

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

CASE NO: 25063/16

In the matter between:

SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED

Plaintiff

and

THANDANANI PACKERS & HAULIERS

Defendant

DEFENDANT'S PLEA

The defendant pleads to the plaintiff's Particulars of Claim as follows.

1. **FIRST SPECIAL PLEA**

1.1 The plaintiff sues the defendant for e-toll liability allegedly incurred by the defendant in an amount of R402 841.62 ("the claimed amount").

1.2 In particular, the plaintiff alleges that:

1.2.1 on 28 March 2008 and 28 July 2008, the plaintiff declared the following sections of national road (hereafter collectively referred to as “the GFIP highways”) to be toll roads in terms of section 27(1)(a)(i) of the South African National Roads Agency Limited and National Roads Act 7 of 1998 (“SANRAL Act”):

1.2.1.1 sections 20 and 21 of the N1;

1.2.1.2 section 12 of the N3;

1.2.1.3 section 1 of the N4;

1.2.1.4 sections 18 and 19 of the N12; and

1.2.1.5 sections 1 and 2 of the R21;

(Particulars of Claim paragraphs 4 to 7)

1.2.2 between 22 January 2014 and 31 August 2015, vehicles registered in the name of the defendant passed under e-toll gantries situated on the GFIP highways, which are deemed to be toll plazas for the purposes of section 27(1)(b) of the SANRAL Act;

(Particulars of Claim paragraphs 14 to 15)

1.2.3 the passage of vehicles registered in the name of the defendant under e-toll gantries caused the defendant to incur e-toll liability, the total aggregate amount being the claimed amount;

(Particulars of Claim paragraphs 14 to 15 read with annexure A)

1.2.4 despite the fact that the 7-day grace period for payment of e-toll liability incurred has lapsed and the defendant has been duly invoiced, the defendant has not paid the amount.

(Particulars of Claim paragraphs 19 to 30)

1.3 The plaintiff purported to declare the GFIP highways to be toll roads by publication of the following declarations in terms of section 27(1)(a)(i) of the SANRAL Act (“the toll declarations”):

1.3.1 the declaration of National Road N1, Section 20: from Armadale to Midrand as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 349 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 349 is attached hereto as annexure “D1”;

- 1.3.2 the declaration of National Road N1, Section 21, from Midrand to the Proefplaas Interchange as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 350 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 350 is attached hereto as annexure "D2";
- 1.3.3 the declaration of National Road N3: Section 12: from Old Barn Interchange to the Buccleuch Interchange as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 351 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 351 is attached hereto as annexure "D3";
- 1.3.4 the declaration of National Road N4: Section 1: from Koedoespoort to Hans Strydom Drive as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 352 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 352 is attached hereto as annexure "D4";

- 1.3.5 the declaration of National Road N12: Section 18: from Diepkloof Interchange to Elands Interchange as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 353 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 353 is attached hereto as annexure "D5";
- 1.3.6 the declaration of National Road N12: Section 19: from Gillooly's Interchange to the Gauteng/Mpumalanga Provincial Border as a continuous toll road and the establishment of electronic toll points, dated 28 March 2008 and published as Government Notice No. 354 in Government Gazette No. 30912 dated 28 March 2008. A copy of Government Notice No. 354 is attached hereto as annexure "D6"; and
- 1.3.7 the declaration of National Road R21 (also known as the P157-1 and P157/2) - Sections 1 and 2: from Hans Strydom Drive to Rietfontein Interchange (N12): Province of Gauteng, as a toll road and the establishment of electronic toll points, dated 28 July 2008 and published as Government Notice No. 800 in Government Gazette

No. 31273 dated 28 July 2008. A copy of Government Notice No. 355 is attached hereto as annexure "D7".

1.4 The toll declarations are, however, unlawful and invalid because the plaintiff failed to comply with:

1.4.1 section 27(4) of the SANRAL Act; *alternatively*,

1.4.2 section 27(4) of the SANRAL Act read with section 4(1) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA")

before applying to the Minister of Transport ("the Minister") in terms of section 27(1)(a) read with 27(4) of the SANRAL Act for approval.

