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IN THE HIGH COURT OF SOUTH AFRICA
(KWAZULU-NATAL DIVISION, PIETERMARITZBURG)

CASE NO: 4448/17P
11488

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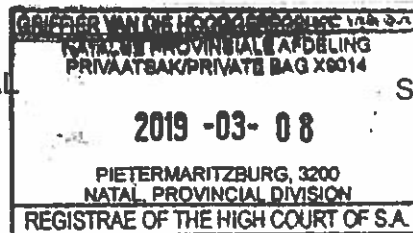
In the application for admission as Amicus Curiae of:

THE CENTRE FOR ENVIRONMENTAL RIGHTS

Applicant for Admission as an
Amicus Curiae

In the matter between:

GLOBAL ENVIRONMENTAL TRUST



First Applicant

**MFOLOZI COMMUNITY ENVIRONMENTAL
JUSTICE ORGANISATION**

Second Applicant

SABELO DUMISANI DLADLA

Third Applicant

and

TENDELE COAL MINING (PTY) LIMITED

First Respondent

MINISTER OF MINERAL RESOURCES

Second Respondent

**MEC: DEPARTMENT OF ECONOMIC
DEVELOPMENT, TOURISM AND
ENVIRONMENTAL AFFAIRS**

Third Respondent

MINISTER OF ENVIRONMENTAL AFFAIRS

Fourth Respondent

MTUBATUBA MUNICIPALITY

Fifth Respondent

HLABISA MUNICIPALITY

Sixth Respondent

INGONYAMA TRUST

Seventh Respondent

EZEMVELO KZN WILDLIFE

Eighth Respondent

**AMAFI AKWAZULU-NATAL HERITAGE
COUNCIL**

Ninth Respondent

FILING NOTICE

PRESENTED HERewith FOR SERVICE AND FILING:

The First Respondent's Answering Affidavit dated 8 March 2019.

DATED AT Pnburg ON THIS THE 08th DAY OF March 2019.

MALAN SCHOLLES INCORPORATED

First Respondent's Attorneys

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TO:

THE REGISTRAR OF THE ABOVE
HONOURABLE COURT, PIETERMARITZBURG

AND TO:

CENTRE FOR ENVIRONMENTAL RIGHTS

Application for Admission as Amicus Curiae

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C/O AUSTEN SMITH ATTORNEYS

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AND TO:

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Applicants' Attorneys in the Main

Application

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C/O HAY & SCOTT ATTORNEYS

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PIETERMARITZBURG

Tel: 033 342 4800

Fax: 033 342 4900

Ref: R F Brent/cjb/09y003001

BY HAND AND E-MAIL

Received a copy hereof on this the 8

day of Mar 2019

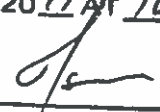


For: the Centre of Environmental Rights

BY HAND AND E-MAIL

Received a copy hereof on this the _____

day of _____ 2019

For: the ~~Applicants~~ **"WITHOUT PREJUDICE"**
RECEIVED A COPY HEREOF ON THIS 08 DAY
OF March 2019 AT 16 H 00

SIGNED: pp HAY & SCOTT ATTORNEYS

AND TO:

TOMILSON MNGUNI JAMES INC.
Seventh Respondent's Attorneys
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Victoria Country Club Office Park
PIETERMARITZBURG
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Email: claudettep@tmj.co.za
AgrippaM@tmj.co.za
Ref: 071004/17/SKN/Claudette

BY HAND AND E-MAIL

Received a copy hereof on this the _____
day of _____ 2019

For: the Seventh Respondent

Received without prejudice a copy
hereof at 16h13 on this.....
day of... 2019-03-08for
TOMLINSON MNGUNI JAMES ATTORNEYS

.....


