

IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH GAUTENG HIGH COURT)
SITTING AS EQUALITY COURT

Case No: 07/2010 EQ JHB

In the application to be admitted as an *amicus curiae* by

FREEDOM OF EXPRESSION INSTITUTE

Applicant

2010-12-07

004

In the matter between:

REGISTRAR OF THE SOUTH GAUTENG
HIGH COURT JOHANNESBURG

AFRIFORUM

Complainant/First Respondent

and

JULIUS SELLO MALEMA

Second Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the applicant intends to make application to this Honourable Court on the 18th day of January 2011 for an order in the following terms –

1. Admitting the applicant as an *amicus curiae* in Case 07/2010 EQ JHB

2. Granting the applicant leave both to file written argument and make oral submissions and participate in the hearing on the matters set out in the applicant's founding affidavit.
3. Granting further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **AYESHA ISMAIL KAJEE** will be used in support of this application.

TAKE NOTICE FURTHER THAT the Applicant will accept notice and service of all process in these proceedings at the address set out below.

TAKE NOTICE FURTHER THAT if any party intends to oppose this, they are required to:

- (a) deliver written notice thereof to the Applicant, at the address set out below, within 10 days of receiving this notice; and
- (b) deliver their answering affidavit, if any, within 20 days of filing and serving notice of their intention to oppose.

KINDLY ENROL THE MATTER FOR HEARING ACCORDINGLY

DATED AT Johannesburg..... THIS 3rd DAY OF Dec..... 2010.

Willie

FREEDOM OF EXPRESSION INSTITUTE

27 Lothbury Road

Auckland Park

2006

Tel: (011) 482 1913

Fax: 0865 942815

Ref: Mbalenhle Cele

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT

AND TO: HURTER SPIES INC

ATTORNEY FOR THE COMPLAINANT

South Block, Solidariteitspark

Corner DF Malan & Eendraght Streets

Kloofsig

Centurion

Tel: 012 664 0708

Fax: 012 664 1997

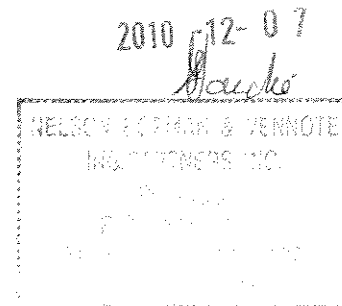
E-mail: willie@hurterspies.co.za

c/o Nelson Borman Inc

17th Floor, Schreiner Chambers

94 Pritchard Street

Johannesburg



AND TO: TUMI MOKWENA INC

ATTORNEYS FOR THE FIRST RESPONDENT

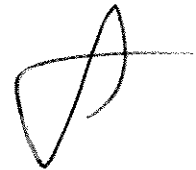
53B Grobler Street

Polokwane

Tel: 015 291 3517

Fax: 015 291 4084
Ref: Mr Mokwena/MAL31/0004/Desire Duvenhage
c/o Mohlala Attorneys
145 Jan Smuts Avenue
Parkwoods
Johannesburg
Tel: 011 447 5556

07/12/2010



MOHLALA ATTORNEYS INC
145 JAN SMUTS AVENUE
PARKWOOD
P.O. BOX 1244 HOUGHTON 2041
TEL: 011 447 5556/7 FAX: 011 447 5552

**IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH GAUTENG HIGH COURT)
SITTING AS EQUALITY COURT**

Case No: 07/2010 EQ JHB

In the application to be admitted as an *amicus curiae* by

FREEDOM OF EXPRESSION INSTITUTE

Applicant

In the matter between:

AFRIFORUM

Complainant/First Respondent

and

JULIUS SELLO MALEMA


Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

01 DEC 2010

F.D.M.



AYESHA ISMAIL KAJEE

do hereby make oath and say:

DEPONENT, AUTHORITY AND PARTIES

1. I am the Executive Director of the Applicant.
2. I am duly authorised to depose to this affidavit on behalf of the Applicant and to represent it in these proceedings.
3. Save where otherwise stated, or where the contrary appears from the context, the facts contained in this affidavit are within my personal knowledge and are, to the best of my belief, true and correct.
4. The Applicant is the Freedom of Expression Institute, an association not for gain, governed by its constitution, in terms of which it is capable of bringing proceedings in its own name. A copy of the Constitution is annexed, marked "AK1". Its principal place of business is at 27 Lothbury Avenue, Auckland Park, Gauteng, 2006 ("FXI").
5. The respondents in this application are the parties in a complaint lodged by the First Respondent against the Second Respondent under case number EQ 07/2010.
6. The first respondent is the Afriforum, a section 21 company incorporated in terms of the Companies Act, 61 of 1973 with its principal place of business at 1 Eendracht Street, Kloofsig, Centurion, Gauteng ("Afriforum").

ER.M.

7. The second respondent is Julius Sello Malema an adult male and president of the African National Congress Youth League, with principal place at Luthuli House, 54 Sauer Street, Johannesburg ("Malema").
8. The African National Congress, a political party registered in terms of the Electoral Commission Act 51 of 1996 with principal place of business at Luthuli House, 54 Sauer Street, Johannesburg, was named as a second respondent in the underlying matter ("ANC"), but Afriforum withdrew its complaint against the ANC on 1 November 2010. In this regard, see annexure "AK2".

