



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

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHER JUDGES: YES /NO	
(3) REVISED	
DATE: 5 September 2025	
SIGNATURE:	[Redacted Signature]

Case No. 32881/2022

In the application to be admitted as *amici curiae* of:

KRISTEN STILT

First Applicant *Amicus Curiae*

MACARENA MONTES FRANCESCHINI

Second Applicant *Amicus Curiae*

In the matter between:

**ANIMAL LAW REFORM SOUTH AFRICA
NPC**

First Applicant

EMS FOUNDATION

Second Applicant

CHIEF STEPHEN FRITZ

Third Applicant

and

**JOHANNESBURG CITY PARKS AND ZOO
NPC (RF)**

First Respondent

**THE CITY OF JOHANNESBURG
METROPOLITAN MUNICIPALITY**

Second Respondent

**MEC: ECONOMIC DEVELOPMENT,
AGRICULTURE, ENVIRONMENT AND
RURAL ENVIRONMENT, GAUTENG
PROVINCIAL GOVERNMENT**

Third Respondent

**MINISTER OF FORESTRY, FISHERIES AND
THE ENVIRONMENT**

Fourth Respondent

Coram: Millar J

Heard on: 2 September 2025

Delivered: 5 September 2025 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 08H30 on 5 September 2025.

JUDGMENT

MILLAR J

- [1] This is an opposed application for the admission of the two *amici curiae* in the main application.
- [2] In the main proceedings, an order is sought declaring the ongoing captivity of three elephants (Lammie, Mopane and Ramadiba), held in the Johannesburg Zoo to be unconstitutional and unlawful, together with ancillary relief including an order for their release.
- [3] The *amici* applicants, Professor Stilt and Dr Franceschini are academics at the Harvard Law School's Brooks McCormick Jr. Animal Law & Policy Program. They are experts in animal law and policy, who have previously authored and contributed to *amicus* briefs before courts in other countries. These contributions were in cases concerning the welfare and protection of animals held in captivity. They seek leave to make legal submissions, in writing and orally, at the hearing of the main application. The submissions pertain to international law and foreign jurisprudence concerning the protection of animals and nature.
- [4] The *amici* applicants sought consent to be admitted as *amici* from all parties to the main application. The applicants in the main application consented. The respondents refused and hence the present application.
- [5] There are two issues to be considered. The first is whether the *amici* applicants have satisfied the requirements for admission as *amici curiae* in terms of rule 16A of the Uniform Rules of Court and the second, whether the applicants' delay in filing their *amicus* application should be condoned.

- [6] It is trite that a person raising a constitutional issue in an application or action must give notice of this to the registrar at the time of filing the relevant affidavit or pleading.¹ This notice is peremptory, and the registrar is obliged upon receipt of the notice to place it on the noticeboard designated for that purpose. The notice must be stamped by the registrar to indicate the date upon which it was placed on the noticeboard, and it is to remain on the noticeboard for a period of 20 days. Rule 16A enables parties with an interest in a constitutional issue to seek to be admitted as *amici curiae* because of their expertise or interest in the matter before the court.
- [7] The rule requires that the applicants:
- [7.1] Seek written consent from the parties and, in the absence of such consent, apply to court for admission.
 - [7.2] Show an interest in the constitutional issues raised;² and
 - [7.3] Should set out why their submissions will assist the court and how it is different from those of the other parties.³
- [8] The court may dispense with any of the requirements of the rule if it is in the interest of justice to do so. The rule affords courts a wide discretion to admit *amici* and to determine the terms and conditions upon which they may participate in court proceedings.⁴
- [9] The role and function of the *amicus curiae* was explained by the Constitutional Court in *Hoffmann v South African Airways*⁵ as follows:

¹ *AS v Minister of Health and Others* 2024 JDR2613 (WCC) at para [15].

² Rule 16A(2) and 16A(5) of the Uniform Rules of Court.

³ Rule 16A(6)(b) of the Uniform Rules of Court.

⁴ *Children's Institute v Presiding Officer of the Children's Court, District of Krugersdorp and Others* 2013 (2) SA 620 (CC) at paras [19]-[20].

⁵ 2001 (1) SA 1 (CC) at para [63].

"An amicus curiae assists the court by furnishing information or argument regarding questions of law or fact. An amicus is not a party to litigation, but believes that the court's decision may affect its interest. The amicus differs from an intervening party, who has a direct interest in the outcome of the litigation and is therefore permitted to participate as a party to the matter. An amicus joins proceedings, as its name suggests, as a friend of the court."

- [10] The role of an *amicus curiae* was further set out in *In Re Certain Amicus Curiae applications: Minister of Health & Others v Treatment Action Campaign*⁶ as follows:

"The role of an amicus is to draw the attention of the court to relevant matters of law and fact to which attention would not otherwise be drawn. In return for the privilege of participating in the proceedings without having to qualify as a party, an amicus has a special duty to the court. That duty is to provide cogent and helpful submissions that assist the court. The amicus must not repeat arguments already made but must raise new contentions; and generally these new contentions must be raised on the data already before the court. Ordinarily it is inappropriate for an amicus to try to introduce new contentions based on fresh evidence."

- [11] In *Children's Institute v Presiding Officer of the Children's Court, District of Krugersdorp*,⁷ the Constitutional Court held that *amici* play an important role by ensuring that courts consider a wide range of options and are well informed; and by increasing access to the courts by creating space for interested non-parties to provide input on important public interest matters, particularly those relating to constitutional issues.

- [12] The respondents in the main application oppose this application on the grounds that no constitutional issue has been squarely raised and that submissions on

⁶ 2002 (5) SA 713 (CC) at para [5].

⁷ Above n 4 at para [26].

international trends and practices, including questions of constitutionality, would not be of assistance to the court in this matter.

- [13] The argument for the respondents is that in the present matter, for there to be a constitutional issue upon which the *amici* could be admitted, this would of necessity require the impugning of the statutory framework in terms of which they keep and maintain the elephants.
- [14] There is no direct impugning of any of the relevant legislation. However, the argument advanced in the main application is somewhat more nuanced and less blunt than the respondents argue it should be.
- [15] The *amici* and the main applicants make common cause with each other on what they say the constitutional issues raised in the main application are. This is framed in the heads of argument filed on behalf of the *amici* as follows:

"The over-arching constitutional issue, as identified in the main applicants' founding papers and rule 16A notice, is whether the continued captivity of the elephants Lammie, Mopane, and Ramadiba at the Johannesburg Zoo is in violation of section 24 read with section 7(2) of the Constitution. The respondents have, in turn, placed this issue in dispute, as they deny any violation of section 24 and contend that they have acted consistently with their constitutional duties."

- [16] This is in my view clearly a constitutional issue that the court hearing the main application will be required to consider and decide, although not formulated as an attack on legislation.
- [17] Is it necessary that the rule 16A notice set out the constitutional issue explicitly as a challenge to the validity of specific legislation or is it sufficient that it is framed as a challenge to the constitutionality of one or more or all of the elements of the relevant statutory framework?

[18] In *Phillips v SA Reserve Bank and Others*,⁸ it was held:

"I respectfully disagree with my learned colleague in his observation in para [36] above that a prospective amicus needs only to know what legislative provision is being challenged and that, for the rest, he or she can then have regard to the court file to ascertain whether relevant matters of fact and law are contained in the applicant's papers. I do not think the legislature intended to burden affected and interested persons in this manner. To require of a prospective amicus to trawl through papers which are more often than not quite voluminous, is to defeat the very purpose of rule 16A(1)(b). The rule has, in my view, the objective of providing sufficient information to affected and interested persons of what the constitutional challenge is all about, thereby obviating the need of scouring lengthy papers to obtain the relevant information.

