

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

Case number: 15876/2020

In the application of:

**THE LAW SOCIETY OF SOUTH AFRICA**

Applicant

and

<b>MABUNDA INCORPORATED</b>	1 <sup>st</sup> Respondent
<b>KEKANA HLATSWAYO ADEBE INCORPORATED</b>	2 <sup>nd</sup> Respondent
<b>NOKO MAIMELA INCORPORATED</b>	3 <sup>rd</sup> Respondent
<b>MAPONYA INCORPORATED</b>	4 <sup>th</sup> Respondent
<b>TM CHAUKE INCORPORATED</b>	5 <sup>th</sup> Respondent
<b>NINGIZA HORNER INCORPORATED</b>	6 <sup>th</sup> Respondent
<b>TASNEEM MOOSA INCORPORATED</b>	7 <sup>th</sup> Respondent
<b>BORMAN AND NGWENYA INCORPORATED</b>	8 <sup>th</sup> Respondent
<b>MKHONTO AND NGWENYA INCORPORATED</b>	9 <sup>th</sup> Respondent
<b>MADUBA ATTORNEYS INCORPORATED</b>	10 <sup>th</sup> Respondent
<b>IQBAL MAHOMMED ATTORNEYS</b>	11 <sup>th</sup> Respondent
<b>TKN INCORPORATED</b>	12 <sup>th</sup> Respondent
<b>DEV MAHARAJ &amp; ASSOCIATES</b>	13 <sup>th</sup> Respondent
<b>SARAS SAGATHEVAN ATTORNEYS</b>	14 <sup>th</sup> Respondent
<b>SHEREEN MEERSINGH &amp; ASSOCIATES</b>	15 <sup>th</sup> Respondent
<b>SMITH TABATA ATTORNEYS</b>	16 <sup>th</sup> Respondent
<b>PULE INCORPORATED</b>	17 <sup>th</sup> Respondent
<b>BRIAN RAMABOA ATTORNEYS</b>	18 <sup>th</sup> Respondent
<b>GOVINDASAMY, NDZINGI &amp; GOVENDER INC</b>	19 <sup>th</sup> Respondent
<b>HAMMANN-MOOSA INC</b>	20 <sup>th</sup> Respondent
<b>MATHOBO RAMBAU SIGOGO ATTORNEYS</b>	21 <sup>st</sup> Respondent

<b>MAYAT NURICK LANGA INC</b>	22 <sup>nd</sup> Respondent
<b>SCMDHLULI ATTORNEYS INCORPORATED</b>	23 <sup>rd</sup> Respondent
<b>HAJRA PATEL INC</b>	24 <sup>th</sup> Respondent
<b>Z &amp; Z NGOGODO INC</b>	25 <sup>th</sup> Respondent
<b>TWALA ATTORNEYS</b>	26 <sup>th</sup> Respondent
<b>SANGHAM INCORPORATED</b>	27 <sup>th</sup> Respondent
<b>RACHOENE ATTORNEYS</b>	28 <sup>th</sup> Respondent
<b>ZUBEDAK K SEEDAT &amp; CO INCORPORATED</b>	29 <sup>th</sup> Respondent
<b>DUDZILE HLEBELA INC</b>	30 <sup>th</sup> Respondent
<b>MOCHE INCORPORATED ATTORNEYS</b>	31 <sup>st</sup> Respondent
<b>MARIVATE ATTORNEYS</b>	32 <sup>nd</sup> Respondent
<b>MGWESHE NGQELENI INC</b>	33 <sup>rd</sup> Respondent
<b>LEKHU PILSON ATTORNEYS INC</b>	34 <sup>th</sup> Respondent
<b>AK ESSACK, MORGAN NAIDOO &amp; COMPANY</b>	35 <sup>th</sup> Respondent
<b>MOLABA ATTORNEYS</b>	36 <sup>th</sup> Respondent
<b>NAIDOO MAHARAJ INC</b>	37 <sup>th</sup> Respondent
<b>HARKOO BRIJLALA &amp; REDDY INC</b>	38 <sup>th</sup> Respondent
<b>MATHIPANE TSEBANE ATTORNEYS</b>	39 <sup>th</sup> Respondent
<b>MORARE THOBEJANE INCORPORATED ATTORNEYS</b>	40 <sup>th</sup> Respondent
<b>NOMPUMELELO HADEBE INC</b>	41 <sup>st</sup> Respondent
<b>MBOWENI AND PARTNERS INC</b>	42 <sup>nd</sup> Respondent
<b>ROAD ACCIDENT FUND</b>	43 <sup>rd</sup> Respondent

