

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

CASE NO.: 32881/22

In the application of: -

ANIMAL LAW REFORM SOUTH AFRICA NPC

First Applicant

EMS FOUNDATION

Second Applicant

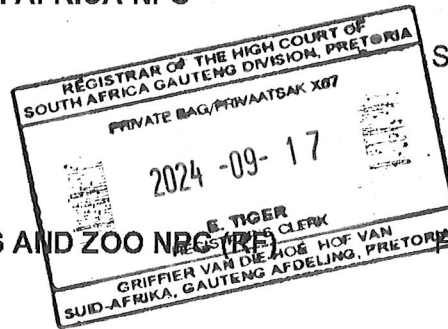
CHIEF STEPHEN FRITZ

Third Applicant

and

JOHANNESBURG CITY PARKS AND ZOO NPC (Pty)

First Respondent



THE CITY OF JOHANNESBURG

METROPOLITAN MUNICIPALITY

Second Respondent

MEC: ECONOMIC DEVELOPMENT, AGRICULTURE,

ENVIRONMENT AND RURAL DEVELOPMENT,

GAUTENG PROVINCIAL GOVERNMENT

Third Respondent

MINISTER OF FORESTRY, FISHERIES AND

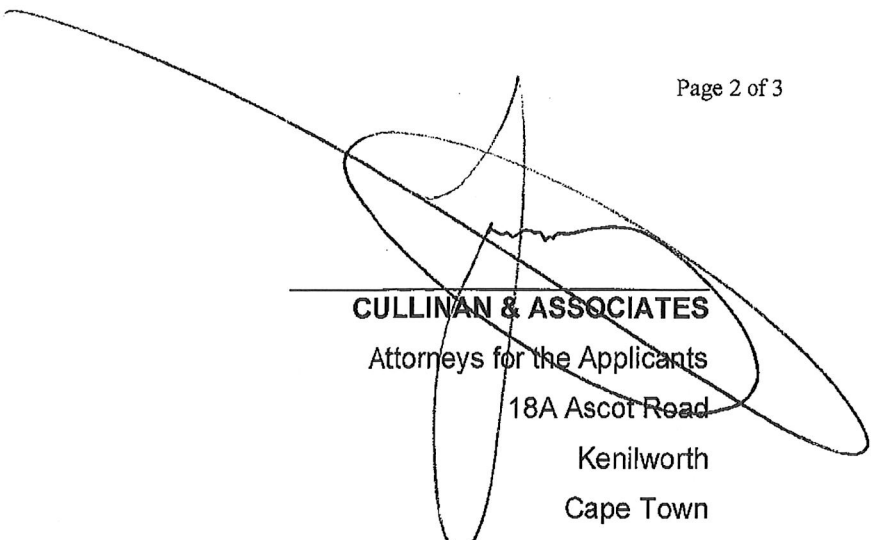
THE ENVIRONMENT

Fourth Respondent

FILING SHEET

TAKE NOTICE THAT the Applicants hereunder file the Rule 16A Notice.

Dated at Cape Town on this the 16th day of SEPTEMBER 2024.



CULLINAN & ASSOCIATES

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TO: **THE REGISTRAR OF THE ABOVE HONOURABLE COURT**

PRETORIA

AND TO: **MOODIE & ROBERTSON ATTORNEYS**

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

CASE NO.: 32881/22

In the application of: -

ANIMAL LAW REFORM SOUTH AFRICA NPC First Applicant

EMS FOUNDATION Second Applicant

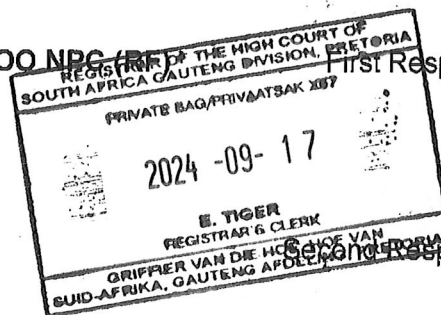
CHIEF STEPHEN FRITZ Third Applicant

and

JOHANNESBURG CITY PARKS AND ZOO NPC (RP) First Respondent

THE CITY OF JOHANNESBURG

METROPOLITAN MUNICIPALITY



MEC: ECONOMIC DEVELOPMENT, AGRICULTURE,

ENVIRONMENT AND RURAL DEVELOPMENT,

GAUTENG PROVINCIAL GOVERNMENT

Third Respondent

MINISTER OF FORESTRY, FISHERIES AND

THE ENVIRONMENT

Fourth Respondent

NOTICE IN TERMS OF RULE 16A

TAKE NOTICE THAT the applicants in the above application have raised the following constitutional issues in this matter:

1. Section 24 of the Constitution guarantees environmental rights as fundamental rights in the Bill of Rights and provides that everyone has the right to an environment that is, *inter alia*, not harmful to their health and wellbeing, and to have the environment protected, which includes the promotion of conservation. The National Environmental Management Act 107 of 1998 ("NEMA") is the overarching national framework legislation giving effect to section 24 and the National Environmental Management: Biodiversity Act 10 of 2004 ("NEMBA") is a specific environmental management Act contemplated by NEMA.