The use of the word 'succinct' in rule 16A(1)(b) is in my view deliberate — it signifies the requirement of a 'brief and clear expression' (as defined in the Concise Oxford English Dictionary 12 ed (2011)) of the constitutional issue concerned. A description can only be 'brief and clear' when it has some particularity — a terse regurgitation of the orders sought hardly leaves any room for such a brief and clear description. While I would not, unlike Makgoba J, elevate the required particularity to that contained in a notice of appeal, it certainly denotes more than a mere repetition of the orders sought." [My underlining]

[19] In *Maughan and Another v Zuma*,⁹ it was held that:

"The interest of an amicus must be an interest in the correct application of the law. What is required is for an amicus' submissions to be directed towards a just outcome, and often this may necessitate written submissions before a court

⁸ 2013 (6) SA 450 (SCA) at paras [70]-[71].

⁹ 2023 (5) SA 467 (KZP) at para [146].

steering it towards a particular direction. But this does not disqualify a prospective applicant from admission as an amicus or its submissions being considered."

- [20] What is readily apparent from the authorities is that the purpose of the rule 16A notice is to provide "sufficient information of what the constitutional challenge is all about" to third parties to enable them to decide whether they have any contribution to make and whether they will apply to be admitted as an *amicus*. The rule 16A notice is separate and distinct from the pleaded case with which the respondents will engage. The respondents have no interest in the framing of the rule 16A notice. It need only be consonant with the pleaded case.
- [21] In the present instance, I find that the rule 16A notice is indeed consonant with the pleaded case and that it contains sufficient particularity. A frontal constitutional challenge to specific legislation is not a requirement for either the raising of a constitutional issue or for the validity of a rule 16A notice. In the present matter, the notice has served the purpose for which it was intended. The issue sought to be conveyed by the applicants in the main case was understood in the manner that it was intended to be by the *amici* applicants.
- [22] It is not in issue that the *amici* applicants are experts in their field and are able to bring an international perspective on how the keeping of elephants in captivity has been addressed in other jurisdictions.
- [23] It was argued for the amici applicants that: *"They have prepared a detailed research brief that addresses the relevant international and foreign jurisprudence concerning the protection of animals, including Spanish language case law that would otherwise be inaccessible to a South African court. Their survey of relevant foreign law includes cases like this, where courts have been faced with applications for the release of elephants and other animals from zoos and other places of captivity."* This is not in issue.
- [24] It is the court hearing the main application that will decide whether the case made out before it is meritorious. This includes the constitutional issue as framed by the

main applicants. It is for the court hearing the main application to decide whether the submissions of the *amici* are of assistance to it or not in deciding the matter.

- [25] A final issue bears mentioning. The respondents took issue with what was contended to be a delay on the part of the *amici* applicants in their application for admission. A full and cogent explanation was given as to the time taken.
- [26] Furthermore, the main application is not yet ripe for hearing. The respondents intend to apply for the admission of a supplementary answering affidavit and if this occurs, this will necessarily enable the main applicants to file a supplementary replying affidavit. For this reason, there is simply no prejudice to the respondents in consequence of the *amici* applicants failing to strictly comply with the periods set out in the rules for the filing of their application for admission. Insofar as it is necessary to do so, I intend to make an order condoning this.
- [27] It is in the interests of justice, given the issues raised in the main application, that the *amici* applicants be admitted, and it is for that reason that I make the order that I do.
- [28] Due to the nature of this application, I make no order as to costs.
- [29] In the circumstances, it is ordered:
- [29.1] The late filing of the application for admission as *amici curiae* is condoned.
- [29.2] The first and second applicants in the present application are admitted as *amici curiae* in terms of rule 16A of the Uniform Rules of Court.
- [29.3] The *amici curiae* are granted leave to:
- [29.3.1] Submit written argument in the above matter; and

[29.3.2] present oral argument at the hearing of the above matter.


A MILLAR

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 2 SEPTEMBER 2025

JUDGMENT DELIVERED ON: 5 SEPTEMBER 2025

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