THE NATURE OF THIS APPLICATION


9. This is an application for leave to be admitted as *amicus curiae* in the main application.
10. In the main application, Afriforum seeks to have certain statements made by Malema declared 'hate speech' as that term is understood by section 16(2) of the Constitution of the Republic of South Africa and section 10(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, and consequently excluded from protected freedom of expression.
11. On 21 April 2010, the FXI addressed a letter to the attorneys representing Afriforum, Malema, and the Freedom Front (another party seeking to be admitted as an *amicus curiae*), which it sought the written consent of their respective clients to the FXI being admitted as *amicus curiae* in the main application. The FXI advised that it wishes to submit written and oral submissions to the Honourable Court on the appropriate approach to the adjudication and resolution of hate speech cases, the approaches adopted by courts in other jurisdictions that may

be appropriate or helpful; and the interpretation of section 16 of the Constitution and section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. A copy of the FXI's letter is annexed marked "AK3".

12. On 23 April 2010, Afriforum consented to the FXI's admission as *amicus curiae*. A copy of the letter is annexed marked "AK4".
13. On 23 April 2010, the Freedom Front consented FXI being admitted as an *amicus curiae*. A copy of this fax is annexed marked "AK5".
14. FXI did not receive a response from Malema to our letter dated 21 April 2010. On 21 September 2010 the FXI addressed a letter to Malema seeking a response to the letter of the 21st of April 2010. A copy of FXI's letter is annexed marked "AK6". The FXI received a response to this letter from Malema dated 5 October 2010. A copy of that letter is annexed marked "AK7".
15. Accordingly, Afriforum has consented to FXI's admission as *amicus curiae* and Malema has not indicated that we make an application to be admitted as *amicus curiae* and they will await the outcome.

THE FXI'S INTEREST

16. The FXI was formed in January 1994 primarily to assist in the repeal and amendment of South African laws inhibiting freedom of expression and association. Its aims today are broader. The present objectives of the FXI include the promotion of efforts to protect the public's right to receive and impart information, ideas and opinion, to defend freedom of expression as well as to oppose censorship and to fight for the right of



FRIM,

access to information.

17. The FXI undertakes a wide range of activities in support of its objects, including lobbying, education, monitoring, research, publicity, litigation and the funding of legal cases that advance these rights and freedoms. As a result of these activities, the FXI has had the benefit of extensive research into the law relating to freedom of expression, and consequently, wide-ranging knowledge of the implications and effect of hate speech provision in the Constitution. These features of the FXI have allowed it to have been admitted as *amicus curiae* in numerous cases involving freedom of expression.
18. With respect to its position to be adopted in these proceedings, the FXI does not think it would be helpful in these proceedings to merely express an opinion on whether or not the speech at issues constitutes hate speech and therefore seeks to focus its submissions as set out below, mindful of its role to assist the court. Of course the application approach urged by the FXI to the adjudication this, and every other, hate speech matter, and the determination of the appropriate remedy in the event of a finding that the particular speech constitutes hate speech, would be canvassed.
19. I respectfully submit that the FXI is clearly an interested party in the constitutional issues raised in these proceedings.

THE CONTRIBUTION OF THE FXI

20. The FXI to assist the court with relevant submissions which are expected to be different from those advanced by the parties to the main application. These submissions will include, *inter alia*, information and argument on –


Fr. M.

- 21.1 The appropriate approach to be taken by the courts in adjudicating hate speech matters, including the relevant factors and considerations that should and could inform the determination and contravention of the applicable legislation, the establishment that particular speech constitutes hate speech and the remedies that follow.
- 21.2 The importance of context in assessing the parameters of hate speech and the manner in which it may, in various circumstances, cause the same speech to be deemed either to be acceptable or to be hate speech, and the consequences of this for the adjudication of hate speech matters and the determination of the appropriate remedy of such matters.
- 21.3 The approach of foreign jurisdictions to the limitation of freedom of expression in circumstances similar to those underlying the main application.
21. These submissions would seek to assist the court in its determination of this matter, but would differ from the submissions expected to be made by the other parties in that the FXI's interest is broader, namely to propose a principled framework for approaching the adjudication of hate speech matters.

WHEREFORE I respectfully pray for an order in the terms set out in the notice of motion to which the founding affidavit is annexed.


DEPONENT

FR. M.

I hereby certify that the deponent declares that the deponent knows and understands the context of this affidavit and that it is to the best of the deponent's knowledge both true and correct, that this affidavit was signed and sworn to before me at BRIXTON SIPS on this 1st day of DECEMBER 2010 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.

frans metsovwene

COMMISSIONER OF OATHS

Full Names: frans metsovwene

Capacity: Politen (sv)

Address: 79 Mercury, Brixton

01 DEC 2010

DL

FR, M,

"AKI"

CONSTITUTION OF THE FREEDOM OF EXPRESSION INSTITUTE


AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
31 OCTOBER 1996
AS AMENDED BY A SPECIAL MEETING OF THE INSTITUTE ON
26 JUNE 1998
AS AMENDED BY A SPECIAL MEETING OF THE INSTITUTE ON
29 JUNE 2000
AS AMENDED BY A SPECIAL MEETING OF THE INSTITUTE ON
29 JUNE 2002
AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
7 JUNE 2003
AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
24 JUNE 2006
AS AMENDED AT A SPECIAL MEETING OF THE INSTITUTE ON
23 JUNE 2007

1. NAME

- 1.1 The organisation hereby constituted will be called the Freedom of Expression Institute.
- 1.2 Its shortened name will be FXI (hereinafter referred to as "the Institute").

2. LEGAL NATURE AND PERSONALITY OF THE INSTITUTE

- 2.1 The Institute shall be a body corporate with perpetual succession, capable of entering into contractual and other relations and of suing and being sued in its own name. It shall hold assets. The Institute shall have an identity and existence distinct from its office bearers.
- 2.2 The Institute shall not be formed for the purpose of carrying on any business or enterprise which has, for its object, the acquisition of gain by the office bearers of the Institute.
- 2.3 The Institute shall alone be liable for its debts and commitments.
- 2.4 Any income or property of the Institute shall be applied solely towards the promotion of its main and subsidiary objects and no proportion of the income or property shall be paid or transferred, directly or indirectly, to any office bearers of the Institute or any other person, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or servant of the Institute in return for any services actually rendered.

FRIM. 

3. OBJECTS OF THE INSTITUTE

3.1 The principal objects of the Institute shall be:

3.1.1. To fight for and defend freedom of expression;

3.1.2. To oppose censorship;

3.1.3. To fight for the right of equal access to information and knowledge; and

3.1.4. To promote access to media and a free press.

3.2 To this end, its subsidiary objects shall be:

3.2.1 Opposing any limitations imposed on the freedoms aforementioned, be they at the instance of the State, the private sector or civil society, that in the opinion of the Institute constitute censorship;

3.2.2 To create a sense of unity and purpose among those subject to censorship;

3.2.3 To educate the public about the dangers of censorship;

3.2.4 To defend, support and extend solidarity to the victims of censorship;

3.2.5 To monitor the effect and implementation of censorship in South Africa;

3.2.6 To engage in solidarity with groups opposing censorship locally and internationally;

3.2.7 To promote access to information and knowledge and information generally; to monitor legislation which makes this possible;

3.2.8 Safeguarding the freedom and independence of all media, including:

3.2.8.1 The right of the media to editorial independence;

3.2.8.2 The strict separation of advertising and editorial functions, with the latter enjoying the freedom from influence by the former;

3.2.8.3 The right not to be forced and coerced to act as witnesses in trials involving their professional duties;

3.2.8.4 The right of journalists not to disclose confidential sources of information;

BC
FRM

- 3.2.9 Helping to ensure a diversity of media;
- 3.2.10 To promote the right of all people to communicate;
- 3.2.11 To engage in campaigns, promotions, projects and other activities in furtherance of the above aims;
- 3.2.12 To raise and disburse funds for legal services as provided for in this constitution in support of victims of censorship;
- 3.2.13 To provide free legal services for poor and needy victims of censorship; and
- 3.2.14 To promote and advocate human rights and democracy within the principal objects contained in section 3.1 above.

4. EXECUTIVE COMMITTEE

- 4.1 The management of the Institute shall be vested in the Executive Committee which shall be composed of between 7 (seven) and 12 (twelve) members. They shall serve in office for 2 (two) consecutive years but shall be eligible for re-election, for a maximum of 2 (two) additional terms.
- 4.2 The Executive Committee shall meet at least every 3rd (third) month.
- 4.3 The quorum for meetings of the Executive Committee shall be 50 percent of the number of Executive Committee members plus 1 (one) member.
- 4.4 Not less than 7 (seven) days notice shall be given of the date, time and venue of an Executive Committee meeting.
- 4.5 Meetings of the Executive Committee shall be convened by the Chairperson or at the instance of any 3 (three) Executive Committee members who advise the purpose for which they desire such meeting to be convened, provided that the competency of the Executive to make decisions at such meetings shall not be limited to the matters for which it was convened.
- 4.6 In the absence of the Chairperson, the Deputy Chairperson shall carry out all the duties of the Chairperson. In the absence of both, the members present shall elect an Acting Chairperson.

OK
Fr. m.

- 4.7 The Chairperson shall be the only member of the Executive Committee who may issue media statements on behalf of the Committee.
- 4.8 Any matter before the Executive Committee shall be resolved by a simple majority of the votes. In the event of an equal number of votes the Chairperson shall have the deciding vote.

5. VACANCIES

- 5.1 A member of the Executive Committee shall cease to hold office:
- 5.1.1 If such a member fails to attend 3 (three) consecutive meetings of the Committee without an apology and a valid excuse;
 - 5.1.2 If such member resigns;
 - 5.1.3 If such a member has served the maximum three terms of two years each in office; or
 - 5.1.4 If the majority of the Committee vote to remove such member from office for contravening the Committee's Code of Conduct after he or she has been given an opportunity of making representations to the Committee against such removal. Such a member will have the right to appeal against the decision. The appeal will be heard by an independent arbitrator, and the decision of the arbitrator will be binding on the Institute.
- 5.2 In order to fill any vacancy on the Executive Committee, new Executive Committee members shall be elected by a simple majority of votes of existing members. In the event of an equal number of votes the Chairperson shall have the deciding vote.
- 5.3 Those Executive Committee members present at an Executive Committee meeting shall elect, by a simple majority, a Chairperson or a Deputy Chairperson when either of these posts falls vacant.

6. POWERS AND DUTIES OF THE EXECUTIVE COMMITTEE

- 6.1 The Executive Committee shall manage all the business and affairs of the Institute and shall have the full power and authority to carry out all the objects of the Institute except when such powers are expressly reserved to a meeting of the Executive Committee and, without derogating from the generality of the Executive Committee, shall more particularly be to:

BC
F.R.M.