2. South African law recognises that:
 - 2.1. animals are sentient beings, capable of suffering and experiencing pain;

 - 2.2. animals have intrinsic value as individuals and that intrinsic value is a central rationale for the protection of animals;

 - 2.3. the protection of animals is intrinsically linked to the moral status of humans;

 - 2.4. the welfare of animals, including those in captivity, and conservation are inextricably intertwined, and together form part of the section 24 right, and the values underpinning the Constitution; and

 - 2.5. animals in captivity constitute biodiversity for purposes of NEMBA.

3. The applicants contend that, on a proper interpretation of section 24 of the Constitution, and the legislation enacted to give effect to section 24, the right enjoyed by everyone to have the environment protected requires that the welfare and well-being of individual animals be considered and promoted. It follows that the first and/or second respondents' continued confinement of the Elephants at the Johannesburg Zoo is unlawful and unconstitutional.

4. The applicants contend further that the Elephants are being kept at the Johannesburg Zoo, operated by the first respondent for and on behalf of the second respondent, in conditions that are adverse to their welfare and wellbeing, and in a state of demonstrable and significant distress, in breach of the first and second respondents' obligations under section 24, read with section 7 of the Constitution, with regard to the welfare and wellbeing of the Elephants and the public interest in their welfare and wellbeing, in that:
 - 4.1. the first and second respondents have failed in their obligations to respect, protect, promote and fulfil the right to the environment by ensuring the welfare and wellbeing of the Elephants at the Johannesburg Zoo;

 - 4.2. the first and second respondents have accordingly failed to take reasonable measures to protect the environment as required by the environmental right;

 - 4.3. the first and second respondents have contravened the provisions of NEMBA, and, in particular, the Threatened or Protected Species

Regulations, 2007, published in terms of section 97 of NEMBA and the National Norms and Standards for the Management of Elephants in South Africa, 2008, published in terms of section 9 of NEMBA;

- 4.4. the decision/decisions of the first and/or the second respondents to continue to keep the Elephants in captivity in the Johannesburg Zoo, *alternatively*, their failure to make a decision to release the Elephants into a suitable and appropriate facility, are unlawful, unreasonable and/or irrational in terms of the constitutional principle of legality and/or under the Promotion of Administrative Justice Act 3 of 2000 and further in violation of the principles of section 2 of NEMA and NEMBA, which are applicable to all decision-making that may significantly affect the environment;

- 4.5. the treatment of the Elephants also indicates violations of animal protection, welfare and environmental obligations and laws, in that the first and second respondents are unlawfully confining the Elephants in at least the following ways:
 - 4.5.1. under conditions and in a manner that causes them unnecessary suffering in contravention of sections 2(1)(b) and (r) of the Animals Protection Act 71 of 1962; and

 - 4.5.2. under conditions in which they may be injured or unnecessarily disturbed in contravention of section 40(1)

of the Transvaal Nature Conservation Ordinance No. 12
of 1983.

5. The third applicant further contends that the manner in which the first and second respondents confine and exhibit the Elephants:

5.1. infringes on the Khoi people's rights, individually and collectively, to dignity, to participate in a cultural life of their own choosing, to enjoy their culture and practise their religion as a community, and to enjoy an environment that is not harmful to their health and wellbeing, in sections 10, 30, 31 and 24 of the Constitution respectively;


5.2. is offensive to the culture and living heritage of the Khoi peoples;
and

5.3. undermines the recovery and perpetuation of the Khoi people's living heritage, including their values, spiritual beliefs and holistic approach to Nature, society and social relationships protected by the Natural Heritage Resources Act 25 of 1999.

TAKE NOTICE FURTHER THAT any interested party may, with the written consent of all the parties to the proceedings, given not later than 20 days after the filing of this notice, be admitted as *amicus curiae* in the application, upon such terms and conditions as may be agreed upon in writing by the parties, or as amended by the Court.

TAKE NOTICE FURTHER THAT if any interested party is unable to obtain the written consent of any party, they may, within five days of the expiry of the 20 day period above, apply to the above Honourable Court in the manner contemplated by Rule 16A(6) of this Court's Rules to be admitted as *amicus curiae* in these proceedings.

Dated at Cape Town on this the 16th day of SEPTEMBER 2024.



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