

IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE DIVISION, CAPE TOWN

Case No: 5663/2023

In the application of:

**HELEN SUZMAN FOUNDATION**

Applicant for admission as *amicus curiae*

In the matter between:

**JOHANNES JOSHUA BEZUIDENHOUT**

First Applicant

**HEROLD BEZUIDENHOUT**

Second Applicant

**JAN BERGH**

Third Applicant

**NUVELD FARMING EMPOWERMENT**

**ENTERPRISE (PTY) LTD**

Fourth Applicant

**EASTERN CAPE AGRICULTURAL RESEARCH PROJECT**

Fifth Applicant

and

**MINISTER FOR AGRICULTURE RURAL DEVELOPMENT  
AND LAND REFORM**

First Respondent

**DEPUTY DIRECTOR GENERAL FOR AGRICULTURE  
RURAL DEVELOPMENT AND LAND REFORM**

Second Respondent

**CHIEF DIRECTOR: WESTERN CAPE PROVINCIAL  
SHARED SERVICE CENTRE**

Third Respondent

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FOUNDING AFFIDAVIT

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I, the undersigned,

**NASEEMA FAKIR**

do hereby make oath and state that:

1. I am an adult director of the applicant for admission as *amicus curiae*, the Helen Suzman Foundation (HSF).
2. The HSF is a non-governmental, public interest, organisation which has as its purpose the promotion of South African democracy and constitutionalism. Its objectives are to defend the values that underpin our liberal constitutional democracy and to promote respect for human rights.
3. The Helen Suzman Foundation (HSF) promotes constitutional democracy, the rule of law and human rights. HSF's mission is to ensure that key institutions of constitutional democracy in South Africa are strengthened and protected so that they, domestically and internationally, deliver on the Constitution's promise.
4. To achieve this, HSF undertakes public interest litigation that safeguards the rights of vulnerable persons who are unable to utilise the ordinary political process to do so; adopts public advocacy interventions and dialogue that promote public participation and deliberation and so result in informed, reasoned state decision-making; and looks to end impunity for systematic criminal conduct destructive of a constitutional state.
5. The HSF has duly authorised the launch of this application.
6. The contents of this affidavit are both true and correct and, save where the contrary appears from the context, are within my personal knowledge. Where I

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rely on information conveyed to me by others, I believe that information to be true and correct.

7. Any legal submissions made in this affidavit are made on the advice of the HSF's legal representatives.
8. The HSF brings this application in terms of Rule 16A of the Uniform Rules of Court for its admission as an *amicus curiae* in the application before this Court under case number 5663/2023, in order to present written and oral submissions to this Court (in the main application). The applicants in the main application (the Applicants) seek, *inter alia*, declaratory relief to ensure that all applications for the redistribution of agricultural state land are considered and determined in a manner that gives effect to the constitutional right to lawful, reasonable and procedurally fair administrative action. The declaratory relief is founded on section 33 of the Constitution.
9. The HSF supports the declaratory relief sought by the Applicants, but it seeks to be admitted as an *amicus curiae* in order to advance two additional submissions:
  - 9.1. That the relief the Applicants seek is justified not only by s 33 of the Constitution, but also by ss 25(5) and 25(6) of the Constitution.
  - 9.2. That the relief should be extended to include a requirement that the Respondents, within 18 months, conduct an audit of all their policies on land redistribution, and then publish all of those policies in the Government Gazette and on their websites.
10. The remainder of this affidavit is structured as follows:

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10.1. in Section A, I provide a brief summary of the facts which have given rise to the HSF's interest in this matter;

10.2. in Section B, I describe the HSF's interest in this matter;

10.3. in Section C, I provide a succinct overview of the submissions that the HSF's intends to advance if it is admitted as *amicus curiae*;

10.4. in Section D, I demonstrate that the HSF has complied with the procedural requirements for admission; and

10.5. in Section E, I conclude.

#### A. FACTUAL BACKGROUND

11. The First to Third Applicants are farmers who operate a farming enterprise. They established the Fourth Applicant company through which they run their farming operations.
12. In December 2019, the Department of Rural Development and Land Reform (**the Department**) published an advertisement inviting candidates to apply for a 30-year lease to conduct farming activities on five farms which, collectively, are called Plateau Farms.
13. Although it is not entirely clear, there are references in various documents which indicate that the decision to invite applications to lease Plateau Farms was taken pursuant to section 11 of the Provision of Land and Assistance Act 126 of 1993 (**the PLAAS Act**).

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14. Section 11 of the PLAAS Act authorises the First Respondent (**the Minister**) to dispose of property as follows:

*The Minister may, on such terms and conditions as he or she may deem fit, for the purposes of this Act, sell, exchange, donate, lease award or otherwise dispose of or encumber any property contemplated in [the Act] or, if such property is no longer required for the purposes of [the Act], for any other purpose.*

15. Section 15(1)(a) of the PLAAS Act authorises the Minister to delegate that power to any officer in the Department of Rural Development and Land Reform.
16. It appears from the letter attached at pages 60 to 63 of the Respondents' supplementary rule 53 record that, at least in relation to Plateau Farm, the Minister took a decision that: "The signing and finalisation of lease contracts is delegated to Provincial Shared Services (PSSC) Chief Director [Chief Director] subject to the approval by the National Land Acquisition and Allocation Control Committee (NLAACC)." At face value, it appears that:

16.1. the approval of a lease is delegated to the NLAACC; and

16.2. the Chief Director is required to sign and finalise the lease, so approved.

17. The Fourth Applicant was one of five entities that applied for the lease; and one of only two entities whose applications complied with the requirements set out in the advertisement.
18. The NLAACC evaluated the two qualifying applicants and recommended that the 30-year lease be concluded with the Fourth Applicant.

19. However, on 27 September 2020, the then acting Chief Director decided not to award the lease to the fourth applicant (this is confirmed in the Reasons for the Decision delivered in the main application on 8 September 2023).
20. Understandably frustrated by the lack of clarity and transparency in the process, the Applicants have approached this Court to secure what they believe to be their right to have the 30-year lease awarded to them.

## **B. THE HSF'S INTEREST**

21. As mentioned, the HSF promotes constitutional democracy, rule of law and human rights. The HSF has a longstanding history of promoting South Africa's commitments to upholding the rule of law, constitutionalism and human rights, all of which are implicated in this matter.
22. HSF is also committed to promoting informed and reasoned state decision making. Without a transparent, uniform and predictable policy framework for land redistribution in South Africa, the process is susceptible to arbitrary decision-making. This, in turn, may present stumbling blocks to deserving candidates for land redistribution, which will impede the realisation of their socio-economic rights.
23. The HSF seeks leave to be admitted as *amicus* in this matter because the issues raised involve the application of the constitutional rights to land, specifically the rights to equitable access to land and security of tenure enshrined in sections 25(5) and (6) of the Constitution.
24. The HSF recognises land redistribution as a mechanism to ensure:

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- 24.1. access to land on an equitable basis as required by section 25(5) of the Constitution, by making land available to individuals and groups that have historically been discriminated against on the grounds of race; and
- 24.2. secure tenure to persons or communities whose tenure of land is legally insecure as a result of past racially discriminatory laws, as required by section 25(6) of the Constitution.
25. On its face, the PLAAS Act is aimed at achieving these constitutional objectives.
26. As an organisation concerned with the principles of constitutionality, human rights and the rule of law, the HSF is concerned that, following an eminently rational process which ultimately led to a recommendation that Plateau Farms be allocated to the Fourth Applicant, the process of allocating the farm was ultimately derailed by the (seemingly capricious) actions of the erstwhile acting Chief Director: Western Cape Provincial Shared Service Centre.
27. As the Applicants and their experts explain, part of the reason this could occur is because of the opacity and uncertainty about the Department's policies relating to the application of the PLAAS Act, other legislation, and other forms or mechanisms of land redistribution and land reform.
28. In particular, at paragraph 180 and 181 of their founding affidavit, the Applicants point out that, even where land redistribution policy documents exist, they are seldom published. The lack of transparency leaves potential beneficiaries for land redistribution unable to properly craft their applications or to hold officials to account in the face of capricious decision-making.