1.5 The plaintiff failed to comply with section 27(4) of the SANRAL Act, *alternatively* section 27(4) of the SANRAL Act read with section 4(1) of PAJA, in that:

1.5.1 the content of each of the notices of intent to toll published by the plaintiff in terms of section 27(4)(a) of the SANRAL Act prior to its applications to the Minister for approval ("the notices of intent to toll") was materially inadequate and/or irregular;

- 1.5.2 the extent of the publication of the notices of intent to toll was materially inadequate and/or irregular;
 - 1.5.3 the public was afforded insufficient time to comment and make representations in response to the notices of intent to toll;
 - 1.5.4 respondents to the notices of intent to toll were not provided with the plaintiff's subsequent proposals to the Minister, or with any of the other material placed before the Minister as part of the applications on 10 January 2008 (in respect of the various sections of the N1, N3, N4 and N12) and 9 July 2008 (in respect of the two sections of the R21) for approval, and were not otherwise informed how the plaintiff intended to accommodate comments and representations received;
 - 1.5.5 the plaintiff did not fairly and properly consider comments and representations received from the public pursuant to the notices of intent to toll that the GFIP highways should not be declared toll roads.
- 1.6 The toll declarations are therefore unlawful and invalid in terms of
- 1.6.1 sections 6(2)(b), 6(2)(c), 6(2)(f) and/or 6(2)(i) of PAJA; and/or

1.6.2 section 1(c) of the Constitution.

1.7 In the premises, the defendant is not liable, and cannot be ordered, to pay the claimed amount.

WHEREFORE the defendant prays that the plaintiff's claim be dismissed with costs.

2. **SECOND SPECIAL PLEA**

2.1 Paragraphs 1.1 to 1.3 hereof are repeated.

2.2 The toll declarations were made on the strength of the following approvals ("the Minister's approvals") granted by the Minister in response to the applications for approval referred to in paragraph 5.4 hereof:

2.2.1 the approvals dated 11 February 2008 that the following sections of national road be declared toll roads:

2.2.1.1 sections 20 and 21 of the N1;

2.2.1.2 section 12 of the N3;

2.2.1.3 section 1 of the N4;

2.2.1.4 sections 18 and 19 of the N12;

2.2.2 the approvals dated 13 July 2008 that sections 1 and 2 of the R21 be declared toll roads.

2.3 The Minister's approvals are unlawful and invalid in that:

2.3.1 prior to granting them, the Minister failed to consider, *alternatively* failed properly to consider one or more or all of the following materially relevant considerations:

2.3.1.1 the costs of toll operations;

2.3.1.2 alternative methods of funding the GFIP;

2.3.1.3 whether road users in Gauteng had any reasonable alternative routes to the GFIP highways available to them;

2.3.1.4 the feasibility and/or practical impossibility of enforcing open road tolling of the GFIP highways; and/or

2.3.1.5 in deciding whether to grant approval, the Minister improperly fettered his discretion and/or abdicated his decision-making power by

considering himself to be bound to follow the Cabinet decision in July 2007 to approve the Gauteng Freeway Improvement Project ("GFIP") as a state implemented toll road scheme; and/or

2.3.1.6 in deciding whether to grant approval, the Minister failed to consider the substance of the application and instead limited his role to checking whether the plaintiff had complied with the letter of section 27(4) of the SANRAL Act.

2.4 In the premises, the Minister's approvals are unlawful and invalid:

2.4.1 in terms of sections 6(2)(b), 6(2)(d), 6(2)(e)(iii), 6(2)(e)(iv), 6(2)(e)(vi), 6(2)(f)(ii)(aa), 6(2)(h) and/or 6(2)(i) of PAJA; *alternatively* section 1(c) of the Constitution;

2.4.2 because the process followed by the Minister in deciding to grant the approvals was irrational and in conflict with Section 1(c) of the Constitution;

2.4.3 because the Minister's decisions to grant the approvals were irrational and in conflict with Section 1(c) of the Constitution.

2.5 In consequence, the toll declarations, made on the strength of the Minister's approvals, are unlawful and invalid.

2.6 Paragraph 1.7 hereof is repeated.

WHEREFORE the defendant prays that the plaintiff's claim be dismissed with costs.

3. **THIRD SPECIAL PLEA**

3.1 Paragraphs 1.1 to 1.3 hereof are repeated.

3.2 The toll declarations are unlawful and invalid because they were not preceded by lawful and valid decisions by the plaintiff's Board in terms of section 27(1)(a)(i) read with section 18(5) of the SANRAL Act to declare the GFIP highways toll roads.

3.3 The plaintiff's Board did not:

3.3.1 resolve, *alternatively* properly and lawfully resolve, prior to or on 28 March 2008, that the sections of the N1, N3, N4 and N12 referred to in paragraph 3.1 to 3.6 hereof be declared toll roads; or

3.3.2 resolve, *alternatively* properly and lawfully resolve, prior to or on 28 July 2008, that sections 1 and 2 of the R21 be declared toll roads.

3.4 The toll declarations are accordingly unlawful and invalid in terms of

3.4.1 section 6(2)(a)(i), 6(2)(a)(ii), 6(2)(b), 6(2)(d) and/or 6(2)(i) of PAJA; and/or

3.4.2 section 1(c) of the Constitution.

3.5 Paragraph 1.7 hereof is repeated.

WHEREFORE the defendant prays that the plaintiff's claim be dismissed with costs.

4. **FOURTH SPECIAL PLEA**

4.1 In the event that the court finds that the plaintiff's Board in fact lawfully resolved to declare the GFIP highways to be toll roads in terms of section 27(1)(a)(i) read with 18(5) of the SANRAL Act, the defendant pleads as follows in the alternative to the Third Special Plea.

4.2 Paragraphs 1.1 to 1.3 hereof are repeated.

- 4.3 The decisions by the plaintiff's Board to declare the GFIP highways to be toll roads are unlawful and invalid because in making them, the plaintiff's Board:
- 4.3.1 failed to consider alternative methods of funding;
 - 4.3.2 improperly and/or unlawfully excluded the fuel levy as a method of funding for GFIP;
 - 4.3.3 failed to consider whether the enforcement of open road tolling was practically possible in the case of GFIP;
 - 4.3.4 failed to consider whether there were reasonable alternative routes to the GFIP highways available to the road using public;
 - 4.3.5 failed to consider the cost of toll operations;
 - 4.3.6 failed to consider the substance of the representations made by the public in response to the notices of intent to toll published on 12 October 2007 and on 18 April 2008 respectively; and/or
 - 4.3.7 fettered its discretion by regarding as binding upon it the Cabinet decision in July 2007 to approve GFIP as a state implemented toll road scheme.

- 4.4 Each of the considerations set out paragraphs 4.3.1 to 4.3.6 above was a materially relevant consideration that the plaintiff's Board was required to have taken into account.
- 4.5 In the premises, the decisions by the plaintiff's Board to declare the GFIP highways toll roads were unlawful and invalid
- 4.5.1 in terms of sections 6(2)(c), 6(2)(d), 6(2)(e)(iii), 6(2)(e)(iv), 6(2)(e)(vi), 6(2)(f)(ii)(aa), 6(2)(f)(ii)(cc), 6(2)(h) and/or 6(2)(i) of PAJA; *alternatively* Section 1(c) of the Constitution;
- 4.5.2 because the process followed by the plaintiff's Board making such decisions was irrational and in conflict with Section 1(c) of the Constitution;
- 4.5.3 because the decisions by the plaintiff's Board to declare the GFIP highways toll roads were irrational and in conflict with Section 1(c) of the Constitution.
- 4.6 Paragraph 1.7 hereof is repeated.

WHEREFORE the defendant prays that the plaintiff's claim be dismissed with costs.

5. **FIFTH SPECIAL PLEA**

- 5.1 Paragraphs 1.1 to 1.3 hereof are repeated.
- 5.2 The toll declarations are unlawful and invalid because they were not preceded by lawful and valid decisions by the Minister for Environmental Affairs *alternatively* the Director General of Environmental Affairs, to grant the following environmental authorisations in terms of section 24 of the National Environmental Management Act 107 of 1998 ("NEMA") and the Regulations and Notices made thereunder:
- 5.2.1 Environmental Authorisation Reference 12/12/20/918 for the proposed upgrading of National Route 1 Section 20 and 21 between Buccleuch and Brakfontein Interchanges to commence and continue with activities 1(m), 1(v), 4, 7, 14 and 15 listed in the schedule to Government Notice No. R386 published in Government Gazette No 28753 dated 21 April 2006 ("GNR 386");
- 5.2.2 Environmental Authorisation Reference 12/12/20/919 for the proposed upgrading of National Route 1 Section 20 between Buccleuch and Fourteenth Avenue Interchanges to commence and continue with activities 1(m), 1(v), 4, 7, 14 and 15 listed in the schedule to GNR 386;

