

**IN THE EQUALITY COURT OF SOUTH AFRICA
(HELD AT EASTERN CAPE DIVISION, GQEBERHA)**

CASE NO.: 2391/2023

In the application of:

MEDIA MONITORING AFRICA TRUST

Applicant for admission as
Amicus Curiae

In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Complainant

and

DAWOOD LAGARDIEN

Respondent

NOTICE OF APPLICATION FOR ADMISSION AS *AMICUS CURIAE*

KINDLY TAKE NOTICE that the Media Monitoring Africa Trust intends to apply to this Honourable Court for an order in the following terms:

1. Admitting the Media Monitoring Africa Trust as an *amicus curiae* in the Main Application.
2. Granting Media Monitoring Africa Trust:
 - 2.1. the opportunity to file written submissions in the Main Application; and
 - 2.2. to the extent that the Court requires, the opportunity to present oral argument at the hearing of the Main Application, provided that such

argument does not repeat matters as dealt with in the arguments of the parties.

3. Costs against any party that opposes this application.
4. Further and/or alternative relief.

TAKE FURTHER NOTICE that the affidavit of **WILLIAM ROBERT BIRD** and the annexures thereto will be used in support of this application.

TAKE FURTHER NOTICE that the Media Monitoring Africa Trust has appointed the offices of **MCWILLIAMS & ELLIOT INC.** at the address set out below as the address at which they will accept notice and service of all documents and processes in these proceedings. The Media Monitoring Africa Trust's attorneys will also accept service at the following email addresses: tina.power@powerlaw.africa and claire.dehousse@powerlaw.africa.

TAKE FURTHER NOTICE that if any party intends to oppose this application, and subject to any directions from the Court, it is required to notify in writing within **seven (7) days** of the service of this Notice of Application of such intention to oppose along with the delivery of Answering Affidavits, if any.

SIGNED at **JOHANNESBURG** on **26th** day of **MARCH 2024**.



POWER AND ASSOCIATES

Attorneys for the *amicus curiae*

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Ref: PLMM-202313

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- TO: THE REGISTRAR**
High Court of South Africa
Eastern Cape Division
GQEBERHA
- AND TO: SOUTH AFRICAN HUMAN RIGHTS COMMISSION**
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- AND TO: DAWOOD LAGARDIEN**
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- AND TO: COMMISSION FOR GENDER EQUALITY**
Applicants in the joinder application
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Ref: CGE23/01/01ZS#433
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IN THE EQUALITY COURT OF SOUTH AFRICA
(HELD AT EASTERN CAPE DIVISION, GQEBERHA)

CASE NO.: 2391/2023

In the application for admission as an *amicus curiae* of:

MEDIA MONITORING AFRICA TRUST

Applicant for admission as
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In the matter between:

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Complainant

and

DAWOOD LAGARDIEN

Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

WILLIAM ROBERT BIRD

hereby make oath and state:

1. I am an adult male, and the Director of the Media Monitoring Africa Trust ("**MMA**"), a not-for-profit organisation with registered offices at Suite No. 2, Art Centre, 22 6th Street, Parkhurst, Johannesburg.

1 KK
WRS

2. I am duly authorised to bring this application and to depose to this affidavit on behalf of MMA.
3. The facts to which I depose are true and correct and are within my personal knowledge, except where it is apparent from the context that they are not. Where I make submissions of law, I do so on the advice of MMA's legal representatives.

OVERVIEW OF THE APPLICATION

4. This is an application to intervene as an *amicus curiae* in this matter as contemplated in regulation 10(5)(c)(vi) of the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("**Regulations to PEPUDA**") and Rule 16A of the Uniform Rules of Court ("**Rules**") in terms of which MMA seeks to be admitted as an *amicus curiae* in this application; and make written submissions, as well as oral submissions to the extent that this Court deems necessary.
5. In line with MMA's particular areas of interest and expertise, and cognisant of the duty of an *amicus curiae* not to repeat any of the submissions that have already been canvassed by the parties, MMA's proposed submissions are narrowly tailored to the following key issues of relevance to the present matter:
 - 5.1. **First**, MMA seeks to address the appropriate balance to be struck between the constitutional rights at play in this matter and seeks to advance arguments on finding an appropriate balance between the right to freedom of religion on the one hand, and the rights to equality and dignity of members of the LGBTQI+ community on the other, taking into account freedom of expression.
 - 5.2. **Second**, MMA intends to bring this Court's attention to considerations applicable when navigating different forms of public and private communication.

- 5.3. **Third**, MMA seeks to provide guidance on the proper interpretation of the meaning of bona fide engagements in fair and accurate reporting in the public interest, as provided in section 12 of PEPUDA.
- 5.4. **Fourth**, MMA intends to advance brief submissions on the remedy sought, with a focus on restorative and alternative justice.
6. In line with these proposed submissions and Rule 16 of the Rules, this affidavit is structured as follows:
- 6.1. **First**, I detail the parties' responses to MMA's request for consent to intervene as an *amicus curiae* in this matter.
- 6.2. **Second**, I describe MMA's interest in this matter.
- 6.3. **Third**, I provide an overview of the submissions that MMA proposes to advance in this matter, including their relevance to the proceedings and the reasons why the submissions will be useful to this Court and different from those of the other parties.
- 6.4. **Finally**, I suggest timeframes for the filing of written submissions.

CONSENT TO BE ADMITTED AS AN *AMICUS CURIAE*

7. On 12 December 2023, to facilitate MMA's involvement in this matter, MMA issued correspondence to the parties requesting consent for MMA to be admitted as an *amicus curiae* in this matter. This is attached as "**WRB1**".
8. On 21 December 2023, the Applicant consented to the request. A copy of their response is attached as "**WRB2**".
9. On 18 January 2024, as a result of a clerical error, MMA re-issued correspondence to the Respondent requesting consent. This is attached as "**WRB3**".

10. On 22 January 2024, the Respondent granted their consent. A copy of their response is attached as “**WRB4**”.
11. On 5 February 2024, MMA wrote to all the parties regarding its intention to notify the Court of its intention to intervene. No opposition was given to this proposal. The correspondence is attached as “**WRB5**”. The correspondence to the Court, dated 19 February 2024, is attached as “**WRB6**”.
12. I am advised that the Regulations to PEPUDA are silent on *amicus* interventions, apart from regulation 10(5)(c)(vi) which provides that such interventions can be addressed at a directions hearing. However, in terms of Rule 16A of the Rules, *amicus* applicants who have obtained consent from all parties to intervene in the proceedings only need to lodge the consent with the Registrar along with the proposed and agreed-upon timeframes for the filing of written submissions.
13. Due to some of the uncertainty around *amicus* interventions in the Equality Court, and out of caution, I am advised to file this brief *amicus* application.

MMA’S INTEREST IN THE PROCEEDINGS

14. MMA is a not-for-profit organisation that has been operating for 30 years to advocate for access to information, freedom of expression, and the responsible free flow of information to the public.¹ MMA seeks to implement innovative rights-based approaches to expression on- and offline and continues to strive for a fair and just society that respects a culture of human rights. Throughout its work, MMA promotes the ideals of equality and inclusion and has a particular interest and expertise in navigating competing rights and interests and finding appropriate balances that align with the dictates of the Constitution.
15. MMA has engaged in multiple law reform processes including, among others, preparing submissions on the Promotion of Equality and the Prevention of Unfair

¹ For more information see mediamonitoringafrica.org.

Discrimination Amendment Bill, the Prevention and Combating of Hate Crimes, the Hate Speech Bill, the Children's Amendment Bill, and the Cybercrimes Bill.