**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG**

CASE NO 11488/17P

The Centre for Environmental Rights

Applicant for admission
as an amicus curiae

In the matter between

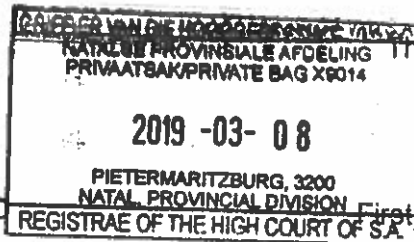
GLOBAL ENVIRONMENTAL TRUST

First applicant

**MFOLOZI COMMUNITY ENVIRONMENTAL JUSTICE
ORGANISATION**

Second Applicant

SABELO DUMISANI DLADLA



Third Applicant

and

TENDELE COAL MINING (PTY) LTD

First Respondent

MINISTER OF MINERAL RESOURCES

Second Respondent

**MEC: DEPARTMENT OF ECONOMIC DEVELOPMENT,
TOURISM AND ENVIRONMENTAL AFFAIRS**

Third Respondent

MINISTER OF ENVIRONMENTAL AFFAIRS

Fourth Respondent

MTUBATUBA MUNICIPALITY

Fifth Respondent

INGONYAMA TRUST

Sixth Respondent

EZEMVELO KZN WILDLIFE

Seventh Respondent

AMAFA AKWAZULU-NATAL HERITAGE COUNCIL

Eighth Respondent

**In re: the application by the Centre for Environmental Rights to be admitted as
*Amicus Curiae***

ANSWERING AFFIDAVIT

I, the undersigned

~~JAN~~ JOHANNES DU PREEZ



do hereby make oath and say that:

- 1 I am the chief executive officer of the first respondent, Tendele Coal Mining (Pty) Ltd ("Tendele").
- 2 The facts set out in this affidavit are, unless otherwise stated or where the contrary appears from the context, within my personal knowledge and are true and correct.
- 3 The purpose of this affidavit is to respond on behalf of Tendele to the application by the Centre for Environmental Rights' ("Centre's") for admission as an *amicus curiae* in the application for leave to appeal brought by the first, second and third applicants against the judgment and order handed down by his Lordship Mr Justice Seegobin on 20 November 2018.
- 4 Tendele does not oppose the admission of the Centre as an *amicus curiae* in the application for leave to appeal, subject to the following two qualifications:
 - 4.1 At paragraphs 96 to 98 of the Centre's founding affidavit, the Centre says that it will seek leave to place evidence before the Appeal Court in the form of a 2016 report published by the Centre entitled "Zero Hour: Poor Governance of Mining and the Violation of Environmental Rights in Mpumalanga". Tendele does not accept that the Centre is entitled to adduce evidence in this matter at all. Tendele accordingly reserves the right to object to the admissibility of any new evidence sought to be adduced on appeal.



- 4.2 In the Centre's letter requesting Tendele's consent for its admission as an amicus (which letter is attached to the Centre's affidavit marked "CH1"), it is stated in paragraph 7(a) that the Centre intends to make submissions which will "*succinctly outline how the various pieces of legislation (and in particular the listed activities and waste management activities) applied at each relevant point in time; including by (as far as possible) linking the listed activities to the activities conducted at the Somkhele mine*". (my emphasis).
- 4.3 The underlined portion of this paragraph suggests that it is the Centre's intention to lead evidence of specific listed activities being undertaken at the mine. Tendele does not accept that the Centre will be permitted to lead evidence of any kind, even if leave to appeal is granted and the Centre is admitted as an *amicus curiae* for the purposes of the appeal.
- 5 Tendele accordingly does not oppose the application for admission as amicus curiae to the extent that the Centre limits itself to making legal submissions and argument at the appropriate time. Tendele does object to any attempt on the part of the Centre to lead evidence in the appeal.
- 6 At paragraphs 41 to 112 of the Centre's founding affidavit, the Centre sets out the legal argument which it intends to advance if admitted as an *amicus*. Tendele denies that these legal arguments are correct. However, I am advised that this is not the appropriate time to enter into the merits of the arguments which the Centre wishes to advance in the event that it is admitted. Tendele reserves the right to do so at the appropriate time.

7 Finally, I note that the Centre, like the applicants for leave to appeal, raises the issue of costs orders in public litigation (at paragraphs 99 to 106) of its founding affidavit. In relation to the costs order granted by this Court:


7.1 I hereby confirm that Tendele unconditionally abandons the costs order granted in its favour by this court.

7.2 Tendele will file a formal notice of abandonment of the costs order in terms of Rule 41(2) in due course.

7.3 The issue of the costs order granted in Tendele's favour need accordingly not feature either in the amicus application or in the application for leave to appeal.


JAW JOHANNES DU PREEZ

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at SANDTON on this the 8 day of MARCH 2019, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.


COMMISSIONER OF OATHS
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BRYANSTON
Capacity: COMMISSIONER OF OATHS
KOMMISSARIS VAN EDE
Practising Attorney R.S.A. & Conveyancer
Praktiserende Prokureur R.S.A. & Aktevervaardiger