In re the matter of:

<b>MABUNDA INCORPORATED</b>	1 <sup>st</sup> Applicant
<b>KEKANA HLATSWAYO ADEBE INCORPORATED</b>	2 <sup>nd</sup> Applicant
<b>NOKO MAIMELA INCORPORATED</b>	3 <sup>rd</sup> Applicant
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**HARKOO BRIJLALA & REDDY INC**

38<sup>th</sup>

Applicant

**MATHIPANE TSEBANE ATTORNEYS**

39<sup>th</sup> Applicant

**MORARE THOBEJANE INCORPORATED ATTORNEYS**

40<sup>th</sup> Applicant

**NOMPUMELELO HADEBE INC**

41<sup>st</sup> Applicant

**MBOWENI AND PARTNERS INC**

42<sup>nd</sup> Applicant

and

**ROAD ACCIDENT FUND**

Respondent

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**RESPONDENTS'S ANSWERING AFFIDAVIT: ADMISSION OF *AMICUS CURIAE***

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**A. THE DEPONENT**

I,

**COLLINS PHUTJANE LETSOALO**

Do hereby make oath and say that:

1. I am an adult male Acting Chief Executive Officer employed by the Road Accident Fund with my place of employment at 420 Witch Hazel Road, Eco Glades, Centurion, Pretoria.

2. I am duly authorized to depose to this affidavit and to oppose this application on behalf of the Road Accident Fund ("*the Fund*") in accordance with section 12(2)(f) read with paragraph 13.7 of the Delegations of the Board.
3. The facts contained in this affidavit are within my personal knowledge except where the contrary is stated.
4. Where I make legal submissions, I do so on the advice of the Fund's legal representatives, which advice I accept.

**B. INTRODUCTION**

5. This is an application by the Law Society of South Africa ("*LSSA*") brought in terms of Rule 16A or alternatively common law for admission as either *amicus curiae* or *alternatively* as co-applicants. The LSSA seeks same orders sought by the applicants.
6. Similarly, the Black Lawyers Association ("*BLA*"), brings an application purportedly in terms of Rule 16A, that it be admitted as *amicus curiae* in Part A and B of this application together with Parts A and B of applications under case numbers 17518/2020 and 18239/2020 brought against the Fund.
7. The BLA further seeks an order that the three applications mentioned above be consolidated with a view of being heard in one sitting and that they be accordingly postponed *sine die* to allow for case management and the provision of further directives

regarding the filing of papers, heads of argument, uploading of the matters on the case management system and the hearing of the three matters.

8. The BLA further seeks that the costs of Part A of this application as well as the two other applications mentioned above be treated as costs in terms of Part A of this application.
9. In this affidavit, will refer to the LSSA and the BLA as *amici* and refer to them separately as the BLA and the LSSA respectively.
10. The Fund opposes both applications and raises points in *limine* with regards to urgency and specifically with the admission of the *amici*. The Fund contends first that the *amici* are not entitled to admission as an *amici* as no constitutional issue has been raised and no Rule 16A(1) notice has been filed by the applicants.
11. Second, the *amici* have failed to make out a case in terms of Rule 16A (9) as to why the requirements in terms of Rule 16A (1) have to be dispensed with, in the interests of justice. The *amici* have further failed to show why the purpose for Rule 16A [i.e. to bring a constitutional issue to the attention of the persons affected, who may have a legitimate interest in the case] has to be curtailed in light of the non-joinder point in *limine* raised by the Fund in the main application.
12. Both applications do not raise any raise new contentions that differ to those already made in these proceedings already before this Court save for introducing new and inaccurate facts, a procedure not provided for in terms of Rule 16A.