16. MMA has further participated in various litigious proceedings pertaining to the appropriate balance to be struck between freedom of expression and other competing rights and interests. This has included, for instance:
 - 16.1. Participating as an *amicus curiae* before the Constitutional Court in the *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku*,² which centred on the balancing of the rights to free expression, dignity, and equality in the context of hate speech legislation.
 - 16.2. Participating as an *amicus curiae* in *Qwelane v South African Human Rights Commission and Another*,³ which dealt with the balancing exercise between rights to freedom of expression, dignity, and equality in response to a publication which was offensive to members of the LGBTQI+ community.
 - 16.3. MMA intervened as an *amicus curiae* in *Mavhidula (on behalf of the South African Human Rights Commission) v Matumba*,⁴ which raised pertinent questions about a series of posts on Twitter and whether they amounted to harassment in terms of section 11 of PEPUDA.
 - 16.4. In *Blind SA v Minister of Trade, Industry and Competition and Others*,⁵ MMA advanced arguments as an *amicus curiae* on appropriately realising the right to freedom of expression and the ability to share knowledge and ideas in the digital era, arguing that an appropriate

² *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku* [2022] ZACC 5.

³ *Qwelane v South African Human Rights Commission and Another* [2021] ZACC 22.

⁴ *Mavhidula (on behalf of the South African Human Rights Commission) v Matumba* (case no.: 01/2021).

⁵ *Blind SA v Minister of Trade, Industry and Competition and Others* [2021] ZAGPPHC 871.

balance can be struck to ensure that freedom of expression can be fostered, rather than restrained, by copyright laws.

- 16.5. In *Economic Freedom Fighters v Manuel*,⁶ MMA presented arguments as an *amicus curiae* to the Supreme Court of Appeal dealing with the appropriate balance between the right to freedom of expression and the rights to dignity and reputation and the proper approach to the notion of the reasonable reader in the context of social media.⁷
17. The present matter raises important questions about navigating an appropriate balance of competing rights and interests, namely religious rights, expressive rights, and the rights of members of the LGBTQI+ community. It further raises questions around new forms of communication, and the bounds of public and private communication.
18. I submit that due to MMA's established track record of acting in the public interest in matters relating to the advancement of the Constitution, the need to balance competing rights and interests, and considerations around new modes of information sharing, MMA is well-placed to provide this Court with assistance regarding the legal issues that arise in this matter.
19. I submit that MMA has a clear interest in these proceedings and that it is well-placed to provide cogent and helpful submissions that will assist this Court regarding the legal issues that arise in the context of this matter.

⁶ *Economic Freedom Fighters v Manuel* [2020] ZASCA 172.

⁷ Additional cases MMA has been involved in include: As an applicant before the Constitutional Court in the matter *Centre for Child Law v Media 24 Limited* [2019] ZACC 46; as an *amicus curiae* before the Constitutional, *Amabhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services* [2021] ZACC 3; as an *amicus curiae* before the Supreme Court of Appeal in *Van Breda v Media 24 Limited*; *National Director of Public Prosecutions v Media 24 Limited* [2017] ZASCA 9; and most recently, along with other civil society organisations as *amici curiae* in *Karyn Maughan vs Jacob Gedleyihlekisa Zuma* (12770/22), and *Mazetti Management Services (Pty) Ltd and Another v Amabhungane Centre for Investigative Journalism NPC and Others* [2023] ZAGPJHC 771.

SUBMISSIONS TO BE ADVANCED BY MMA

20. If admitted as an *amicus curiae*, MMA seeks to focus on four discrete issues, which MMA submits will be useful to this Court in its adjudication of proceedings and are, to the best of my present knowledge, different from those of the other parties to the litigation.

Balancing the Rights at Play

21. **First**, MMA seeks to address the intersection of freedom of expression, the right to freedom of religion, and the rights of members of the LGBTQI+ community. In doing so MMA will advance arguments on finding an appropriate balance between the right to freedom of religion on the one hand, and the rights to equality and dignity on the other, taking into account freedom of expression.
22. In its submissions, MMA intends to provide context on the appropriate balance to be found in light of the facts at hand, taking into account, among others, that—
- 22.1. blanket justifications of discrimination are contrary to our constitutional framework;
 - 22.2. religious rights and freedoms and the rights of LGBTQI+ persons are not mutually exclusive;
 - 22.3. religious communities themselves are not monolithic and a multitude of voices exist within religious groups; and
 - 22.4. the right to religion and belief must be understood in the context of the universality, indivisibility, interdependence, and inalienability of all human rights.

23. In doing so, MMA intends to provide guidance on the balancing exercise in terms of PEPUDA and the Constitution, drawing on relevant South African jurisprudence.
24. Further, and mindful that our Courts must consider international law and may consider foreign law when interpreting the Bill of Rights, MMA will bring this Court's attention to international law instruments, such as the International Covenant on Civil and Political Rights ("ICCPR") as well as foreign law, including relevant jurisprudence from the European Court of Human Rights, among others.
25. MMA will also draw on guidance from recognised independent experts from the United Nations ("UN") including the UN Special Rapporteur on Freedom of Religion or Belief and the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, who have focused on the intersection of freedom of religion or belief and protection from violence and discrimination based on sexual orientation and gender identity.

Considerations around modes of communication

26. **Second**, MMA seeks to provide guidance to the Court on factors to consider when taking into account that discrimination and/or hate speech takes place both on- and offline and can be communicated through different mediums to different audiences.
27. The prohibition against harassment and discrimination contained in PEPUDA is technology-neutral, in that it applies equally whether such harassment is committed on- or offline. However, the reality is that, in the digital era, harassment online and/or through messaging platforms, as is the case here, raises nuances and complex considerations.
28. MMA seeks to make submissions on the bounds of private communications, broader community communications, and the intersection of the rights to privacy, freedom of expression, religion and equality and non-discrimination. In doing so MMA intends to provide guidance to the Court on considerations applicable when

navigating different modes of communication and the transmission of information in private, public, and semi-private contexts.

Fair and accurate reporting in the public interest

29. **Third**, MMA seeks to provide brief guidance on the proper interpretation of the meaning of “fair and accurate reporting in the public interest” in terms of section 12 of PEPUDA.
30. Section 12 of PEPUDA prohibits the dissemination and publication of information that could reasonably be construed, or reasonably be understood to demonstrate, a clear intention to unfairly discriminate against any person. Section 12(1) includes the following proviso: “*bona fide* engagement in artistic creativity, academic and scientific inquiry, fair and accurate reporting in the public interest or publication of any information, advertisement or notice in accordance with section 16 of the Constitution, is not precluded by this section.”
31. This proviso is referenced in the sections 2(b)(v) and 10(1) of PEPUDA. Section 2(b)(v) provides that the objections of PEPUDA are to, among others, give effect to the letter and spirit of the Constitution, in particular the prohibition of advocacy of hatred, based on race, ethnicity, gender or religion, that constitutes incitement to cause harm as contemplated in section 16(2)(c) of the Constitution and section 12 of PEPUDA. Section 10(1) provides that, subject to the proviso in section 12, no person may publish, propagate, advocate or communicate words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be hurtful, be harmful or to incite harm; promote or propagate hatred.
32. The Respondent relies on section 12 contending that “section 12 permits the publication of information in the interest of the public regardless of the prohibitions contained in section 10 and 12” and that his publication was “necessary and in the public interest of [his] Muslim community”.⁸

⁸ AA at para 38 and 38 of the Respondent’s counter claim.

33. MMA submits that this is an incorrect interpretation and application of section 12.
34. While the proviso provides a defence to a person whose speech would otherwise fall foul of section 10(1), it is not a blanket defence. To rely on this defence, the Respondent must prove that it was (i) a *bona fide* engagement, and in this case, (ii) that it amounted to fair and accurate reporting, and (iii) is in the public interest. From the papers presently before the Court, these components of the defence have not been established.
35. In order to assist the Court with a correct interpretation, MMA submits that this proviso is in many ways akin to the fair comment defence in defamation. In doing so, MMA will rely on jurisprudence on PEPUDA, as well as relevant jurisprudence relating to defamation, to provide guidance to this Court on a proper interpretation of section 12 and illustrate that it is not applicable in the present case.

Appropriate Remedy

36. **Fourth**, aligned with MMA's submissions on balancing competing rights and interests, and mindful of the potential intervention of the Commission for Gender Equality, as well as the remedy sought by the Complainant, MMA seeks to make brief submissions on an appropriate remedy.
37. MMA seeks to advance submissions on principles of restorative and alternative justice to assist the Court in considering remedies that aim to foster a society founded on human dignity, the achievement of equality, and the advancement of human rights and freedoms. In this regard, we will draw the Court's attention to, among others, the *Chinese Association Gauteng*⁹ case which suggested novel remedies that focused on educating the Respondent on racial intolerance and techniques to remove hate speech from the internet.

⁹ *Chinese Association Gauteng (TCA) v Henning and Others* [2022] ZAGPJHC 590.

38. I submit that the submissions that MMA seeks to advance are directly relevant to this matter as they provide context to this Court on the appropriate balance to be struck with competing rights at play, the considerations around public and private communications, the correct interpretation of section 12 of PEPUDA, and the importance of restorative justice. MMA's submissions will also provide international and foreign law guidance to the Court. I submit that these submissions will be useful to the Court in its determination of this matter and, having read the available pleadings, and to the extent of my present knowledge, are different from those of the other parties.

SUGGESTED TIMEFRAMES FOR THE FILING OF WRITTEN SUBMISSIONS

39. In the event that MMA is admitted as *amicus curiae*, and subject to any directions from the Court, we propose filing our Heads of Argument by 10 April 2024.
40. While MMA had initially proposed filing Heads of Argument on 3 April 2024, along with the parties, after further consideration and cognisant of the duty of an *amicus curiae* not to repeat any of the submissions that have already been canvassed by the parties, I submit it preferable for MMA to file its Heads of Arguments after the other parties to ensure that its submissions are not repetitive, are useful to this Court and differ from those of the other parties.

CONCLUSION

41. In light of the submissions above, MMA requests that this Court grant MMA's application to intervene as *amicus curiae* in the present matter and admit MMA accordingly. MMA respectfully submits that it has a clear interest in these proceedings and that the submissions that MMA intends to advance are relevant to this matter, will assist this Court, and are different from those of the other parties.
42. MMA reserves the right to seek costs against any party that oppose MMA's admission as an *amicus curiae*.



DEPONENT

The Deponent has acknowledged that they know and understand the contents of this affidavit, which was signed and sworn to before me at Rosebank on this 26 day of **MARCH 2024**, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

KELLY KROPMAN
Commissioner of Oaths
Practising Attorney
20 Baker Street,
Rosebank, Johannesburg
(011) 485 0352

This message/correspondence contains information which is confidential and/or legally privileged. It is intended for the addressee only. If you are not the addressee and you have received this message in error, you may not read, use, disseminate, distribute, or copy its information. Please notify us immediately and we shall arrange for the return of this message/correspondence at our own cost.

Date: 14 December 2023

Your ref: 2391/2023

Our ref: PLMM-202312

TO: SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Applicant

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TO: LITHEMBA NCANYA ATTORNEYS

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Dear All,

SOUTH AFRICAN HUMAN RIGHTS COMMISSION // DAWOOD LAGARDIEN (2391/2023) | REQUEST FOR CONSENT TO BE ADMITTED AS AN *AMICUS CURIAE*

1. We act for Media Monitoring Africa ("**MMA**" or "**our client**") and refer to the above matter.
2. Our client seeks to intervene as an *amicus curiae* in this matter as contemplated in regulation 10(5)(c)(vi) of the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("**Regulations to PEPUDA**").

Director: MJ Power B.A., LL.B., LL.M. (Wits) | **Senior Associates:** T Davis B.A. (RU), LL.B. (UCT), S Khumalo LL.B. (Wits), T Lloyd LL.B. (Wits), LL.M. (Edin.), T Power B.A., LL.B., LL.M. (Wits) | **Candidate Legal Practitioners:** C Chitengu B.A., LL.B. (UJ), C Dehosse B.A., LL.B. (Stell.), LL.M. (UCT) | **Technologist:** K Nwana | **Office Manager:** J Rashid. Power & Associates Incorporated is a law firm registered with the Legal Practice Council of South Africa (F18433) and a personal liability company registered in the Republic of South Africa (2018/071686/21).

* **Cape Town Office:** Unit 403, 5 St Georges Mall, Cape Town, South Africa, 8001. ** **Name Change:** Please note that on 10 May 2023 our name changed from Power Singh Inc. to Power & Associates.

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MMA's interest in the matter

3. MMA is a not-for-profit organisation that has been operating for 30 years to advocate for access to information, freedom of expression, and the responsible free flow of information to the public.¹ MMA seeks to implement innovative rights-based approaches to expression on- and offline and continues to strive for a fair and just society that respects a culture of human rights. Throughout its work, MMA promotes the ideals of equality and inclusion and has a particular interest and expertise in navigating competing rights and interests and finding appropriate balances that align with the dictates of the Constitution.
4. MMA has engaged in multiple law reform processes including, among others, preparing submissions on the Promotion of Equality and the Prevention of Unfair Discrimination Amendment Bill, the Prevention and Combating of Hate Crimes, the Hate Speech Bill, the Children's Amendment Bill, and the Cybercrimes Bill.
5. MMA has further participated in various litigious proceedings pertaining to the appropriate balance to be struck between freedom of expression and other competing rights and interests. This has included, for instance:
 - 5.1. Participating as an *amicus curiae* before the Constitutional Court in the *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku*,² which centred on the balancing of the rights to free expression, dignity, and equality in the context of hate speech legislation.
 - 5.2. Participating as an *amicus curiae* in *Qwelane v South African Human Rights Commission and Another*,³ which dealt with the balancing exercise between rights to freedom of expression, dignity, and equality in response to a publication which was offensive to members of the LGBTQI+ community.
 - 5.3. MMA intervened as an *amicus curiae* in *Mavhidula (on behalf of the South African Human Rights Commission) v Matumba*,⁴ which raised pertinent questions about a series of posts on Twitter and whether they amounted to harassment in terms of section 11 of PEPUDA.
 - 5.4. In *Blind SA v Minister of Trade, Industry and Competition and Others*,⁵ MMA advanced arguments as an *amicus curiae* on appropriately realising the right to freedom of expression and the ability to share knowledge and ideas in the digital era, arguing that an appropriate balance can be struck to ensure that freedom of expression can be fostered, rather than restrained, by copyright laws.

¹ For more information see mediamonitoringafrica.org.

² *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku* [2022] ZACC 5.

³ *Qwelane v South African Human Rights Commission and Another* [2021] ZACC 22.

⁴ *Mavhidula (on behalf of the South African Human Rights Commission) v Matumba* (case no.: 01/2021).

⁵ *Blind SA v Minister of Trade, Industry and Competition and Others* [2021] ZAGPPHC 871.

KK
WB

- 5.5. In *Economic Freedom Fighters v Manuel*,⁶ MMA presented arguments as an *amicus curiae* to the Supreme Court of Appeal dealing with the appropriate balance between the right to freedom of expression and the rights to dignity and reputation and the proper approach to the notion of the reasonable reader in the context of social media.⁷
6. In line with the above illustrative examples, given MMA's particular areas of interest and the work that it pursues, MMA has a clear interest in the present matter. Accordingly, MMA wishes to participate as an *amicus curiae* as contemplated by regulation 10(5)(c)(vi) of the Regulations to PEPUDA, read with Rule 16A of the Uniform Rules of Court, to the extent that it is applicable.
7. Therefore, we hereby request your client's written consent that our client be admitted as an *amicus curiae* with the opportunity to file an application, make written submissions, and present oral argument at the hearing of this matter.

The submissions which MMA seeks to advance

8. MMA does not intend to repeat any matters set forth in the argument of the other parties, and we emphasise that MMA seeks only to address issues that may be useful to the Court in its determination of this matter. In doing so, MMA intends to canvass the following issues, which it submits are relevant to the proceedings, useful to the Court, and, to the extent of its present knowledge, differ from those of the other parties to the litigation:
- 8.1. **First**, MMA seeks to address the intersection of the right to freedom of religion and the rights of members of the LGBTQI+ community. In doing so MMA will advance arguments on finding an appropriate balance between the right to freedom of religion on the one hand, and the rights to equality and dignity on the other, taking into account discrimination and/or hate speech that takes place both on- and offline.
- 8.2. **Second**, MMA seeks to advance arguments around the correct interpretation of "fair and accurate reporting in the public interest" in terms of section 12 of PEPUDA.

⁶ *Economic Freedom Fighters v Manuel* [2020] ZASCA 172.

⁷ Additional cases MMA has been involved in include: As an applicant before the Constitutional Court in the matter *Centre for Child Law v Media 24 Limited* [2019] ZACC 46; as an *amicus curiae* before the Constitutional, *Amabhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services* [2021] ZACC 3; as an *amicus curiae* before the Supreme Court of Appeal in *Van Breda v Media 24 Limited*; *National Director of Public Prosecutions v Media 24 Limited* [2017] ZASCA 9; and most recently, along with other civil society organisations as *amici curiae* in *Karyn Maughan vs Jacob Gedleyihlekisa Zuma* (12770/22), and *Mazetti Management Services (Pty) Ltd and Another v Amabhungane Centre for Investigative Journalism NPC and Others* [2023] ZAGPJHC 771.

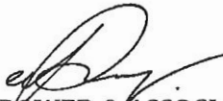
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MB

9. In making its submissions, MMA will draw on domestic jurisprudence as well as international, regional, and comparative law, to assist the Court in its determination of this matter.
10. Based on the above, MMA submits that these issues are relevant to the Court in its full consideration of this matter.

Proposed timeframes

11. MMA has been advised that a directions hearing was held on 30 November 2023 setting out time frames for the filing of various pleadings. At this stage, MMA understands that the filing deadline for an *amicus curiae* intervention is 19 February 2024.
12. In line with this, and in order to enable MMA to properly prepare its application, we request that you advise, in writing, whether you consent to MMA's intervention as an *amicus curiae* by no later than **17h00 on Friday, 18 January 2024**.
13. We look forward to hearing from you.

With kind regards,



POWER & ASSOCIATES

Per: Tina Power | *Senior Associate*

E-mail: tina.power@powerlaw.africa

ENDS.

MB KK

Re: [PLMM-202312] SAHRC // Lagardien (2391/2023) | Request for consent to be admitted as amicus curiae

Lithemba Ncanywa <lithemba.ncanywa@gmail.com>

Thu 12/21/2023 12:14 PM

To:Tina Power <tina.power@powerlaw.africa>

You don't often get email from lithemba.ncanywa@gmail.com. [Learn why this is important](#)

Good day,

Your email dated 14 December 2023 refers.

Our client consents to your client's request to be admitted as *amicus curiae* herein.

Should there be any formal document to be signed by our client, please forward same to us.

We look forward to hearing from you.

PLEASE NOTE THAT OUR FIRM MOVED FROM 1 DE VILLIERS STREET, NORTH END, GQEBERHA TO ITS NEW OFFICES SITUATED AT 3RD FLOOR, AFRICA HOUSE, 6 GRAHAM STREET, NORTH END, GQEBERHA.

Regards

Lithemba Ncanywa

Director

Tel: 067 232 5529

Cell: 072 407 7588

Email: lithemba.ncanywa@gmail.com

3rd Floor, Africa House

6 Graham Street

North End

Gqeberha, 6001

OUR OFFICE WILL NEVER CHANGE ITS BANKING DETAILS BY NOTIFICATION TO YOU VIA EMAIL, SMS, WHATSAPP OR ANY OTHER ELECTRONIC COMMUNICATION. OUR OFFICE WILL NOT BE LIABLE FOR ANY LOSS YOU MAY SUFFER AS A RESULT OF ANY FRAUDULENT INSTRUCTION TO AMEND BANKING DETAILS.

On Thu, Dec 14, 2023 at 1:37 PM Tina Power <tina.power@powerlaw.africa> wrote:

Good day,

SAHRC // Lagardien (2391/2023)

MB KK

1. We act for Media Monitoring Africa (MMA) and refer to the above matter.
2. Kindly find attached correspondence for your attention.
3. Kindly acknowledge receipt.
4. Please copy in legal@powerlar.africa for any responses between 15 December 2023 and 5 January 2024.

Warm regards,

→ [E-mail Disclaimer](#) | → [Privacy Policy](#) | → [Non-discrimination](#) | → [Name change notification](#)

Out of Office: 15 December 2023 - 5 January 2024 (Office Closure)

**** NOTE:** This e-mail originated from outside of our organisation. Please do not click links or attachments unless you recognise the sender. **

MB KK

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Date: 18 January 2024

Your ref: 2391/2023

Our ref: PLMM-202313

TO: YOUSHA TAYOB ATTORNEYS
Attorneys for the Respondent
E-mail: yousha@youshatayob.co.za

Dear Mr Tayob,

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION // DAWOOD LAGARDIEN (2391/2023) |
REQUEST FOR CONSENT TO BE ADMITTED AS AN *AMICUS CURIAE***

1. We act for Media Monitoring Africa ("**MMA**" or "**our client**") and refer to the above matter.
2. Our client seeks to intervene as an *amicus curiae* in this matter as contemplated in regulation 10(5)(c)(vi) of the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("**Regulations to PEPUDA**").

MMA's interest in the matter

3. MMA is a not-for-profit organisation that has been operating for 30 years to advocate for access to information, freedom of expression, and the responsible free flow of information to the public.¹ MMA seeks to implement innovative rights-based approaches to expression on- and offline and continues to strive for a fair and just society that respects a culture of human rights. Throughout its work, MMA promotes the ideals of equality and inclusion and

¹ For more information see mediamonitoringafrica.org.

Director: MJ Power B.A., LL.B., LL.M. (Wits) | **Senior Associates:** T Davis B.A. (RU), LL.B. (UCT), S Khumalo LL.B. (Wits), T Lloyd LL.B. (Wits), LL.M. (Edin.), T Power B.A., LL.B., LL.M. (Wits) | **Candidate Legal Practitioners:** C Chitengu B.A., LL.B. (UJ), C Dehosse B.A., LL.B. (Stell.), LL.M. (UCT) | **Technologist:** K Nwana | **Office Manager:** J Rashid. Power & Associates Incorporated is a law firm registered with the Legal Practice Council of South Africa (F18433) and a personal liability company registered in the Republic of South Africa (2018/071686/21).

* **Cape Town Office:** Unit 403, 5 St Georges Mall, Cape Town, South Africa, 8001. ** **Name Change:** Please note that on 10 May 2023 our name changed from Power Singh Inc. to Power & Associates.

KK
MB

has a particular interest and expertise in navigating competing rights and interests and finding appropriate balances that align with the dictates of the Constitution.

4. MMA has engaged in multiple law reform processes including, among others, preparing submissions on the Promotion of Equality and the Prevention of Unfair Discrimination Amendment Bill, the Prevention and Combating of Hate Crimes, the Hate Speech Bill, the Children's Amendment Bill, and the Cybercrimes Bill.
5. MMA has further participated in various litigious proceedings pertaining to the appropriate balance to be struck between freedom of expression and other competing rights and interests. This has included, for instance:
 - 5.1. Participating as an *amicus curiae* before the Constitutional Court in the *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku*,² which centred on the balancing of the rights to free expression, dignity, and equality in the context of hate speech legislation.
 - 5.2. Participating as an *amicus curiae* in *Qwelane v South African Human Rights Commission and Another*,³ which dealt with the balancing exercise between rights to freedom of expression, dignity, and equality in response to a publication which was offensive to members of the LGBTQI+ community.
 - 5.3. MMA intervened as an *amicus curiae* in *Mavhidula (on behalf of the South African Human Rights Commission) v Matumba*,⁴ which raised pertinent questions about a series of posts on Twitter and whether they amounted to harassment in terms of section 11 of PEPUDA.
 - 5.4. In *Blind SA v Minister of Trade, Industry and Competition and Others*,⁵ MMA advanced arguments as an *amicus curiae* on appropriately realising the right to freedom of expression and the ability to share knowledge and ideas in the digital era, arguing that an appropriate balance can be struck to ensure that freedom of expression can be fostered, rather than restrained, by copyright laws.
 - 5.5. In *Economic Freedom Fighters v Manuel*,⁶ MMA presented arguments as an *amicus curiae* to the Supreme Court of Appeal dealing with the appropriate balance between the right to freedom of expression and the rights to dignity and reputation and the proper approach to the notion of the reasonable reader in the context of social media.⁷

² *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku* [2022] ZACC 5.

³ *Qwelane v South African Human Rights Commission and Another* [2021] ZACC 22.

⁴ *Mavhidula (on behalf of the South African Human Rights Commission) v Matumba* (case no.: 01/2021).

⁵ *Blind SA v Minister of Trade, Industry and Competition and Others* [2021] ZAGPPHC 871.

⁶ *Economic Freedom Fighters v Manuel* [2020] ZASCA 172.

⁷ Additional cases MMA has been involved in include: As an applicant before the Constitutional Court in the matter *Centre for Child Law v Media 24 Limited* [2019] ZACC 46; as an *amicus curiae* before the Constitutional, *Amabhungane*

WB KK

6. In line with the above illustrative examples, given MMA's particular areas of interest and the work that it pursues, MMA has a clear interest in the present matter. Accordingly, MMA wishes to participate as an *amicus curiae* as contemplated by regulation 10(5)(c)(vi) of the Regulations to PEPUDA, read with Rule 16A of the Uniform Rules of Court, to the extent that it is applicable.
7. Therefore, we hereby request your client's written consent that our client be admitted as an *amicus curiae* with the opportunity to file an application, make written submissions, and present oral argument at the hearing of this matter.

The submissions which MMA seeks to advance

8. MMA does not intend to repeat any matters set forth in the argument of the other parties, and we emphasise that MMA seeks only to address issues that may be useful to the Court in its determination of this matter. In doing so, MMA intends to canvas the following issues, which it submits are relevant to the proceedings, useful to the Court, and, to the extent of its present knowledge, differ from those of the other parties to the litigation:
 - 8.1. **First**, MMA seeks to address the intersection of the right to freedom of religion and the rights of members of the LGBTQI+ community. In doing so MMA will advance arguments on finding an appropriate balance between the right to freedom of religion on the one hand, and the rights to equality and dignity on the other, taking into account discrimination and/or hate speech that takes place both on- and offline.
 - 8.2. **Second**, MMA seeks to advance arguments around the correct interpretation of "fair and accurate reporting in the public interest" in terms of section 12 of PEPUDA.
9. In making its submissions, MMA will draw on domestic jurisprudence as well as international, regional, and comparative law, to assist the Court in its determination of this matter.
10. Based on the above, MMA submits that these issues are relevant to the Court in its full consideration of this matter.

Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services [2021] ZACC 3; as an *amicus curiae* before the Supreme Court of Appeal in *Van Breda v Media 24 Limited*; *National Director of Public Prosecutions v Media 24 Limited* [2017] ZASCA 9; and most recently, along with other civil society organisations as *amici curiae* in *Karyn Maughan vs Jacob Gedleyihlekisa Zuma* (12770/22), and *Mazetti Management Services (Pty) Ltd and Another v Amabhungane Centre for Investigative Journalism NPC and Others* [2023] ZAGP]HC 771.

MB KK

Proposed timeframes

11. MMA has been advised that a directions hearing was held on 30 November 2023 setting out time frames for the filing of various pleadings. At this stage, MMA understands that the filing deadline for an *amicus curiae* intervention is 19 February 2024.
12. MMA has issued the same request for consent to the South African Human Rights Commissions, to which consent was granted.
13. In line with all the above, and in order to enable MMA to properly prepare its application, we request that you advise, in writing, whether your client consents to MMA's intervention as an *amicus curiae* by no later than **17h00 on Wednesday, 31 January 2024**.
14. We look forward to hearing from you.

With kind regards,



POWER & ASSOCIATES

Per: Tina Power | *Senior Associate*

E-mail: tina.power@powerlaw.africa

ENDS.

WB KK

"WRB4" 26

1st Floor, 7 Bonanza Street,
Selby, Ext19, JOHANNESBURG
P.O. Box 1427, Crown Mines, 2025
TEL: (011) 838-3342
FAX: (011) 838-4744
CEL: 082 926 5408

Email yousha@youshatayob.co.za

Yousha Tayob **ATTORNEY**

Your reference:

Our reference: YOUSHA/3801/YT

Date: 22 January 2024

POWER AND ASSOCIATE ATTORNEYS
PER EMAIL: legal@powerlaw.africa
Claire.dehosse@powerlaw.africa

Dear Sir/Madam,

**RE: SAHRC VS DAWOOD LAGARDIEN HIGH COURT OF SOUTH AFRICA –
EASTERN CAPE LOCAL DIVISION CASE NUMBER: 2391/2023**

Without prejudice to his rights my client does not at this stage see any basis to object to your intervention and accordingly consents to same as an amicus curiae.

Yours faithfully


YOUSHA TAYOB

Yousha Tayob BA LLB (University of Witwatersrand)
VAT Registration Number: 4250179373

Recipient of the pmr.africa Diamond Arrow Award for 2010, 2011, & 2016 (Muslim Business) and
Golden Arrow Award for 2012, 2013, 2014 & 2015 (Muslim Business)

KK
WB

"WRB5"

**POWER AND
ASSOCIATES**
PUBLIC INTEREST LAW AFRICA

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t. +2710 822 7860
w. powerlaw.africa
a. 20 Baker Street, Rosebank,
Johannesburg, South Africa, 2196

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Date: 5 February 2024

Your ref:

Our ref: PLMM-202313

TO: SOUTH AFRICAN HUMAN RIGHTS COMMISSION

C/o Lithemba Ncanywa
Attorneys for the applicant
1 De Villiers Street, North End, Gqeberha, South Africa, 6001
Tel: +27(0)72 407 7588
E-mail: lithemba.ncanywa@gmail.com

TO: DAWOOD LAGARDIEN

C/o Yousha Tayob
Attorneys for the respondent
First Floor, Osgo Building, 7 Bonanza Street, Selby, Johannesburg, South Africa, 2001
Tel: +27(0) 11 838 3342
E-mail: yousha@youshatayob.co.za

Dear All

SAHRC // DAWOOD LAGARDIEN (CASE NO.: 2391/2023)

1. We act for Media Monitoring Africa Trust ("MMA" or "our client").
2. We note that both parties have given consent for MMA to be admitted as *amicus curiae* in the above matter.
3. We further note the following timeframes set out in an email dated 24 January 2024 from the Applicant:

Director: MJ Power B.A., LL.B., LL.M. (Wits) | **Senior Associates:** T Davis B.A. (RU), LL.B. (UCT), S Khumalo LL.B. (Wits), T Lloyd LL.B. (Wits), LL.M. (Edin.), T Power B.A., LL.B., LL.M. (Wits) | **Candidate Legal Practitioners:** C Chitengu B.A., LL.B. (UJ), C Dehosse B.A., LL.B. (Stell.), LL.M. (UCT) | **Technologist:** K Nwana | **Office Manager:** J Rashid. Power & Associates Incorporated is a law firm registered with the Legal Practice Council of South Africa (F18433) and a personal liability company registered in the Republic of South Africa (2018/071686/21).

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- 3.1. The Applicant is to file its Answering Affidavit by 9 February 2024.
- 3.2. The Respondent is to file its Replying Affidavit by 19 February 2024.
- 3.3. All parties are to file their Heads of Argument by 3 April 2024.
4. The email further noted that the *amicus* can file its papers after the exchange of all papers between parties.
5. We confirm that our client is amenable to the above. Subject any guidance from the Court, and to the extent required, we propose filing our client's application by 1 March 2024, and Heads of Argument by 3 April 2024, along with the parties.
6. We record that regulation 10(5)(c)(vi) of the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("**Regulations to PEPUDA**") refer to *amicus curiae* interventions being addressed at a direction's hearings. We note that the deadline set at the last directions hearing for *amicus curiae* interventions was 19 February 2024. We appreciate that this may change due to the filing of the counter application.
7. We further note that apart from regulation 10(5)(c)(vi) the Regulations to PEPUDA on are silent on *amicus* interventions. In terms of Rule 16A of the Uniform Rules, *amicus* applicants that obtained consent from all of the parties to intervene in the proceedings need to lodge the consent with registrar along with proposed and agreed upon timeframes for the filing of written submissions.
8. In order to advise the Court of our client's position and to ensure no undue delays, we intend on writing to the Court recording the following:
 - 8.1. Our client wishes to participate as an *amicus curiae* as contemplated by regulation 10(5)(c)(vi) of the Regulations to PEPUDA, read with Rule 16A of the Uniform Rules of Court, to the extent that it is applicable.
 - 8.2. Our client has obtained consent from all of the parties to intervene as *amici curiae*.
 - 8.3. Confirming that our client is aware of the agreed timeframes between the parties and is amenable to filing after the exchange of pleadings. To the extent required, our client will file its application by 1 March 2024. Further, our client will file its Heads of Argument by 3 April 2024, along with the parties.
 - 8.4. Seeking any further guidance on our client's admission as *amici curiae*.
9. Kindly advise by **8 February 2024**, if you have any concerns with this approach.

WB KK

With kind regards,



POWER & ASSOCIATES

Per: Tina Power | *Senior Associate*

E-mail: tina.power@powerlaw.africa



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Date: 19 February 2024

Your ref: 2391/2023

Our ref: PLMM-202313

TO: THE HONOURABLE JUDGE PAKATI

C/o Annelise Erasmus

Equality Court, Gqeberha

E-mail: AErasmus@judiciary.org.za

Dear Judge Pakati,

SAHRC // DAWOOD LAGARDIEN (CASE NO.: 2391/2023)

1. We act for the Media Monitoring Africa Trust ("**MMA**" or "**our client**") who seek to intervene in the abovementioned matter as *amici curiae*.
2. MMA seeks to intervene as an *amicus curiae* in this matter as contemplated in regulation 10(5)(c)(vi) of the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("**Regulations to PEPUDA**").
3. The purpose of this correspondence is to (i) advise your Ladyship that our client has obtained written consent from both parties to intervene as *amicus curiae* in the proceedings; (ii) to set out the proposed timeframes for relevant filings, and (iii) seek your Ladyship's guidance on our client's admission as *amici curiae* and the proposed timeframes for filing.
4. On 14 December 2023, MMA requested consent from the Applicant to intervene as *amicus curiae*. This request is attached hereto as annexure "**MM1**". On 21 December 2023, the Applicant gave its consent. Proof of consent is attached hereto as annexure "**MM2**".

Director: MJ Power B.A., LL.B., LL.M. (Wits) | **Senior Associates:** T Davis B.A. (RU), LL.B. (UCT), S Khumalo LL.B. (Wits), T Lloyd LL.B. (Wits), LL.M. (Edin.), T Power B.A., LL.B., LL.M. (Wits) | **Candidate Legal Practitioners:** C Chitengu B.A., LL.B. (UJ), C Dehosse B.A., LL.B. (Stell.), LL.M. (UCT) | **Technologist:** K Nwana | **Office Manager:** J Rashid. Power & Associates Incorporated is a law firm registered with the Legal Practice Council of South Africa (F18433) and a personal liability company registered in the Republic of South Africa (2018/071686/21).

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WRB
KK

On 18 January 2024, MMA requested consent from the Respondent to be admitted as *amicus curiae*. This request is attached hereto as annexure "MM3". The Respondent gave their consent on 22 January 2024, as evidenced by annexure "MM4".

5. We record that regulation 10(5)(c)(vi) of the Regulations to PEPUDA refer to *amicus curiae* interventions being addressed at a directions hearing. We note that the deadline set at the last directions hearing for *amicus curiae* interventions was 19 February 2024. However, we understand that this has changed due to the filing of the counter application.
6. We further note that the Regulations to PEPUDA are silent on *amicus* interventions, apart from regulation 10(5)(c)(vi). However, in terms of Rule 16A of the Uniform Rules, *amicus* applicants who have obtained consent from all parties to intervene in the proceedings need to lodge the consent with the registrar along with the proposed and agreed-upon timeframes for the filing of written submissions.
7. Accordingly, we have engaged with the parties as to proposed timeframes and they have taken no issue with the below proposed filing deadlines. As such, MMA proposes to file:
 - 7.1. Its application to intervene as *amicus* by **1 March 2024**, if so directed by your Ladyship; and
 - 7.2. Its Heads of Argument by **3 April 2024**, together with that of the parties.
8. In light of the consent received from both parties and guidance from Rule 16A, we would welcome guidance from your Ladyship on whether our client is required to make an application to be admitted as *amicus curiae*, or if our client may proceed to filing its Heads of Argument as set out above.
9. We trust that the above is in order and, to the extent necessary, we would be grateful for your Ladyship's guidance.

With kind regards,



POWER & ASSOCIATES

Per: Tina Power | *Senior Associate*

E-mail: tina.power@powerlaw.africa

KB
WB

COPIED TO: SOUTH AFRICAN HUMAN RIGHTS COMMISSION

C/o Lithemba Ncanywa
Attorneys for the Applicant
1 De Villiers Street, North End, Gqeberha, South Africa, 6001
Tel: +27(0)72 407 7588
E-mail: lithemba.ncanywa@gmail.com

COPIED TO: DAWOOD LAGARDIEN

C/o Yousha Tayob
Attorneys for the Respondent
First Floor, Osgo Building, 7 Bonanza Street, Selby, Johannesburg, South Africa,
2001
Tel: +27(0) 11 838 3342
E-mail: yousha@youshatayob.co.za

WB^{KK}

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Date: 14 December 2023

Your ref: 2391/2023

Our ref: PLMM-202312

TO: SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Applicant

C/o Loyiso Mpondo

13-33 Phillip Frame Road, Phase 4 B, Waverly Office Park, Chiselhurst, East London

Tel: +27(0)43 722 7828

E-mail: lmpondo@sahrc.org.za

TO: LITHEMBA NCANYA ATTORNEYS

Attorneys for the Respondent

C/o Lithemba Ncanywa

3rd Floor, Africa House, 6 Graham Street, North End, Gqeberha

Tel: +27(0)72 407 5788

E-mail: lithemba.ncanywa@gmail.com

Dear All,

SOUTH AFRICAN HUMAN RIGHTS COMMISSION // DAWOOD LAGARDIEN (2391/2023) | REQUEST FOR CONSENT TO BE ADMITTED AS AN *AMICUS CURIAE*

1. We act for Media Monitoring Africa ("**MMA**" or "**our client**") and refer to the above matter.
2. Our client seeks to intervene as an *amicus curiae* in this matter as contemplated in regulation 10(5)(c)(vi) of the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("**Regulations to PEPUDA**").

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MMA's interest in the matter

3. MMA is a not-for-profit organisation that has been operating for 30 years to advocate for access to information, freedom of expression, and the responsible free flow of information to the public.¹ MMA seeks to implement innovative rights-based approaches to expression on- and offline and continues to strive for a fair and just society that respects a culture of human rights. Throughout its work, MMA promotes the ideals of equality and inclusion and has a particular interest and expertise in navigating competing rights and interests and finding appropriate balances that align with the dictates of the Constitution.
4. MMA has engaged in multiple law reform processes including, among others, preparing submissions on the Promotion of Equality and the Prevention of Unfair Discrimination Amendment Bill, the Prevention and Combating of Hate Crimes, the Hate Speech Bill, the Children's Amendment Bill, and the Cybercrimes Bill.
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¹ For more information see mediamonitoringafrica.org.

² *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku* [2022] ZACC 5.

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⁴ *Mavhidula (on behalf of the South African Human Rights Commission) v Matumba* (case no.: 01/2021).

⁵ *Blind SA v Minister of Trade, Industry and Competition and Others* [2021] ZAGPPHC 871.

KL
MB

- 5.5. In *Economic Freedom Fighters v Manuel*,⁶ MMA presented arguments as an *amicus curiae* to the Supreme Court of Appeal dealing with the appropriate balance between the right to freedom of expression and the rights to dignity and reputation and the proper approach to the notion of the reasonable reader in the context of social media.⁷
6. In line with the above illustrative examples, given MMA's particular areas of interest and the work that it pursues, MMA has a clear interest in the present matter. Accordingly, MMA wishes to participate as an *amicus curiae* as contemplated by regulation 10(5)(c)(vi) of the Regulations to PEPUDA, read with Rule 16A of the Uniform Rules of Court, to the extent that it is applicable.
7. Therefore, we hereby request your client's written consent that our client be admitted as an *amicus curiae* with the opportunity to file an application, make written submissions, and present oral argument at the hearing of this matter.

The submissions which MMA seeks to advance

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⁶ *Economic Freedom Fighters v Manuel* [2020] ZASCA 172.

⁷ Additional cases MMA has been involved in include: As an applicant before the Constitutional Court in the matter *Centre for Child Law v Media 24 Limited* [2019] ZACC 46; as an *amicus curiae* before the Constitutional, *Amabhungane Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services* [2021] ZACC 3; as an *amicus curiae* before the Supreme Court of Appeal in *Van Breda v Media 24 Limited*; *National Director of Public Prosecutions v Media 24 Limited* [2017] ZASCA 9; and most recently, along with other civil society organisations as *amici curiae* in *Karyn Maughan vs Jacob Gedleyihlekisa Zuma* (12770/22), and *Mazetti Management Services (Pty) Ltd and Another v Amabhungane Centre for Investigative Journalism NPC and Others* [2023] ZAGPJHC 771.

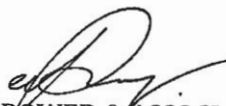
WB
KK

9. In making its submissions, MMA will draw on domestic jurisprudence as well as international, regional, and comparative law, to assist the Court in its determination of this matter.
10. Based on the above, MMA submits that these issues are relevant to the Court in its full consideration of this matter.

Proposed timeframes

11. MMA has been advised that a directions hearing was held on 30 November 2023 setting out time frames for the filing of various pleadings. At this stage, MMA understands that the filing deadline for an *amicus curiae* intervention is 19 February 2024.
12. In line with this, and in order to enable MMA to properly prepare its application, we request that you advise, in writing, whether you consent to MMA's intervention as an *amicus curiae* by no later than **17h00 on Friday, 18 January 2024**.
13. We look forward to hearing from you.

With kind regards,



POWER & ASSOCIATES

Per: Tina Power | *Senior Associate*

E-mail: tina.power@powerlaw.africa

ENDS.

KK
WB

"MM2"37

From: [Tina Power](#)
To: [Lithemba Ncanywa](#)
Cc: [Claire Dehosse](#); [Michael Power](#)
Subject: Re: [PLMM-202312] SAHRC // Lagardien (2391/2023) | Request for consent to be admitted as amicus curiae
Date: Monday, 08 January 2024 09:23:50
Attachments: [Outlook-alkrq4tb.png](#)
[Outlook-ry0kixlo.png](#)

Dear Lithemba,

We trust you are well.

Your email and change of address are noted.

With thanks and warm regards,

<!--[if !vml]-->

Tina Power | Senior Associate
Power & Associates
Pronouns: she/her/hers

POWER AND ASSOCIATES
PUBLIC INTEREST LAW | AFRICA

e tina.power@powerlaw.africa
t +2710 822 7860
w powerlaw.africa

a 20 Baker Street, Rosebank, **Johannesburg**, 2196 | 5 St Georges Mall, **Cape Town**, 8000
Power & Associates is a law firm registered with the Legal Practice Council (F18433).

<!--[endif]-->

>

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Out of Office: -

From: Lithemba Ncanywa <lithemba.ncanywa@gmail.com>
Sent: Thursday, December 21, 2023 1:13 PM
To: Tina Power <tina.power@powerlaw.africa>
Subject: Re: [PLMM-202312] SAHRC // Lagardien (2391/2023) | Request for consent to be admitted as amicus curiae

SPAM You don't often get email from lithemba.ncanywa@gmail.com. [Learn why this is important](#)

Good day,

Your email dated 14 December 2023 refers.

Our client consents to your client's request to be admitted as *amicus curiae* herein.

Should there be any formal document to be signed by our client, please forward same to us.

We look forward to hearing from you.

PLEASE NOTE THAT OUR FIRM MOVED FROM 1 DE VILLIERS STREET, NORTH END, GQEBERHA TO ITS NEW OFFICES SITUATED AT 3RD FLOOR, AFRICA HOUSE, 6 GRAHAM STREET, NORTH END, GQEBERHA.

Regards

KL
WB

Lithemba Ncanywa
Director



Tel: 067 232 5529
Cell: 072 407 7588
Email: lithemba.ncanywa@gmail.com
3rd Floor, Africa House
6 Graham Street
North End
Gqeberha, 6001

OUR OFFICE WILL NEVER CHANGE ITS BANKING DETAILS BY NOTIFICATION TO YOU VIA EMAIL, SMS, WHATSAPP OR ANY OTHER ELECTRONIC COMMUNICATION. OUR OFFICE WILL NOT BE LIABLE FOR ANY LOSS YOU MAY SUFFER AS A RESULT OF ANY FRAUDULENT INSTRUCTION TO AMEND BANKING DETAILS.

On Thu, Dec 14, 2023 at 1:37 PM Tina Power <tina.power@powerlaw.africa> wrote:
Good day,

SAHRC // Lagardien (2391/2023)

1. We act for Media Monitoring Africa (MMA) and refer to the above matter.
2. Kindly find attached correspondence for your attention.
3. Kindly acknowledge receipt.
4. Please copy in legal@powerlar.africa for any responses between 15 December 2023 and 5 Januray 2024.

Warm regards,

Tina Power | Senior Associate
Power & Associates
Pronouns: she/her/hers

**POWER AND
ASSOCIATES**
PUBLIC INTEREST LAW | AFRICA

e tina.power@powerlaw.africa
t +2710 822 7860
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a 20 Baker Street, Rosebank, **Johannesburg**, 2196 | 5 St Georges Mall, **Cape Town**, 8000
Power & Associates is a law firm registered with the Legal Practice Council (F18433).

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Out of Office: 15 December 2023 - 5 January 2024 (Office Closure)

**** NOTE:** This e-mail originated from outside of our organisation. Please do not click links or attachments unless you recognise the sender. **

WB KK

This message/correspondence contains information which is confidential and/or legally privileged. It is intended for the addressee only. If you are not the addressee and you have received this message in error, you may not read, use, disseminate, distribute, or copy its information. Please notify us immediately and we shall arrange for the return of this message/correspondence at our own cost.

Date: 18 January 2024

Your ref: 2391/2023

Our ref: PLMM-202313

TO: YOUSHA TAYOB ATTORNEYS
Attorneys for the Respondent
E-mail: yousha@youshatayob.co.za

Dear Mr Tayob,

SOUTH AFRICAN HUMAN RIGHTS COMMISSION // DAWOOD LAGARDIEN (2391/2023) | REQUEST FOR CONSENT TO BE ADMITTED AS AN *AMICUS CURIAE*

1. We act for Media Monitoring Africa ("**MMA**" or "**our client**") and refer to the above matter.
2. Our client seeks to intervene as an *amicus curiae* in this matter as contemplated in regulation 10(5)(c)(vi) of the Regulations Relating to the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("**Regulations to PEPUDA**").

MMA's interest in the matter

3. MMA is a not-for-profit organisation that has been operating for 30 years to advocate for access to information, freedom of expression, and the responsible free flow of information to the public.¹ MMA seeks to implement innovative rights-based approaches to expression on- and offline and continues to strive for a fair and just society that respects a culture of human rights. Throughout its work, MMA promotes the ideals of equality and inclusion and

¹ For more information see mediamonitoringafrica.org.

