

**IN THE HIGH COURT OF SOUTH AFRICA
(LIMPOPO DIVISION, POLOKWANE)**

CASE NO: 4612/2020

In the matter between:

MALESELA ALFRED KEKANA

1st APPLICANT

MALOSE JACOB MAJIU

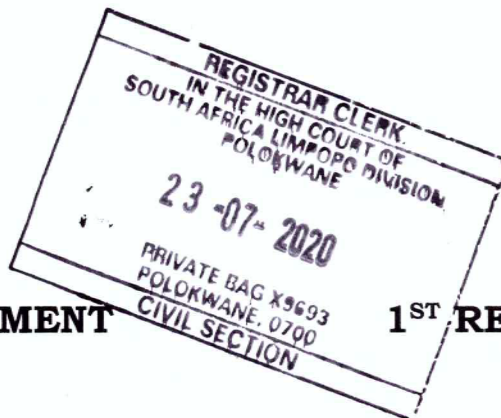
2ND APPLICANT

MADIMETJA SOLOMON LEDWABA

3RD APPLICANT

And

**MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**



1ST RESPONDENT

**ACTING MAGISTRATE,
DISTRICT COURT, MOKOPANE**

2ND RESPONDENT

**DIRECTOR OF PUBLIC PROSECUTIONS,
LIMPOPO PROVINCE**

3RD RESPONDENT

NOTICE IN TERMS OF RULE 16 A

PLEASE TAKE NOTICE THAT the applicants, in the application under the above case number, raise the following constitutional issues:

1. that the Magistrate Court Act, 32 of 1944, as amended, lacks a provision authorizing a Magistrate Court to retract or recall or vary or rescind any order made in the Criminal Court;
2. that the Criminal Procedure Act, 51 of 1977, as amended, save for an order under section 176, lacks a provision authorizing a Magistrate Court to retract or recall or vary or rescind an order made in the Criminal Court;
3. that as a result, save for section 176 correction of orders, only the High Court having jurisdiction would serve as a forum to have orders set-aside in circumstances when and where; absent the legislative *lacuna*, the Magistrate Criminal Court would have been a proper forum to set-aside the relevant orders;
4. the applicants pray that:
 - 4.1. for the legislative *lacuna*, the two pieces of legislation be declared constitutionally invalid,

4.2. in the alternative to prayer 4.1, for the legislative *lacuna*, the two pieces of legislation be declared constitutionally invalid insofar as they lack a provision authorizing a Magistrate Court to retract or recall or vary or rescind any order made by the Court, and as for the section 174 of the Criminal Procedure Act, inclusive of an order made in terms of that section;

TAKE NOTICE FURTHER THAT any party interested in a constitutional issue raised in this application may, with the written consent of all the parties to the proceedings, be admitted as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the *amicus curiae* upon such terms and conditions as may be agreed upon in writing by and between the parties.

TAKE NOTICE FURTHER THAT the notice above, if given to the parties, be given not less than twenty court days after the date of the publication of this notice.

TAKE NOTICE FURTHER THAT the written consent referred to above shall be lodged with the Registrar of this Court within five days

of it being obtained and that the *amicus* shall, in addition to any other provision, comply with the time-periods agreed upon for the filing of the pleadings and written argument.

TAKE NOTICE FURTHER THAT that time-period agreed upon by the parties may be amended by the Honourable Court.

TAKE NOTICE FURTHER THAT if the interested party is unable to obtain the written consent as contemplated herein, he, she or it may, within five days of the expiry of the twenty-day period prescribed above, apply to the Court to be admitted as an *amicus curiae* in the proceedings. Such application shall:

- a) briefly describe the interest of the interested party in the proceedings;
- b) clearly and succinctly set out the submissions which would be advanced by the interested party, the relevance thereof to the proceedings and his, her or its reason for believing that the submissions will assist the Court and are different from those of the parties; and

c) be served upon the parties.

TAKE FURTHER NOTICE 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 five days of service of the application upon such party. The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

KINDLY PLACE A COPY OF THIS NOTICE ON THE NOTICE BOARD.

DATED AT **POLOKWANE** ON THIS ^{22nd}..... DAY OF **JULY 2020**



THE STATE ATTORNEY
CORRESPONDENT ATTORNEYS
CHIDI ATTORNEYS
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TO: THE REGISTRAR OF THE COURT
POLOKWANE

AND TO: MEMBERS OF THE PUBLIC