- 6.1.1 interpret, oversee the implementation and promotion of the aims and objectives of the Institute;
- 6.1.2 obtain support, financial or otherwise, for the Institute, including support for the Institute's sustainability and investment plans;
- 6.1.3 oversee the administration of the financial affairs of the Institute;
- 6.1.4 to determine the conditions upon which other institutes may become affiliated with the Institute or vice versa;
- 6.1.5 to invest the funds and assets of the Institute in securities nominated by it and to vary, realise and deal with such investments in its discretion;
- 6.1.6 to decide what amount of the funds shall be invested and what amount should be retained for administrative and other expenses;
- 6.1.7 to deposit any funds with a bank selected by them in the name of the Institute or any other name suitable to such bank and to nominate the person or persons to sign any cheques;
- 6.1.8 to grant any honorarium to any office bearers of the Institute for services rendered and to remunerate him or her accordingly;
- 6.1.9 to employ any person in the interests of the Institute and remunerate him or her accordingly;
- 6.1.10 to register the name and, if necessary, the constitution and rules of the Institute under any law;
- 6.1.11 to approve annual organisational plans and budgets, as well as a sustainability and investment plan;
- 6.1.12 to receive and approve Annual Reports and Annual Audited Financial Statements;
- 6.1.13 to appoint an auditor to examine and report upon the accounts of the Institute and remunerate him or her accordingly;
- 6.1.14 to institute or defend any legal proceedings in the name of the Institute;
- 6.1.15 to appoint office bearers from within the organisation to task committees. All decisions of such task committees shall be subject to ratification by

AC
Fr. m.

the Executive Committee;

6.1.16 to appoint an Executive Director; and

6.1.17 to appoint patrons of the Institute; and

6.1.18 to constitute a Management Committee, which shall consist of the Chairperson, Deputy Chairperson, one other Executive Committee member and the Executive Director. The Executive Committee may delegate certain management powers and functions in writing to the Management Committee, which shall take operational decisions within the framework of Executive Committee policies and without assuming any powers expressly reserved to the Executive Committee in terms of this section.

6.2 Members of the Executive Committee shall not be liable for any of the obligations and liabilities of the Institute solely by virtue of their status as office bearers of the organisation.

8. ANNUAL GENERAL MEETING

8.1

7. THE EXECUTIVE DIRECTOR

7.1 The Executive Director shall:

7.1.1 be accountable to, and report to, the Executive Committee and Management Committee;

7.1.2 be responsible for the day to day running of the Institute;

7.1.3 ensure that proper accounts are kept and are submitted to the Executive Committee on a regular basis;

7.1.4 supervise the staff of the Institute;

7.1.5 submit an annual report to a meeting of the Executive Committee;

7.1.6 be responsible for fundraising;

7.1.7 act as spokesperson for the Institute;

OK!

FRIM

- 7.1.8 issue media releases, grant interviews to the media, release comments to the media and delegate any member of staff to carry out these responsibilities within the framework of the Institute's Media Policy;
- 7.1.9 enter into contracts on behalf of the Institute and authorise the signing of documents in the name of the Institute, but subject to the financial provisions in section 8 below;
- 7.1.10 appoint "Friends" of the Institute;
- 7.1.11 be an ex officio non-voting member of the Executive Committee; and
- 7.1.12 provide overall strategic leadership and management of the Institute.

8. FINANCIAL AND COMPLIANCE-RELATED MATTERS

- 8.1 Subject to section 2.4 above, all funds received shall be banked in the name of the Institute and cheques, money orders or any withdrawal transaction shall be signed by two signatories from a list nominated for such purpose by the Executive Committee who shall inform the Institute's banking institution accordingly.
- 8.2 The financial year-end of the Institute shall be December 31.
- 8.3 The financial affairs are to be administered according to the Institute's Financial Policies and Procedures Manual.
- 8.4 In compliance with section 30 (3) Income Tax Act 58 of 1962 (as amended, "the Income Tax Act"), the Institute shall effect, or cause to be effected, approval from the Commissioner for the South African Revenue Service ("the Commissioner") of the Institute as a public benefit organisation, in pursuance of which the Institute shall submit to the Commissioner a copy of its constitution and in terms of which it is:
 - 8.4.1 required to have at least 3 (three) persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision making powers relating to that organisation;
 - 8.4.2 prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established, or to invest such funds-

AL
FRIM

8.4.2.1 with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act 97 of 1990);

8.4.2.2 in any listed financial instrument of a company contemplated in paragraph (a) of the definition of 'listed company' in such Act; or

8.4.2.3 in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations:

Provided that the provisions of this subsection shall not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance;

8.4.3 required on dissolution to transfer its assets to-

8.4.3.1 any similar public benefit organisation which has been approved in terms of this section;

8.4.3.2 any institution, board or body which is exempt from tax under the provisions of section 10 (1) (cA) (i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity; or

8.4.3.3 any department of state or administration in the national or provincial or local sphere of government of the Republic, contemplated in section 10 (1) (a) or (b) of the Income Tax Act;

8.4.4 prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that-

8.4.4.1 the gross income derived from all such business undertakings or trading activities do not in total exceed the greater of-

8.4.4.1.1 5% (five percent) of the gross receipts of such public benefit organisation; or

8.4.4.1.2 R50 000;

8.4.4.2 the undertaking or activity is-

Handwritten signature
Fr. M.

- 8.4.4.2.1 integral and directly related to the sole object of such public benefit organisation; and
- 8.4.4.2.2 carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and which would not result in unfair competition in relation to taxable entities;
- 8.4.4.3 the undertaking or activity, if not integral and directly related to the sole object of such public benefit organisation as contemplated in subsection 8.4.4.2, is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or
- 8.4.4.4 the undertaking or activity is approved by the Minister by notice in the Gazette, having regard to-
- 8.4.4.4.1 the scope and benevolent nature of the undertaking or activity;
- 8.4.4.4.2 the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;
- 8.4.4.4.3 the profitability of the undertaking or activity; and
- 8.4.4.4.4 the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity;
- 8.4.5 prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A of the Income Tax Act: Provided that a donor (other than a donor which is an approved public benefit organisation or an institution board or body which is exempt from tax in terms of section 10 (1) (cA) (i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity) may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation; and
- 8.4.6 required to submit to the Commissioner a copy of any amendment to the

FRM

constitution.

9. PATRONS AND FRIENDS OF THE INSTITUTE

- 9.1 Patrons of the Institute shall be people who are (a) recognised for their commitment to the cause of freedom of expression and (b) invited by the Executive Committee to serve as patrons.
- 9.2 Patrons shall be appointed on acceptance of invitation by the Executive Committee, which shall have the sole discretion as to whether to appoint a patron or not.
- 9.3 Patrons shall enjoy such rights as accorded by resolution of the Executive Committee from time to time and within the boundaries of the Constitution.
- 9.4 Friends of the Institute shall be people who are: (a) interested in the cause of freedom of expression; and (b) invited by the Executive Director to serve as Friends.
- 9.5 Friends shall be appointed by making application in writing to the Executive Director, who shall have the sole discretion as to whether to appoint a Friend or not.
- 9.6 Friends shall enjoy such rights as accorded by resolution of the Executive Committee from time to time and within the boundaries of the Constitution.

10. AMENDMENT OF THE CONSTITUTION

- 10.1 This constitution may only be amended by way of a resolution to amend such, taken at an Executive Committee meeting with a quorum of 66 percent of the number of Executive Committee members. An amendment to the Constitution can be passed if at least 75 percent of the votes cast at such a meeting are in favour of the amendment.
- 10.2 The notice convening a meeting of the Executive Committee at which a motion to amend this Constitution is put forward shall set forth fully the amendments to be proposed at such meeting, provided that the provision of this clause may be waived by a resolution at such meeting with a quorum of 66 percent of the number of Executive Committee members, at which 75 percent of the votes cast are in support of such a waiver.
- 10.3 Notice of such proposed amendment shall be given at least 2 (two) weeks before



FR: m,

the meeting.

11. DISSOLUTION

11.1 The Institute may be dissolved by a resolution at an Executive Committee meeting with a quorum of 75 percent of the number of Executive Committee members. The dissolution of the Institute may be effected if at least 75 percent of the votes cast at such a meeting are in support of such dissolution.

11.2 The notice convening such meeting shall state that a motion to dissolve the Institute is to be put at the meeting and notwithstanding any contrary provision of the constitution it shall not be competent for such meeting to waive the requirements of notice in terms of this clause.

11.3 The notice aforesaid shall be given not later than 3 (three) weeks before the date of the meeting.

11.4 Subject to the provisions of section 8.4 above, upon the winding-up and dissolution of the Institute the assets of the Institute remaining after the satisfaction of its liabilities shall be given or transferred to such other company, association, society or institution or any combination of them which shall:

11.4.1 be committed to freedom of expression;

11.4.2 be of a public character;

11.4.3 be in the Republic of South Africa;

11.4.4 be of such a nature that donations tax is not payable in respect of the value of any property which is disposed of under a donation to it;

11.4.5 have objects similar to the Institute's main objects; and

11.4.6 be determined by the office bearers of the Institute at or before the time of the Institute's dissolution, or failing such dissolution, by the Local Division of the High Court of South Africa having jurisdiction.



FR: M,

"AK2"

IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH GAUTENG PROVINCIAL DIVISION)
SITTING AS AN EQUALITY COURT

Case no: 07/2010 EQ JHB

In the matter between:

AFRIFORUM

Complainant

and

JULIUS SELLO MALEMA

First Respondent

AFRICAN NATIONAL CONGRESS

Second Respondent

WITHDRAWAL OF COMPLAINT AGAINST SECOND RESPONDENT

WHEREAS:

1. At a directions hearing held on 9th September 2010 in the above honourable court the directions hearing stood down till 1st November 2010 to allow the parties to endeavour to resolve the dispute between them;
2. Counsel for the Complainant and the Second Respondent met informally and without prejudice to discuss a possible settlement of the dispute in September 2010;

AL.
FR.M.

3. Further "without prejudice" correspondence took place between the parties on 8th October 2010, 19th October 2010, 25th October 2010 and 26th October 2010 and a meeting "without prejudice" took place between the attorneys of the various parties in the chambers of the Senior Counsel for the second respondent on Friday, 29th October 2010 in order to enable the parties to resolve the dispute.

AND WHEREAS

4. The Complainant took cognisance of and acknowledged the stance taken by the Second Respondent's president and President of the Republic of South Africa on 10th April 2010 (which is attached as "X" and incorporated herein by reference);
5. The Complainant particularly noted the following statements:

"We place a high premium on order, stability and the rule of law in the country.

That is why the ruling party took the step this week of calling for restraint from all its structures and members.

