

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

Case No: 71174/17

In the matter between:

CHAMBER OF MINES OF SOUTH AFRICA First Applicant

MINING AFFECTED COMMUNITIES UNITED IN ACTION Second Applicant

**WOMEN FROM MINING AFFECTED COMMUNITIES
UNITED IN ACTION** Third Applicant

**MINING AND ENVIRONMENTAL JUSTICE COMMUNITY
NETWORK OF SOUTH AFRICA** Fourth Applicant

BAKGATLA BA SEFIKILE COMMUNITY Fifth Applicant

LESETHLENG COMMUNITY Sixth Applicant

BABINA PHUTHI BA GA-MAKOLA COMMUNITY Seventh Applicant

KGATLU GA MATLALA COMMUNITY Eighth Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

and

NATIONAL UNION OF MINeworkERS

First Amicus Curiae


SOLIDARITY TRADE UNION

Second Amicus Curiae

FILING SHEET

Presented for service and filing: Respondent's Answering Affidavit in response to the First Amicus' Application

Dated at **Johannesburg** on this 22nd day of **November 2017**.



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ABOVE HONOURABLE COURT**

AND TO: NORTON ROSE FULLBRIGHT SOUTH AFRICA INC.

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and

MINISTER OF MINERAL RESOURCES Respondent

and

NATIONAL UNION OF MINEWORKERS First *Amicus Curiae*

SOLIDARITY TRADE UNION Second *Amicus Curiae*

**RESPONDENT'S ANSWERING AFFIDAVIT IN RESPONSE TO THE FIRST
AMICUS' APPLICATION**

I, the undersigned,

MOSEBENZI JOSEPH ZWANE

state under oath that:

1. I am the Minister of Mineral Resources of the Republic of South Africa and was appointed to that post on 23 September 2015. The Minister's office is at building 2C, C/o Meintjes and Francis Baard Street (formerly Schoeman Street), Sunnyside, Pretoria.
2. Unless stated otherwise or the contrary appears from the context, the facts contained in this affidavit fall within my personal knowledge and are to the best of my belief both true and correct.
3. Where I make submissions of law, I do so on the advice of my legal advisors whose advice I accept to be correct.
4. I have read the founding affidavit of Mr Sebitlo Nica Rakau ("**Mr Rakau**") together with the attached documents.

5. I have already responded to the intervention applications in *Mining Affected Communities United in Action and Others v Chamber of Mines and Another* (71147/17), *Bakgatla ba Sefikile Community and Others v Chamber of Mines of South Africa and Another* (73890/17), and to the amicus curiae application in *Solidarity v The Chamber of Mines of South Africa and Another* (43621/17). I respond to this application for the sake of completeness.
6. The trade union NUM has brought application an application to be admitted as an *amicus curiae* in the review application brought by the Chamber of Mines against the Minister of Mineral Resources. The Minister does not oppose the application for admission, but submits that if the hearing date is not extended by another day, all *amici* (including NUM) should be limited to the presentation of written submissions/argument.
7. As indicated by my attorney in correspondence to the Judge President and the Deputy Judge President dated 12 October 2017 and attached to the founding papers as annexure "JA9", the Department and the Minister's approach to this dispute is that all interested parties should have their proverbial say provided that the hearing of this matter and the associated timetable are not threatened. Accordingly I have no objection to NUM being admitted as an *amicus curiae*.

NUM'S SUBMISSIONS

8. Broadly speaking, NUM appears not to support the review application of the Chamber of Mines. It criticises several of the Chamber of Mines' grounds of

review and its approach. It also criticises the 2017 Charter as irrational in its definition of 'Black Person'. NUM seeks to be admitted as an amicus curiae in order to make submissions in that regard (para 28).

9. I have detailed in both my answering affidavit in the Main Application and my answering affidavits in the intervention applications of *Mining Affected Communities United in Action and Others v Chamber of Mines and Another* (71147/17), *Bakgatla ba Sefikile Community and Others v Chamber of Mines of South Africa and Another* (73890/17), the extensive publication participation process, which included consultations with stakeholders in the mining industry, including NUM.
10. The Department has a long-standing practice of consulting with stakeholders, including NUM and mining affected communities, on, among other things, the content and the implementation of the various Mining Charters. The intention is for this practice to continue within the Department during the implementation of the 2017 Charter.
11. I note that NUM concludes that “[n]o person having interest or who is affected by the development of the Charter 2017 was denied an opportunity to participate by making representations prior to its finalization and promulgation.”
12. I agree with NUM and in that the failure to meet targets identified in the 2010 Charter is one of the primary reasons for the preparation and finalisation of the 2017 Charter, the contents of which I have dealt with extensively in my answering

affidavit to the review application. I agree with NUM in relation to its remaining criticisms of the Chamber of Mines's review grounds.

13. I deny that NUM's criticism of the definition of 'Black Person' in the 2017 Charter is irrational or in any way invalid or unlawful.

14. I am advised by my legal representatives that in the event that NUM is admitted as an *amicus curiae* in this matter, any matters arising will be dealt with in argument at the hearing of this matter, to the extent that it is necessary.

SERIATIM

AD PARAS 1-5

15. The allegations in these paragraphs are noted.

AD PARAS 6-20

16. NUM's intervention is no longer before this Court, and does not require to be directly considered further. NUM's submissions as an applicant seeking to be admitted as *amicus curiae* are set out in its founding affidavit in its present application.

17. Save as aforesaid the allegations in these paragraphs are noted.

AD PARAS 21-30

18. The allegations in these paragraphs are noted.

AD PARAS 31-50

19. I note that NUM indicates that:

19.1. *“the workers' rights and interests were properly catered for in the Charter 2017, though not to the satisfaction of NUM as the workers' representative”* (para 47); and

19.2. *“[n]o person having interest or who is affected by the development of the Charter 2017 was denied an opportunity to participate by making representations prior to its finalization and promulgation”* (para 50).

20. Save as aforesaid the allegations in these paragraphs are noted.

AD PARAS 51-70

21. The allegations in these paragraphs are noted.

AD PARAS 71-85

22. NUM alleges that the definition of 'Black Person' in the 2017 Charter, including the apparent exclusion of women, is irrational and illogical. These allegations are denied.

23. I have dealt with this issue in the context of my answer to the review application and in the context of my answer to Solidarity's affidavit in support of its *amicus curiae* application.

24. In any event, I am advised that these allegations constitute legal argument. I am advised that argument in response will be addressed to the court at the hearing of this matter.

25. Save as aforesaid the allegations in these paragraphs are denied.

AD PARAS 86-107

26. The allegations in these paragraphs are noted.

MOSEBENZI JOSEPH ZWANE

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at _____ on _____ November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

Commissioner of Oaths

Full names:

Business address:

Designation:

Capacity: