

**IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

**CASE NO. CC 22/2020**

In the matter between:

**SAYEFUDEEN ASLAM DEL VECCHIO**

**First Applicant**

**BIBI FATIMA PATEL**

**Second Applicant**

**MUSSA AHMAD JACKSON**

**Third Applicant**

and

**THE NATIONAL DIRECTOR  
OF PUBLIC PROSECUTIONS**

**First Respondent**

**MAHENDRA NAIDU**

**Second Respondent**

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**NOTICE IN TERMS OF RULE 16A**

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**PLEASE TAKE NOTICE** that the respondents intend delivering an answering affidavit to an application brought by the applicants for the removal of the prosecutor in the abovementioned criminal trial which raises the following constitutional issues:

1. In noting that different legal standards apply to the recusal of a Judge and the removal of a prosecutor, may the presiding officer hearing the criminal trial hear an application for the removal of the prosecutor in that trial?
  
2. In applying the test of a removal of a prosecutor in *S v Shaik and Others* 2008 (2) SA 208 (CC), is it axiomatic that an alleged irregularity, if proved, conducted by a prosecutor constitutes an infringement of an accused fair trial rights?
  
3. Can an applicant seek the removal of a prosecutor without a Court first declaring, in terms of section 172(1)(a), any such conduct inconsistent with the Constitution?

**TAKE NOTICE FURTHER** that any interested party may, with the written consent of all parties to the proceedings, given not later than 20 days after the filing of this notice in which the constitutional issue was first raised, be admitted herein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

**TAKE NOTICE FURTHER** that the written consent referred to above shall, within 5 days of it having been obtained, be lodged with the registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times, agreed upon for the lodging of written argument.

**TAKE NOTICE FURTHER** that the terms and conditions agreed upon may be amended by the court.

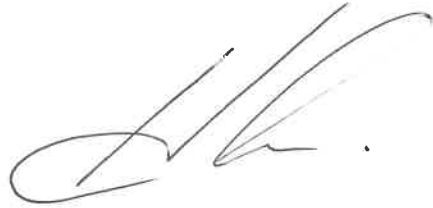
**TAKE NOTICE FURTHER** that if the interested party is unable to obtain the written consent as contemplated herein, he or she may, within 5 days of the expiry of the 20 day period prescribed above, apply to the court, which next sitting will be 22 January 2024, to be admitted as an *amicus curiae* in the proceedings. Such application shall

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- (a) Briefly describe the interest of the *amicus curiae* in the proceedings;
- (b) Clearly and succinctly set out the submissions which will be advanced by the *amicus curiae*, the relevance thereof to the proceedings and his or her reasons for believing that the submissions will assist the court and are different from those of the other parties; and
- (c) Be served upon all parties to the proceedings.

**TAKE NOTICE FURTHER** that any party to the proceedings who wishes to oppose an application to be admitted as an *amicus curiae*, shall file an answering affidavit within 5 days of the service of such application upon such party. The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

DATED at DURBAN on this 18<sup>th</sup> day of DECEMBER 2023.



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**1<sup>ST</sup> & 2<sup>ND</sup> RESPONDENTS' ATTORNEY**  
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TO: REGISTRAR OF THE HIGH COURT  
DURBAN



AND TO: BULELANI MAZOMBA ATTORNEYS

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