Anyone who then goes against that statement is undermining the leadership authority of the ANC, and that cannot be accepted.

When the ANC has made such a statement, it is totally out of order for us to continue as if such a statement was not made.

Certainly there must be consequences for such behaviour. We have done this because of the need to respect a high court ruling relating to a particular liberation song.

We also recognise that this song, in the current environment, could be misunderstood by those not familiar with the context and content of our struggle.

In making this call, we do not intend in any way to diminish the proud history of struggle against apartheid.

We do recognise that we have a responsibility to act in a way that reduces the potential for tension, and encourages unity. Our Constitution enshrines the independence of the judiciary and the rule of law.

We must recognise the role of the judiciary as the final arbiter in disputes in society.

The dignity and decorum of the institution must always be protected and defended.

There are procedures that one should follow to challenge court decisions. Defiance of these procedures should not be tolerated.

FRIM

It would make mockery of our judicial system. It should be noted that to appeal a court decision is not to defy it".

NOW THEREFORE

6. The Complainant hereby withdraws its complaint against the **Second Respondent**; and
7. Gives notice of its intention to proceed with its complaint against the **First Respondent**.

SIGNED ON 1 NOVEMBER 2010 AT JOHANNESBURG



HURTER SPIES INC

Mr WD Spies

Attorneys for the Complainant

Fax 012-644-1997

e-mail willie@hurterspies.co.za

TO:


TUMI MOKWENA INC

Attorneys for First Respondent

Fax: 015-291 4084

By e-mail

TO:


FRIM

Mr S Mahlangu / V Soga

EDWARD NATHAN SONNENBURGS

Attorney for Second Respondent

By e-mail

AND TO:

THE PRESIDING OFFICER

The Honourable Judge Colin Lamont

SOUTH GAUTENG HIGH COURT

JOHANNESBURG

By e-mail

BT
BRM

"X"

Statement by President JG Zuma on political conduct and social cohesion

10 Apr 2010

Ladies and gentlemen of the media

At the meeting of the ANC's National Executive Committee last month, we spoke out strongly about the need for discipline among the members of the organisation and more generally for all to respect the rules of political engagement.

As the organisation's leadership we were drawing the line, and that there would be consequences for anyone who crossed that line.

Matters relating to the conduct and statements of the ANC Youth League which are totally alien to the culture of the ANC have made it necessary for us to emphasise a few fundamental principles today.

This is an appropriate moment to do so, particularly since it is the anniversary of the brutal assassination of one of the outstanding heroes of our struggle, Comrade Chris Hani.

On this anniversary, we recommit ourselves to uphold the values and traditions to which he and scores of the country's national heroes dedicated their lives.

We commit ourselves to continue working tirelessly to build a non-racial, non-sexist, united and democratic South Africa, founded on the positive values that are enshrined in the Constitution.

We urge all South Africans to work with us in achieving these goals. But ANC cadres must lead in this process.

We also wish to underscore the following important points:

Freedom of the media

The country's Constitution enshrines the principle of freedom of the media.

An independent and free media is one of the cornerstones of democracy. It is an important barometer of the extent to which the people are freely able to express themselves.

While in a democracy there will inevitably be times of contestation between the media and other sections of society, the fundamental principles should be adhered to at all times.

We must accord journalists the freedom to do their work unhindered. We should engage them professionally and with dignity.

Should there be a need to take issue with anything that is being reported, it should be done in a manner that promotes frank and open engagement.

AL
F.R.M.

The manner in which a BBC journalist was treated at an ANC Youth League press conference is regrettable and unacceptable, regardless of any alleged provocation on his part.

Respect for the law

We place a high premium on order, stability and the rule of law in the country.

That is why the ruling party took the step this week of calling for restraint from all its structures and members.

Anyone who then goes against that statement is undermining the leadership authority of the ANC, and that cannot be accepted.

When the ANC has made such a statement, it is totally out of order for us to continue as if such a statement was not made.

Certainly there must be consequences for such behaviour. We have done this because of the need to respect a high court ruling relating to a particular liberation song.

We also recognise that this song, in the current environment, could be misunderstood by those not familiar with the context and content of our struggle.

In making this call, we do not intend in any way to diminish the proud history of struggle against apartheid.

We do recognise that we have a responsibility to act in a way that reduces the potential for tension, and encourages unity. Our Constitution enshrines the independence of the judiciary and the rule of law.

We must recognise the role of the judiciary as the final arbiter in disputes in society.

The dignity and decorum of the institution must always be protected and defended.

There are procedures that one should follow to challenge court decisions. Defiance of these procedures should not be tolerated.

It would make mockery of our judicial system. It should be noted that to appeal a court decision is not to defy it.

Zimbabwe

South Africa is a respected member of the international community. The country has certain responsibilities and obligations in the regional and broader international spheres.

One of these is to facilitate the implementation of the Global Peace Agreement in Zimbabwe.

We undertake this task with the necessary seriousness and sensitivity, and have to ensure impartiality at all times.

FRIM

We will continue to facilitate the resolution of the impasse in Zimbabwe and to treat all parties with respect.

We cannot and will not side with any one of the parties to the exclusion of others.

We received a report from the last round of talks held last week. We will work with the parties again to take the process forward.

2010 World Cup

The 21st of April will mark the 50 days until the start of the 2010 FIFA World Cup.

Initial research indicates that South Africa is likely to receive 450 000 international fans between 11 June and 11 July.

South Africa remains ready to receive visitors from all walks of life and from all parts of the globe.