- 5.2.3 Environmental Authorisation Reference 12/12/20/920 for the proposed upgrading of National Route 1 Section 20 between Misgund and Fourteenth Avenue Interchanges to commence and continue with activities 1(m), 1(v), 4, 7, 14 and 15 listed in the schedule to GNR 386;
- 5.2.4 Environmental Authorisation Reference 12/12/20/922 for the proposed upgrading of National Route 3 Section 12 between Dwars in die Weg and Geldenhuys Interchanges to commence and continue with activities 1(m), 1(v), 4, 7, 14 and 15 listed in the schedule to GNR 386;
- 5.2.5 Environmental Authorisation Reference 12/12/20/923 for the proposed upgrading of National Route 12 Section 18 between Uncle Charlies and Elands Interchanges to commence and continue with activities 1(m), 1(v), 4, 7, 14 and 15 listed in the schedule to GNR 386;
- 5.2.6 Environmental Authorisation Reference 12/12/20/926 for the proposed upgrading of National Route 1 between Brakfontein and the Waterfkloof Interchanges to commence and continue with activities 1(m), 1(v), 4, 7, 14 and 15 listed in the schedule to GNR 386;

- 5.2.7 Environmental Authorisation for the proposed upgrading of the Regional Route 21 between the N12 and Hans Strijdom Drive Interchanges to commence and continue with activities set out in paragraph 1 of section B of the undated basic assessment report compiled by Arup/ Tswelopele Environmental.
- 5.3 The issue of lawful and valid environmental authorisations was a condition precedent to the toll declarations.
- 5.4 The grant of the environmental authorisations referred to in paragraph 5.2 above were unlawful and invalid in that:
- 5.4.1 the content of each of the plaintiff's applications for an environmental authorisation and/or of the notices to the public of such applications was materially defective because it failed to disclose:
- 5.4.1.1 in addition to the plaintiff's intention to undertake the upgrades and improvements constituting the GFIP highways, its intention to fund such upgrades and improvements through e-tolling;

- 5.4.1.2 the socio-economic impacts that the proposed tolling would have on the environment;
- 5.4.2 those environmental authorisations were granted by the Chief Director: Environmental Impact Management who lacked authority to take such decisions;
- 5.4.3 in granting those environmental authorisations, the Chief Director failed to consider one or more or all of the following materially relevant considerations:
 - 5.4.3.1 the socio-economic impact that the proposed tolling would have on the environment;
 - 5.4.3.2 the cumulative impact on the environment of recouping costs through tolling on the environment;
 - 5.4.3.3 the feasible and reasonable alternatives to recouping costs through tolling; and
 - 5.4.3.4 the appropriate conditions and mitigation measures to be imposed, given these impacts.
- 5.5 In the premises, the environmental authorisations are unlawful and invalid:

5.5.1 in terms of sections 6(2)(a)(i), 6(2)(b), 6(2)(c), 6(2)(e)(iii), 6(2)(e)(vi), 6(2)(f)(ii)(aa), 6(2)(h) and/or 6(2)(i) of PAJA;

5.5.2 in terms of section 1(c) of the Constitution.

5.6 In consequence, the toll declarations, made on the strength of the environmental authorisations, are unlawful and invalid.

5.7 Paragraph 1.7 hereof is repeated.

WHEREFORE the defendant prays that the plaintiff's claim be dismissed with costs.

6. **SIXTH SPECIAL PLEA**

6.1 Paragraphs 1.1 to 1.3 hereof are repeated.

6.2 Regulation 6(3) read with regulation 6(10) of the e-Road Regulations requires the plaintiff to notify a registered user, within 90 days of its use of a toll road, of the amount of toll payable and the date for payment, by sending an invoice to the user's last known address as recorded on the user's e-toll account (where such user has an e-toll account), or on NaTIS (where the user is identified by the VLN of the vehicle), or by sending an electronic message to the user's email address or cellular telephone.

6.3 Regulation 6(5) read with regulation 6(10) of the e-Road Regulations requires the plaintiff to notify an alternate user, within 60 days after its use of a toll road, of the amount of toll payable and the date for payment, in the aforesaid manner.