- 13. Lastly, the *amici* bring the brings the application for admission as *amicus* on 16 March 2020 when the matter is set down for hearing on 17 March 2020 without explaining why they did not bring their own applications earlier as they had both threatened. Allowing the said intervention as either *amicus curiae* or co-applicant, as alleged by the LSSA at this late stage will be both be disruptive and prejudicial to the Fund. It has not been able to fully answer to both because (a) of the unreasonably short frames appointed by both BLA and LSSA.
  
- 14. The LSSA further in the alternative, seeks to intervene as co-applicant in terms of common law. The Fund contends that since the promulgation of the Uniform Rules of the Court, joinder and intervention is catered for in terms of Rules 10 and 12. It is only if the Rules do not assist in the application for intervention that resort to the common law principles.
  
- 15. The Fund contends further that this application was brought so late, a day before the hearing, when the matter is ready for hearing and that this is disruptive and prejudicial to the Fund. The intervention is clearly calculated to engineer a postponement thereby delaying the furnishing of files to the Fund.

**POINTS IN LIMINE**

**This application is not urgent**

*LSSA*

16. The LSSA contends that their intervention application is urgent as the effect of the impugned decision referred to in the notice of motion in the main application, means that the Fund will not have legal representation in court from 1 June 2020. This as no provision has been made to deal with the impact of the notice of hand over and tender cancelation which will result in chaos affecting all participants to the litigation process
17. The LSSA further, in support of its contentions on urgency, submit that it became aware of the main application on 3 March 2020 and requested the application, which was received only on 4 March 2020. This is not correct.
18. On 18 and 20 February 2020, the Fund issued letters of handover to panels attorneys. This is common cause in the main application.
19. In response to notice of the handover of files, on 21 February 2020, the Acting Executive Director, Mr. Anthony Pillay (“*Pillay*”) addressed a letter to the Chairperson of the Board for the Fund, Adv. Galetlane Rasethaba (“*chairperson*”).
20. Pillay then requests the Fund to embark on a process that will not undermine the “*basic principles of contractual obligations*” and meaningful discharge of the Fund’s statutory obligation. The LSSA requests the Fund to retract the handover notice.
21. The LSSA then states that should the Fund fail to retract the notices of handover, it will be left with no choice but to seek an urgent interdict. The Board was given until 25 February 2020 to respond.
22. The letter is attached by the LSSA as annexure “**LSSA11.**”



23. Therefore, as at 21 February 2020, the LSSA had the intention of bringing this application but did not do so. It does not explain in its affidavit why it did not launch an application then.
24. I must deal with the point raised by the LSSA in terms of which Pillay points out that the notice of hand over will prejudice claimants and have an impact on the administration of justice. I pause to mention that this allegation is simply made to create an atmosphere. The Fund currently has 197 849 open matters. Out of these, only 6646 matters are on the June to December 2020 roll and only 62 on the January to December 2021 roll.
25. The Board did not respond to the above letter but in on 25 February 2020, Pillay issued an advisory to its members titled "*LSSA Advisory: RAF handover of files*". In this advisory, the LSSA indicates its concerns regarding the handover notices in terms of clause 14 of the extended SLA.
26. Pillay indicates that the LSSA has demanded a retraction of the handover notice and that the Board has agreed to consider the demand and revert on 2 March 2020 after a Board meeting to be held on 27 February 2020.
27. On 27 February 2020, the Board met and resolved to address a letter to the LSSA and request a meeting. The resolution is attached as annexures "IA1" and the letter is attached as "IA2".

28. On 28 February 2020, the LSSA held meeting and resolved that it intervene in any application that might be brought against the Fund. The LSSA attaches the resolution as annexure "LSSA1" Therefore the decision to intervene was taken at that date. Alternatively, the LSSA could have brought an application of its own on the above date.
29. On 3 March 2020, the applicants in the main application issued and served the main application. The deponent for the LSSA indicates that he obtained the application only on 4 March 2020.
30. The LSSA therefore had more than 7 days to bring this application but brings it a day before the hearing in circumstances where the main application is ripe for hearing. This conduct is disruptive and prejudicial to the Fund and the hearing of this matter.
31. The application should be struck from the roll for lack of urgency.