We are now putting final touches to our plans on security, logistics, hospitality, transport and others.

We urge international soccer fans to continue buying tickets and to prepare themselves to enjoy South African hospitality and experience the first African World Cup ever.

Social cohesion and unity

Recent events have raised concerns in some quarters about social cohesion.

Some people have spoken of heightened racial tension. We should not be dismissive of such concerns, and should be prepared to engage in dialogue to address them.

But we must acknowledge that South Africans remain united in their support for the Constitution, the values it enshrines, and the democratic institutions it has established.

South Africans are clearly committed to work together to address the legacy of our divided past.

Our history tells us that there is no challenge we cannot overcome. Among other things this requires responsible leadership.

The ANC Youth League is not an independent body. It exists within the umbrella policy and discipline of the ANC. The organisation will deal with these matters internally as it deems fit.

We reiterate that leaders should think before they speak, as their utterances have wider implications for the country.

I thank you.


F.R.M.

Issued by: The Presidency
10 April 2010
Source: The Presidency (<http://www.thepresidency.gov.za/>)

Issued by: The Presidency
10 Apr 2010


FR 'm.



"AK3"

Street Address: 27 Lothbury Avenue
Auckland Park
Johannesburg
Postal Address: PO Box 30668
Braamfontein 2017
South Africa
Tel: +27 11 482-1913
Fax: +27 11 482 - 1906
fxi@fxi.org.za
http://www.fxi.org.za

21 April 2010

To: Mr Willie Spies
Hurter Spies Inc
Attorneys for Afriforum
Email: willie@hurterspies.co.za

And To: Mr Tumi Mokwena
Tumi Mokwena Inc
Attorneys for Mr Malema
Email: desd@tmattorneys.co.za
tumi-law@mweb.co.za

And To: Mr Anton de Waal Alberts
Counsel for Freedom Front Plus
Email: alberts@salegalchambers.co.za

Dear Colleagues,

RE: REQUEST FOR CONSENT TO AMICUS CURIAE INTERVENTION - AFRIFORUM AND FREEDOM FRONT PLUS v J MALEMA

1. We refer to the above mentioned matter.
2. The Freedom of Expression Institute (FXI) is a not for profit non-governmental organisation which was established in 1994 to protect and foster the rights to freedom of expression and access to information, and to oppose censorship. The FXI's principal objects, as set out in its Constitution, are: to promote and defend freedom of expression; to oppose censorship; to advocate the right of equal access to information and knowledge; and to promote access to media and a free press.
3. In terms of its constitution, the FXI's subsidiary objects include: "To promote access to information and knowledge and information generally" and "opposing any limitations imposed on the freedoms aforementioned, be they at the instance of the State, the private sector or civil society, that in the opinion of the Institute constitute censorship".
4. The FXI undertakes a wide range of activities in support of its objects, including lobbying, education, monitoring, research, publicity, litigation and the funding of legal cases that advance these rights and freedoms.
5. In view of the above, FXI is an interested party in respect of the issues raised in the proceedings between Afriforum, the FFP and Mr Malema.
6. The FXI has been admitted as *amicus curiae* in several cases involving freedom of expression. It has an in-depth knowledge of the law relating to the guarantee of freedom of

EXECUTIVE COMMITTEE: Anton Harber (chairperson), Kate Skinner (deputy-chairperson), Graham Bailey, Nobuntu Mbele, Raymond Louw

ACTING EXECUTIVE DIRECTOR: Melissa Moore

LAW CLINIC ATTORNEY: Mbali Cele ADMINISTRATOR: Sheila Gqweta
No Profit Organisation Number: 034887NPO


F.R.M.

expression and the issues raised in the present proceedings. The FXI has also conducted extensive research into the hate speech issues relevant to these proceedings.

7. The FXI wishes to make written and oral submissions, as *amicus curiae*, regarding:
 - 7.1. The appropriate approach to the adjudication and resolution of hate speech cases;
 - 7.2. The approaches adopted by courts in other jurisdictions that may be appropriate or helpful; and
 - 7.3. The interpretation of section 16 of the Constitution and section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.
8. Accordingly, the FXI requests your respective clients' consent to the FXI being admitted as *amicus curiae*.
9. We look forward to your response.

Yours Faithfully
Melissa Moore
Acting Executive Director
Freedom of Expression Institute
(unsigned due to electronic transfer)

2 PL
FRM

 **Hurter Spies** Inc.
prokureurs • attorneys

"AK4"

Hurter Spies Incorporated
Reg. no. 2008/009761/21
Attorneys Notaries Conveyancers
Prokureurs Notarisse Transportbesorgers

Grondvloer Suidblok Solidariteitpark
Eendrachtstraat 1
Kloofsig, Centurion

Ground Floor South Block, Solidarity Park
1 Eendracht Street
Kloofsig, Centurion

PO Box / Posbus 32475
0134 Totiusdal
Tel: 012-644-2676
012-664-0708
Fax / faks : 086-670-5651
E-mail / e-pos : admin@hurterspies.co.za
Internet: www.hurterspies.co.za

Our ref / ons verw: Mr. Spies

23 April 2010

The Freedom of Expression Institute
BY EMAIL

Dear Ms Moore

AFRIFORUM / JS MALEMA / ANC

Further to your letter dated 21 April 2010, this letter serves to confirm that my clients have no objection to the admittance of the FXI as amicus curiae.

Yours sincerely



HURTER SPIES INC.

