OATHS
FULL NAMES: T.S. Zulu
BUSINESS ADDRESS: 01 Commissioner Street
CAPACITY: SGT