*BLA*

32. On 12 March 2020, the BLA addressed a letter to the Judge President Mlambo ("*Judge President*") in terms of which they sought leave from the Judge President as *amicus* in all three applications as mentioned above as it believes that it is best positioned to provide an objective view on these matters. I submit that as at this date, the BLA could have brought this application as opposed to the unprecedented move to seek admission from the Judge President.

33. On 19 February 2020, the BLA addressed an email to its members expressing its disapproval with the “*termination*” of the services of attorneys without reasons. For the sake of brevity and in light of the limited time within which I must file this affidavit, I will refer to two points mentioned in the letter. I ask that the letter be incorporated herein as if specifically traversed. The BLA proceeded to record its disgust at the manner in which the Fund treats its members. Lastly, the BLA urges its members who have been “*terminated*” to launch urgent applications to “*stop the abuse*” and it will consider to join.
34. I submit that, as at 19 February 2020, the BLA had already stated its support for any application to be brought regarding what it calls the “*termination*” of its members. It ought to have brought an application then but chose not to. It gives no explanation in its affidavit for this failure.
35. Similarly, the BLA brought an application on 16 March 2020 at 12:23 for the relief sought, expecting the Fund to file a notice of intention to oppose and its affidavit at 20h00, time-frames which are totally unreasonable.
36. The BLA contends that this matter is urgent as the main application is set down for hearing on 17 March 2020. It further states that it only had sight of the Fund’s answering affidavit on 10 March 2020. I submit that this allegation is incorrect as relates to the urgency of the matter. It is in any event irrelevant since the BLA could have brought its own application much earlier.
37. Further to that, the BLA seeks an order that the three applications mentioned above, including the current one, be postponed to 21 April 2020 to allow for directions in terms

of which it will file submissions on all the applications within 20 days after the order is granted [i.e. by 14 April 2020]. This with the knowledge that the service level agreement that is the subject of this application ends on 31 May 2020 and that the Fund needs its files urgently. The conduct by the BLA is disruptive and dilatory.

38. This conduct is directed at the delay of settlement of matters as envisaged by the Fund. I pause to mention that in addition to settled matters referred to in the answering affidavit, all 21 matters that were on the Court roll of the Durban High Court post June 2020 have now been settled. The relevant attorneys furnished the files in accordance with the hand over notices. Similarly, if the applicants comply with the hand over notice, I have no doubt that a very large number of the files in this Division will be settled.
39. I submit that the application by the BLA is not urgent and lacks merit. It should be struck from the roll.

**The Law Society of South Africa or BLA are not entitled to admission as *amicus curiae***

40. The LSSA seeks an order that it be admitted as *amicus curiae* in terms of Rule 16A of the Uniform Rules of this Court. Similarly, the BLA seeks admission as *amicus curiae* in terms of Rule 16A of the Uniform Rules of Court but goes further and relies on Rule 10 of the Constitutional Court Rules with reference to *Fose v Minister of Safety and Security 1997 (3) SA 786* at paragraph 9 and *In re Certain Amicus Curiae Applications: Minister of Health v Treatment Action Campaign 2003 (5) SA 713 (CC)* at paragraph 5 thereof.

41. The above matters do not assist either the BLA nor the *amici* as a collective. In the *Fose*, the court found that it is not enough that there is consent regarding admission as *amicus curiae*. The court stated that the underlying principles are whether the submissions are relevant and raise new contentions.
42. I submit that both the LSSA and the BLA seek to “supplement” the application as filed by the applicants and do not raise substantially new contentions. In the *Fose* matter, the Human Rights Commission was not admitted as *amicus curiae* despite an agreement by the parties as it did not raise new contentions.
43. Similarly, in the *TAC* matter, a doctor who sought to provide evidence was not allowed admission as *amicus* as the application was brought months out of time without condonation.
44. In any event, Rule 16A envisages the admission of an interested party in proceedings where a constitutional issue has been raised. Rule 16A (1) provides that a notice which details the constitutional issue in a clear and succinct manner must be filed with the Registrar.
45. It is only after the said notice that an interested party can, in the absence of consent, within 20 days apply to court for admission as *amicus curiae*.
46. There is no notice as contemplated by Rule 16A (1) in these proceedings. The BLA has sought to request the Judge President Mlambo regarding admission as *amicus curiae* in contravention with Rule 16A and states that the Judge President has waived the