Direkteur / director: WD Spies B Com LLB MBA (UP)
Bygestaan deur / assisted by: MW Viljoen LLB (UVS)
Konsultant / consultant: JJ Hurter Dip Proc (UP)


FR: m.

"AK5"

Subject: Re: FXI request for consent to amicus curiae intervention: Afriform & FFP vs Malema
From: alberts@salegalchambers.co.za
Date: Fri, 23 Apr 2010 10:30:46 +0200
To: melissa@fxi.org.za

Dear Melissa,

Further to your request herein we have no objection to the FXI being admitted as amicus curiae to this matter.

Yours truly,

Adv Anton Alberts
FF Plus

Quoting melissa@fxi.org.za:

Dear Sirs
Attached for your kind attention is a letter requesting your clients consent to FXI being admitted as amicus curiae in the above mentioned matter.
We look forward to your response.
Kind Regards
Melissa Moore
Acting Executive Director
Freedom of Expression Institute



"AK6"

FREEDOM OF EXPRESSION INSTITUTE

Our ref: M Cele

Street Address: 27 Lothbury Street
Auckland Park
2006
Postal Address: PO Box 30668
Braamfontein 2017
South Africa
Tel: +27 11 482-1913
Fax: +27 11 482-1906
fxi@fxi.org.za
http://www.fxi.org.za

21 September 2010

To: Tumi Mokwena
Tumi Mokwena Incorporated
Attorney for Julius Malema
Fax no: 015 291 4084
E-mail: tumi-law@mweb.co.za
desd@tmattorneys.co.za

And to: Siyabonga Mahlangu
Edward Nathan Sonnenbergs
Attorney for African National Congress
Fax: 011 269 7899
E-mail: smahlangu@ens.co.za

Dear Sirs

RE: AFRIFORUM / JS MALEMA

We refer to the above mentioned matter and our letter to you dated 12 August 2010.

The Freedom of Expression Institute (FXI) has not received a response from you in respect of consent to the FXI's admission as *amicus curiae* in the above-mentioned proceedings. We are currently in the process of finalising the application to the High Court.

Kindly let us have your response as to consent before the 30th of September 2010.

Yours Faithfully

Mbalenhle Cele

Law Clinic Attorney

Freedom of Expression Institute

EXECUTIVE COMMITTEE: Mabalane Mfundisi (chairperson), Kate Skinner (vice-chairperson), Graham Bailey,
Nobuntu Mbele, Raymond Louw
EXECUTIVE DIRECTOR: Ayesha Kajee
HEAD: LAW CLINIC: Melissa Moore ADMINISTRATOR: Sheila Gqweta

"AK7"

A T T O R N E E Y S
tumi mokwena inc

OUR REF: Mr Mokwena/MAL31/0005/SR

YOUR REF: M Cele

5 October 2010

FREEDOM OF EXPRESSION INSTITUTE
P.O.Box 30668
BRAAMFONTEIN
2017

Attention: Mbalenhle Cele

Per Fax: (011) 482 1906

Dear Sir

RE: AFRI-FORUM // JULIUS SELLO MALEMA

The above matter herein refers.

We acknowledge receipt of your letter dated 21st September 2010, the contents of which are noted and wish to thank you for the indulgence granted to enable us to respond to same. Please be advised that it is our suggestion that an application be made to the High Court for admission as *amicus curiae* in this matter and we will await the outcome of same.

We trust that the above is in order.

Yours faithfully

TUMI MOKWENA INCORPORATED

53B Grobler Street
P O Box 3361
Polokwane

0700

Tel: (015) 291 3517/ 44

Fax: (015) 291 4084

Email: admin@tmattorneys.co.za

Registration number: 2005/008045/21

Vat Number: 4510219886

Director: MR Mokwena – B Proc. LL.B. (UDW)
Candidate Attorney: N Mothapo-LL B. (UNILIM)

AL
FR.M.

**IN THE HIGH COURT OF SOUTH AFRICA
(SOUTH GAUTENG PROVINCIAL DIVISION)
SITTING AS AN EQUALITY COURT**

Case no: 07/2010 EQ JHB

In the matter between:

AFRIFORUM

Complainant

and

JULIUS SELLO MALEMA

Respondent

NOTICE OF BAR

HEREBY TAKE NOTICE THAT the Respondent is hereby required to deliver a plea in the above action within 5 (five) days of the service of this Notice, failing which the Respondent shall be barred from doing so and the Complainant shall make an application for default judgement.

DATED at PRETORIA this day the 8th day of DECEMBER 2010



Hurter Spies Inc
Attorney for Complainant
South Block
Solidarity Park
Corner DF Malan and Eendracht Street
Kloofsig
Centurion
Tel 012-664-0708
Fax 012-644-1997
E-mail: willie@hurterspies.co.za
Ref: MR WD Spies

c/o Nelson Borman Inc
17th Floor, Schreiner Chambers
94 Pitchard Street
Johannesburg

TO: The Presiding Officer
The Honourable Judge Collin Lamont
SOUTH GAUTENG HIGH COURT
JOHANNESBURG
By e-mail

AND TO: Tumi Mokwena Inc
Attorney for the Respondent
Fax: 015 291 4084
By e-mail

AND TO: Mr S Mahlangu / V Soga
Edward Nathan Sonnenburgs
Attorney for ANC
By e-mail

AND TO: Freedom of Expression Institute
Fax: 0865 942815
Ref: Mbalenhle Cele