Director: MJ Power B.A., LL.B., LL.M. (Wits) | **Senior Associates:** T Davis B.A. (RU), LL.B. (UCT), S Khumalo LL.B. (Wits), T Lloyd LL.B. (Wits), LL.M. (Edin.), T Power B.A., LL.B., LL.M. (Wits) | **Candidate Legal Practitioners:** C Chitengu B.A., LL.B. (UJ), C Dehosse B.A., LL.B. (Stell.), LL.M. (UCT) | **Technologist:** K Nwana | **Office Manager:** J Rashid. Power & Associates Incorporated is a law firm registered with the Legal Practice Council of South Africa (F18433) and a personal liability company registered in the Republic of South Africa (2018/071686/21).

* **Cape Town Office:** Unit 403, 5 St Georges Mall, Cape Town, South Africa, 8001. ** **Name Change:** Please note that on 10 May 2023 our name changed from Power Singh Inc. to Power & Associates.

KK
WB

- has a particular interest and expertise in navigating competing rights and interests and finding appropriate balances that align with the dictates of the Constitution.
4. MMA has engaged in multiple law reform processes including, among others, preparing submissions on the Promotion of Equality and the Prevention of Unfair Discrimination Amendment Bill, the Prevention and Combating of Hate Crimes, the Hate Speech Bill, the Children's Amendment Bill, and the Cybercrimes Bill.
 5. MMA has further participated in various litigious proceedings pertaining to the appropriate balance to be struck between freedom of expression and other competing rights and interests. This has included, for instance:
 - 5.1. Participating as an *amicus curiae* before the Constitutional Court in the *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku*,² which centred on the balancing of the rights to free expression, dignity, and equality in the context of hate speech legislation.
 - 5.2. Participating as an *amicus curiae* in *Qwelane v South African Human Rights Commission and Another*,³ which dealt with the balancing exercise between rights to freedom of expression, dignity, and equality in response to a publication which was offensive to members of the LGBTQI+ community.
 - 5.3. MMA intervened as an *amicus curiae* in *Mavhidula (on behalf of the South African Human Rights Commission) v Matumba*,⁴ which raised pertinent questions about a series of posts on Twitter and whether they amounted to harassment in terms of section 11 of PEPUDA.
 - 5.4. In *Blind SA v Minister of Trade, Industry and Competition and Others*,⁵ MMA advanced arguments as an *amicus curiae* on appropriately realising the right to freedom of expression and the ability to share knowledge and ideas in the digital era, arguing that an appropriate balance can be struck to ensure that freedom of expression can be fostered, rather than restrained, by copyright laws.
 - 5.5. In *Economic Freedom Fighters v Manuel*,⁶ MMA presented arguments as an *amicus curiae* to the Supreme Court of Appeal dealing with the appropriate balance between the right to freedom of expression and the rights to dignity and reputation and the proper approach to the notion of the reasonable reader in the context of social media.⁷

² *South African Human Rights Commission on behalf of South African Jewish Board of Deputies v Masuku* [2022] ZACC 5.

³ *Qwelane v South African Human Rights Commission and Another* [2021] ZACC 22.

⁴ *Mavhidula (on behalf of the South African Human Rights Commission) v Matumba* (case no.: 01/2021).

⁵ *Blind SA v Minister of Trade, Industry and Competition and Others* [2021] ZAGPPHC 871.

⁶ *Economic Freedom Fighters v Manuel* [2020] ZASCA 172.

⁷ Additional cases MMA has been involved in include: As an applicant before the Constitutional Court in the matter *Centre for Child Law v Media 24 Limited* [2019] ZACC 46; as an *amicus curiae* before the Constitutional, *Amabhungane*

WB KH

6. In line with the above illustrative examples, given MMA's particular areas of interest and the work that it pursues, MMA has a clear interest in the present matter. Accordingly, MMA wishes to participate as an *amicus curiae* as contemplated by regulation 10(5)(c)(vi) of the Regulations to PEPUDA, read with Rule 16A of the Uniform Rules of Court, to the extent that it is applicable.
7. Therefore, we hereby request your client's written consent that our client be admitted as an *amicus curiae* with the opportunity to file an application, make written submissions, and present oral argument at the hearing of this matter.

The submissions which MMA seeks to advance

8. MMA does not intend to repeat any matters set forth in the argument of the other parties, and we emphasise that MMA seeks only to address issues that may be useful to the Court in its determination of this matter. In doing so, MMA intends to canvas the following issues, which it submits are relevant to the proceedings, useful to the Court, and, to the extent of its present knowledge, differ from those of the other parties to the litigation:
 - 8.1. **First**, MMA seeks to address the intersection of the right to freedom of religion and the rights of members of the LGBTQI+ community. In doing so MMA will advance arguments on finding an appropriate balance between the right to freedom of religion on the one hand, and the rights to equality and dignity on the other, taking into account discrimination and/or hate speech that takes place both on- and offline.
 - 8.2. **Second**, MMA seeks to advance arguments around the correct interpretation of "fair and accurate reporting in the public interest" in terms of section 12 of PEPUDA.
9. In making its submissions, MMA will draw on domestic jurisprudence as well as international, regional, and comparative law, to assist the Court in its determination of this matter.
10. Based on the above, MMA submits that these issues are relevant to the Court in its full consideration of this matter.

Centre for Investigative Journalism NPC v Minister of Justice and Correctional Services [2021] ZACC 3; as an *amicus curiae* before the Supreme Court of Appeal in *Van Breda v Media 24 Limited*; *National Director of Public Prosecutions v Media 24 Limited* [2017] ZASCA 9; and most recently, along with other civil society organisations as *amici curiae* in *Karyn Maughan vs Jacob Gedleyihlekisa Zuma* (12770/22), and *Mazetti Management Services (Pty) Ltd and Another v Amabhungane Centre for Investigative Journalism NPC and Others* [2023] ZAGP]HC 771.

MB KK

Proposed timeframes

11. MMA has been advised that a directions hearing was held on 30 November 2023 setting out time frames for the filing of various pleadings. At this stage, MMA understands that the filing deadline for an *amicus curiae* intervention is 19 February 2024.
12. MMA has issued the same request for consent to the South African Human Rights Commissions, to which consent was granted.
13. In line with all the above, and in order to enable MMA to properly prepare its application, we request that you advise, in writing, whether your client consents to MMA's intervention as an *amicus curiae* by no later than **17h00 on Wednesday, 31 January 2024**.
14. We look forward to hearing from you.

With kind regards,



POWER & ASSOCIATES

Per: Tina Power | *Senior Associate*

E-mail: tina.power@powerlaw.africa

ENDS.

Wb KK

"MM4"43

1st Floor, 7 Bonanza Street,
Selby, Ext19, JOHANNESBURG
P.O. Box 1427, Crown Mines, 2025
TEL: (011) 838-3342
FAX: (011) 838-4744
CEL: 082 926 5408

Email yousha@youshatayob.co.za

Yousha Tayob **ATTORNEY**

Your reference:

Our reference: YOUSHA/3801/YT

Date: 22 January 2024

POWER AND ASSOCIATE ATTORNEYS
PER EMAIL: legal@powerlaw.africa
Claire.dehosse@powerlaw.africa

Dear Sir/Madam,

**RE: SAHRC VS DAWOOD LAGARDIEN HIGH COURT OF SOUTH AFRICA –
EASTERN CAPE LOCAL DIVISION CASE NUMBER: 2391/2023**

Without prejudice to his rights my client does not at this stage see any basis to object to your intervention and accordingly consents to same as an amicus curiae.

Yours faithfully

YOUSHA TAYOB



Yousha Tayob BA LLB (University of Witwatersrand)
VAT Registration Number: 4250179373

Recipient of the pmr.africa Diamond Arrow Award for 2010, 2011, & 2016 (Muslim Business) and
Golden Arrow Award for 2012, 2013, 2014 & 2015 (Muslim Business)

KY
WB