requirement of Rule 16A. I submit not. I submit that the Judge President simply stated that the BLA could file papers as a matter of cause.

47. Therefore, the *amici* cannot be admitted as *amici curiae*. Further, there is no justification in terms of which the court can exercise its discretion in terms Rule 16A (9) to dispense with the requirements of the notice in terms of Rule 16A (1).

48. The *amici* have further failed to indicate to the court why it is in the interest of justice that the requirements of Rule 16A (1) be condoned. The court will note that the purpose of the Rule is to ensure that notice of the constitutional issue is given to persons who might be affected by the or who might have a legitimate interest in the case.

49. The court will note that the Fund raised a point in *limine* of joinder in the main application. I submit therefore, that in the absence of the notice in terms of Rule 16A (1) notice, the admission of the *amici* would be dilatory and disruptive in circumstances where even their admission would not assist the court as the issues they seek to raise have already been catered for by the applicants. I submit that had the applicants sought it necessary to supplement the founding affidavit they could have done so.

#### **Both LSSA and BLA have an alternative remedy**

50. The BLA have referred to the matter of Fouriefismer Inc under case number 17518/2020 which is set down in the urgent roll of 21 April 2020. I attach a copy of the notice of motion in that matter as annexure "AI3". This Court will note that in that matter, only final relief is sought. What is of importance is that a Rule 16A notice has been filed by

the applicants in that matter, The BLA and the LSSA are at liberty to join in those proceeding as amici, at this early stage so that papers are properly filed without any disruption to those proceedings. A copy of the Rule 16A(1) notice in those proceedings is attached as "AI4".

**Conclusion**

51. In these circumstances, the LSSA and the BLA are not entitled to be admitted as *amici curiae* in this matter and their applications should be dismissed with costs of two counsel

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**DEPONENT**

Thus, signed and sworn to at **PRETORIA** on this the 17th day of **MARCH 2020**. The deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to taking the prescribed oath and considers the oath as binding on his conscience.

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**COMMISSIONER OF OATH**  
**NAME:**  
**ADDRESS:**  
**CAPACITY:**  
**AREA:**



**RESOLUTION**

**EXTRACT FROM THE MINUTES OF A MEETING OF THE BOARD OF THE ROAD ACCIDENT FUND ESTABLISHED IN TERMS OF THE ROAD ACCIDENT FUND ACT, 56 OF 1996, AS AMENDED, And HELD AT ECOGLADES, CENTURION ON 27 FEBRUARY 2020.**

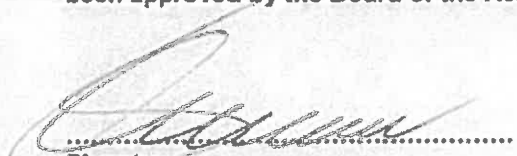
**"12.2 Handover of Files: Claims Panel of Attorneys**

**Resolved that**

1. The Board would write a letter to the Law Society of South Africa and request a meeting.
2. Management was requested to prepare a detailed handover plan which could be substantiated and implemented.
3. The Board delegated the oversight of the implementation of the detailed plan to the OPSIT Committee. The Chairperson of the OPSIT Committee would serve as liaison with management.
4. Reporting should take place on a weekly basis.
5. Should there be failure in terms of the implementation of this particular plan there will be consequence management."

**Certification**

**I confirm that the above resolutions are a true extract of the original. The minutes have not yet been approved by the Board of the Road Accident Fund.**

  
 .....  
**Signature**  
**Chairperson of the Board**

11.03.2020  
 .....  
**Date**