

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

**CASE NO 87643/2016**

In the matter between:

**HELEN SUZMAN FOUNDATION** First Applicant

**FREEDOM UNDER LAW NPC** Second Applicant

and

**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** First Respondent

**SHAUN ABRAHAMS** Second Respondent

**DR JP PRETORIUS SC** Third Respondent

**SIBONGILE MZINYATHI** Fourth Respondent

**THE NATIONAL PROSECUTING AUTHORITY** Fifth Respondent

---

**APPLICANTS' PRACTICE NOTE**

---

**1. COUNSEL FOR THE APPLICANTS**

1.1 DN Unterhalter SC (011 263 9000; 082 569 2987); and

1.2 M du Plessis (031 304 5512; 084 512 7406)

**2. COUNSEL FOR THE RESPONDENTS**

2.1 Unknown to the applicants.

### 3. NATURE OF THE PROCEEDINGS

3.1 This is an urgent application in terms of Rule 6 of the Uniform Rules of Court seeking to review, set aside and declare unlawful the first respondent's failure, *alternatively*, refusal:

3.1.1 to institute enquiries, under section 12(6)(a) of the National Prosecuting Authority Act, 1998, ("**the NPA Act**") into the second, third and fourth respondents' fitness and propriety to hold office; and

3.1.2 provisionally to suspend the second, third and fourth respondents, under section 12(6)(a) of the NPA Act, pending finalisation of the respective enquiries.

### 4. ESTIMATED DURATION OF ARGUMENT

4.1 It is estimated that one day is required for the hearing of this matter. The applicants will abide by this Court's directions in regard to the time allocated to them for oral argument.

### 5. SUMMARY OF THE APPLICANTS' SUBMISSIONS AND URGENCY

5.1 The applicants submit that there is a duty on the first respondent to exercise his powers under s 12(6) of the NPA Act where the facts of a matter dictate that an enquiry into the conduct or fitness for office of the relevant member of the NPA is necessary. There is also a (separate) duty on the first respondent to exercise his powers under

s 12(6) of the NPA Act where the facts of a matter dictate that such member should be suspended pending the outcome of such enquiry.

5.2 The second to fourth respondents have misconducted themselves and have demonstrated that, *prima facie*, they are not fit and proper to hold their respective offices, and that an enquiry is necessary to determine their conduct, as well as their competence, independence and fitness for office. It cannot be, the applicants submit, that an insupportable prosecution, where critical evidence was lacking from the outset, in a sensitive environment and which caused untold damage to the reputation and perception of the NPA, the reputation of the Republic and damage to the economy, does not raise any questions which are required to be answered at an enquiry. The second to fourth respondents, in preferring charges against, *inter alios*, Minister Gordhan, where such charges, it emerged, were always bad in law and fact and in conducting themselves as they did in the full view of the public, have displayed either gross incompetence and recklessness, or, more sinisterly, a desire to achieve an ulterior purpose outside of a legitimate prosecution.

5.3 As such, the circumstances of this matter dictate that the first respondent should have exercised his powers to suspend the first to fourth respondents and order enquiries into their fitness and propriety to hold office.

5.4 The first respondent is seized with a duty to exercise his powers under s12(6) *mero motu*, timeously and responsibly. This he has

failed to do. He has, moreover, had a reasonable opportunity to exercise his powers in this regard, having been in possession of sufficient information and evidence since at least 1 November 2016. The first respondent has, however, failed, *alteranatively*, refused to do so.

5.5 The first respondent has attempted to justify this delay on an incorrect interpretation of section 12(6) of the NPA Act, contending that the matter is not ripe for hearing and that submissions must first be received (after the initial hearing date, after the special allocation date and after every deadline identified by the applicants) from the second to fourth respondents. The applicants will demonstrate that this is incorrect and that the matter must proceed.

5.6 In addition, it appears that the first respondent has already closed his mind to the matter, determining that the second to fourth respondents have no case to answer. Morevoer, the first respondent has failed to appreciate the factors which he is obliged to consider under s12(6), improperly narrowing the ambit of his consideration to exclude key considerations such as competence and misconduct. He has thus effectively disabled himself from making a lawful decision in this respect. This speaks to both the unlawfulness of his refusal to suspend, and institute an enquiry into the conduct of, the second to fourth respondents, and to whether the Court should substitute his failure or refusal to act.

5.7 In light of the extreme public importance of this matter, the threat to the independence and functioning of the National Prosecuting Authority, the threat of further damage to the economy, and the ongoing harm occasioned daily whilst the second to fourth respondents remain in office and wield their formidable powers, the Court should order their suspension and the institution of the disciplinary enquiries without delay. For the same reasons, it is submitted that the urgency of this matter is axiomatic.

## 6. LIST OF AUTHORITIES

6.1 A list of authorities, alphabetically arranged, is filed herewith.

## 7. READING

7.1 The applicants submit that the Court should read all the affidavits filed in this matter.

7.2 The applicants contend that the bulk of the second, third and fifth respondents' answering affidavit is largely irrelevant to the determination of the issues in this application. This is addressed further in the applicants' replying affidavit and heads of argument.

**DN UNTERHALTER SC**  
**M DU PLESSIS**  
Counsel for the Applicants  
Chambers  
18 November 2016