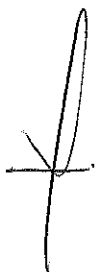
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29. As such, the facts of this case illustrate why it is necessary for the State Respondents to create a coherent, transparent and procedurally fair legal framework within which land redistribution can be facilitated. The absence of proper regulation creates uncertainty, leaves the process open to abuse and caprice, and undermines the rule of law, constitutionalism and human rights.
30. In the circumstances, the legal issues arising out of the above matter fall within the mandate of the HSF.
31. I stress that the HSF's interest is not about the resolution of the particular dispute between the Applicants and the Department. It will make no direct arguments about how that dispute should be resolved. The HSF's interest arises because:
- 31.1. the Applicant's predicament is symptomatic of a broader policy failure by the Department; and
- 31.2. the Applicants seek not only relief for their specific situation, but also broader relief to ensure that the malady does not repeat itself and that other persons in similar circumstances in the future are treated fairly and lawfully.

### C. SUMMARY OF THE HSF'S INTENDED SUBMISSIONS

32. The HSF has considered the amended notice of motion and the affidavits delivered by and on behalf of the Applicants in the main application. The HSF will make legal submissions different to those made on behalf of the Applicants.
33. If admitted as an *amicus curiae*, the HSF intends to make submissions on two issues.

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34. First, it will advance an additional basis for some of the relief the Applicants seek:

34.1. In prayer 8 of the amended notice of motion, the Applicants seek a declaration that *“any applicant that applies for the redistribution of agricultural state land in terms of any legislation, policy, or programme of the government has a right to administrative action that is lawful, reasonable and procedurally fair”*. The relief is founded on the right to just administrative action in section 33 of the Constitution. The HSF supports this relief.

34.2. However, the HSF also contends that the obligation arises not only from section 33, but also from sections 25(5) and (6) of the Constitution. Those rights read:

(5) *The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.*

(6) *A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.*

34.3. Section 25(5) is violated if the policies the state adopts to promote access to land on an equitable basis are not accessible, and are not part of a coherent overall approach to land redistribution.

34.4. Neither right can be promoted or fulfilled, as required by section 7(2) of the Constitution, if the decisions the Department takes to give effect to those rights are not consistent with the principles of administrative justice.

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34.5. The state is constitutionally obliged to: (a) adopt laws and policies that will result in equitable access and security of tenure; and (b) implement and administer those laws and policies in a manner that is lawful, reasonable and procedurally fair. The evidence put up by the Applicants demonstrates that the state has failed to adhere to that second constitutional obligation.

35. Second, the HSF will argue that this Court should oblige the Respondents to audit and publish their land redistribution policies. That is the only way to ensure a procedurally fair process for potential land reform beneficiaries:

35.1. In prayer 9 of the amended notice of motion, the Applicants seek relief specifying what a procedurally fair process in the context of land redistribution policies would require.

35.2. The HSF supports that relief. But it believes that merely declaring the content of the rights will not be sufficient to ensure that the Department complies with its constitutional obligations.

35.3. The HSF will contend that sections 25(5) and (6) – read with sections 33 and 7(2) – impose an obligation on the State to establish a clear, reasonable and uniform legislative and regulatory framework to implement land redistribution. Without that regulatory and policy framework to give effect to its constitutional and statutory obligations, meaningful land reform will be illusory, inaccessible, and open to abuse and corruption.

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35.4. The Applicants' personal and expert evidence, as well as the rule 53 records, demonstrate that the Department has failed to fulfil this constitutional obligation. There is extreme uncertainty on the part of potential beneficiaries, and even among experts, about what policies are in place, when each policy applies, and what the content of the relevant policies are.

35.5. The HSF will therefore contend that this Court should, in terms of its power under section 172(1)(b) of the Constitution and section 8 of PAJA, grant the following additional just and equitable relief:

35.5.1. The Minister and the Director-General must conduct an audit of all of the Department's policies and guidelines that currently regulate the fulfilment of the Department's obligations to facilitate land reform and security of tenure. They must provide a report to this Court setting out the results of that audit.

35.5.2. Following the audit, the Minister and/or the Director-General must publish in the Government Gazette all policies and guidelines applicable to the redistribution of agricultural land in South Africa. They should also publish the relevant policies and guidelines on the Department's website.

36. These submissions are different from those advanced by the Applicants. They are also relevant to the case brought by the Applicants.

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37. These arguments are legal in nature, and rely only on the facts that are already part of the application. The HSF will expand on them more fully in legal argument if it is admitted as an *amicus curiae*.

**D. COMPLIANCE WITH PROCEDURAL REQUIREMENTS**

38. On 2 October 2023, the HSF's attorneys addressed a letter to the applicant and respondents, requesting consent to intervene in the matter. A copy of the letter is attached marked **HSF1**. In the letter, the HSF's attorneys indicated that, if admitted by consent, the HSF would file a short affidavit setting out its position, in order to enable the parties to respond to it on affidavit, as well as in legal submissions. We undertook to do so within 10 days after the Applicant supplemented its founding papers.
39. By response dated 13 October 2023, the Applicants' attorneys confirmed their consent to the HSF's admission as *amicus curiae* (**HSF2**).
40. The Applicants' amended notice of motion and supplementary founding papers were delivered on 2 February 2024.
41. The Respondents have not responded to the HSF's letter of 2 October 2023.
42. It is accordingly necessary for the HSF to bring this application for its admission as *amicus curiae*.
43. Regrettably, it was not practically possible for the HSF's legal representatives to bring this application within 10 days of receipt of the Applicants' supplementary papers. To the extent necessary, I humbly ask that the delay in bringing this application be condoned.

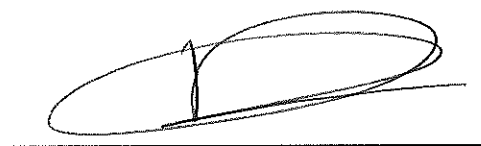
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44. The Respondents have not yet filed answering papers. In those circumstances, I respectfully submit the parties to the application will not suffer any prejudice as a result of the HSF's non-compliance with Rule 16A.

**E. CONCLUSION**

45. I respectfully submit that the HSF has satisfied the requirements for admission as *amicus curiae*.

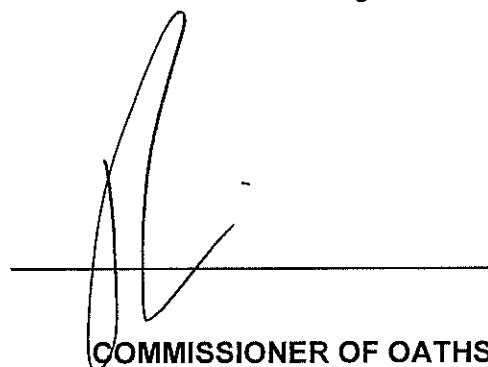
46. I pray for orders condoning the HSF's non-compliance with the time period in rule 16A, admitting the HSF as *amicus curiae*, and permitting it to present written and oral argument, as per the notice of motion that accompanies this affidavit.



**DEPONENT**

The deponent has acknowledged that she knows and understands the contents of this affidavit which was signed and sworn before me at Johannesburg on this 2<sup>nd</sup> day of June 2024, the regulations contained in Government Notice No. 1258 of 21 July 1972, as amended and Government Notice No. R 1648 of 19 August 1977, as amended have been complied with.

**DANIEL BASCKIN**  
 Practising Attorney  
 Le Val, North Block  
 45 Jan Smuts Avenue  
 Westcliff, Johannesburg  
 South Africa  
 Tel: 011 486 0242/3  
 Commissioner of Oaths



**COMMISSIONER OF OATHS**

FULL NAMES:

DESIGNATION:

ADDRESS:

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**The State Attorney**  
Attention: **L Golding**  
Per email: [LGolding@justice.gov.za](mailto:LGolding@justice.gov.za)  
(Ref: Bezuidenhout/22/P10)

**Legal Resources Centre**  
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02 October 2023

Dear Sir / Madam

**Re: BEZUIDENHOUT & OTHERS v MINISTER FOR AGRICULTURAL RURAL DEVELOPMENT AND LAND REFORM AND OTHERS CASE NUMBER 5663/23**

1. We write on behalf of the Helen Suzman Foundation (HSF), which has instructed us to apply for its admission as *amicus curiae* in this matter.
2. The HSF is a non-governmental, public interest, organisation which has as its purpose the promotion of South African democracy and constitutionalism. Its objectives are to defend the values that underpin our liberal constitutional democracy and to promote respect for human rights.
3. The HSF has a longstanding history of promoting South Africa's commitments to upholding the rule of law, constitutionalism and human rights, all of which are implicated in this matter.
4. The HSF seeks leave to enter as amicus in this matter because the issues raised involve the application of the constitutional rights to land, specifically the rights to equitable access to land and security of tenure enshrined in section 25(5) and (6) of the Constitution.

**Competition Law Specialists • Litigation Attorneys • Regulatory Advice • White-Collar Crime**

Directors: Anthony Norton • Anton Roets • Paul Russell • Warwick Radford • Michelle Rawlinson • Nicola Ilgner

Vice President - Economics: Avias Ngwenya

Senior Associates: Nicci van der Walt • Melissa Steele • Nina Greyling

Company Registration No.: 2009/006902/21 • VAT Registration No.: 4510252580

5. The HSF recognises land redistribution as a mechanism to ensure access to land on an equitable basis as required by section 25(5) of the Constitution, by making land available to individuals and groups that have historically been discriminated against on the grounds of race.
6. In the circumstances, the legal issues arising out of the above matter fall within the mandate of the HSF.
7. The HSF seeks admission as an *amicus curiae* to advance two submissions that are novel and relevant.
8. First, in prayer 11 of their notice of motion, the Applicants seek a declaration that “*any applicant that applies for the redistribution of agricultural state land in terms of any legislation, policy, or programme of the government has a right to administrative action that is lawful, reasonable and procedurally fair*”. The relief is founded on section 33 of the Constitution.
9. The HSF supports the relief. But it will seek to contend that the obligation arises not only from section 33, but also from sections 25(5) and (6) of the Constitution. Those rights cannot be realised if the state does not: (a) adopt laws and policies that will result in equitable access and security of tenure; and (b) implement and administer those laws and policies in a manner that is lawful, reasonable and procedurally fair. The evidence put up by the Applicants demonstrates that the state has failed to adhere to that second constitutional obligation.
10. Second, in prayer 12 of their notice of motion, the Applicants seek relief specifying what a procedurally fair process in the context of land reform policies would require. The HSF supports that relief. But it believes that merely declaring the content of the rights will not be sufficient to ensure that the Department complies with its constitutional obligations.
11. The HSF will contend that sections 25(5) and (6) – read with sections 33 and 7(2) – impose an obligation on the State to establish a clear, reasonable and uniform legislative and regulatory framework to implement land redistribution. Without that regulatory and policy framework to give effect to its constitutional and statutory obligations, meaningful land reform will be illusory, inaccessible, and open to abuse and corruption.

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12. The Applicants' personal and expert evidence demonstrates that the Department has failed to fulfil this constitutional obligation. There is extreme uncertainty on the part of potential beneficiaries, but even among experts, about what policies are in place, when each policy applies, and what the content of the relevant policies is.
13. The HSF will therefore contend that this Court should, in terms of its power under section 172(1)(b) of the Constitution and section 8 of PAJA, grant the following additional just and equitable relief:
  - 13.1 The Minister and the Director-General must conduct an audit of all policies and guidelines that currently regulate the fulfilment of the obligations to facilitate land reform and security of tenure and provide a report to this Court setting out the results of that audit.

Following the audit, the Minister and/or the Director-General must publish in the Government Gazette all policies and guidelines applicable to the redistribution of agricultural land in South Africa. The relevant policies and guidelines should also be published on the Department's website.
14. The HSF thus requests the consent of the parties to participate in the proceedings, including the delivery of written submissions, and the presentation of oral argument, in accordance with Rule 16A of the Uniform Rules of Court. The HSF does not intend to introduce additional evidence. But if admitted by consent, it will file a short affidavit setting out its position, in order to enable the parties to respond to it on affidavit, as well as in legal submissions. It will do so within 10 days after the Applicants supplement their founding papers.
15. We look forward to your response to this letter by close of business on 9 October 2023.

Yours faithfully,

*[Unsigned due to electronic transmission]*

**Anton Roets / Michelle Rawlinson / Nina Greyling**

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**Nortons Inc .**

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HSF2

Mr Anton Roets

13 October 2023

Nortons Inc

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Cc: The State Attorney

L Golding

Per email: [LGolding@justice.gov.za](mailto:LGolding@justice.gov.za)

Dear Sir/Madam,

**BEZUIDENHOUT & OTHERS v MINISTER FOR AGRICULTURE RURAL  
DEVELOPMENT AND LAND REFORM AND OTHERS (CASE NUMBER 5663/23)**

The above matter and your letter dated 2 October 2023 refer. We hold instructions to consent to your client's request for intervention as an *amicus curiae*.

Kind regards,

**WILMIËN WICOMB**

**LEGAL RESOURCES CENTRE**

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