6.4 The plaintiff alleges that:

6.4.1 It sent various invoices in respect of each of the toll transactions to the defendant by post, at its last known address provided in terms of the National Road Traffic Act 93 of 1996; and

(Particulars of Claim paragraphs 21 to 23)

6.4.2 it brought the full outstanding amount of e-tolls as at 31 August 2015 to the defendant's attention on or about 18 February 2016, by sending a statement to an (unspecified) email address of an unidentified representative of the defendant.

(Particulars of Claim paragraph 25)

6.5 The plaintiff has not taken reasonable steps to apprise the defendant of the outstanding toll amount and/or to ensure that the invoices would have come to the attention of a reasonable user, in that it:

- 6.5.1 failed to send invoices to the defendant's last known address as recorded on the its e-toll account, despite the fact that the defendant, on the plaintiff's version, held an e-toll account;
 - 6.5.2 failed to send an electronic message to the defendant's e-mail address or cellular telephone;
 - 6.5.3 failed to cause the invoices to be sent by registered mail, rather than ordinary mail;
 - 6.5.4 failed to ensure that the invoices were sent to an address at which they would come to the defendant's attention and/or be timeously collected; and/or
 - 6.5.5 failed to send invoices at all during the period 8 to 26 February 2014, 19 and 31 August 2014, and 30 September to 14 October 2014.
- 6.6 The plaintiff has therefore failed to effect delivery of the invoice and/or to notify the defendant of the toll payable within the prescribed period, or at all.
- 6.7 In the premises,

6.7.1 the defendant not liable for the alleged use of the GFIP highways during the period 22 January 2014 to 31 August 2015; *alternatively*

6.7.2 the plaintiff's claim is premature.

6.8 Paragraph 1.7 hereof is repeated.

WHEREFORE the defendant prays that the plaintiff's claim be dismissed with costs.

7. **SEVENTH SPECIAL PLEA**

7.1 Paragraphs 1.1 to 1.3 hereof are repeated.

7.2 The plaintiff alleges that:

7.2.1 On 19 November 2013, the Head of the Department of Transport made known by publication in GNR887 in Government Gazette 37038 that the Minister had determined, in terms of section 27(3)(a) of the SANRAL Act, the tolls to be levied on the GFIP toll road from 3 December 2013. A copy of that notice ("the 2013 Toll Tariffs") is attached as "E1";

(Particulars of Claim paragraph 12.2)

7.2.2 On 17 June 2015, the Head of the Department of Transport made known by publication in GNR524 in Government Gazette 38884 (as corrected by GN579 in Government Gazette 38949, GN645 in Government Gazette 39027 and GN972 in Government Gazette 39298) that the Minister had determined, in terms of section 27(3)(a) of the SANRAL Act, the tolls to be levied on the GFIP toll road from 2 July 2015. A copy of that notice (“the 2015 Toll Tariffs”) is attached as “E2”;

(Particulars of Claim paragraph 13.2)

7.2.3 The 2013 and 2015 Toll Tariff prescribe the toll tariff that must be paid by registered and unregistered alternate users for the various classes of vehicle during the period referred to in Schedule A to the Particulars of Claim.

(Particulars of Claim paragraph 19)

7.3 The 2013 and 2015 Toll Tariffs both stipulate a toll tariff amount inclusive of value-added tax (“VAT”), such that VAT is payable on every e-toll transaction recorded.

7.4 Section 7(1) of the Value-Added Tax Act 89 of 1991 (“the VAT Act”) requires VAT to be levied and paid in respect of the supply by any

vendor of goods or services supplied in the course or furtherance of any enterprise carried on by such vendor.

7.5 Neither the Department of Transport nor the plaintiff is registered as a vendor for VAT purposes and/or neither is lawfully entitled to levy or collect VAT, *alternatively* neither is lawfully entitled to levy and collect VAT from a registered e-tag user, a registered alternate user and/or an unregistered alternate user for the use of the GFIP highways.

7.6 The 2013 and 2015 Toll Tariffs are unlawful and invalid in that they purport to authorise the plaintiff to levy and collect tax to which they are not entitled, and do not specify a toll tariff exclusive of VAT.

7.7 As a result, no lawful toll tariff has been prescribed.

7.8 Paragraph 1.7 hereof is repeated.

WHEREFORE the defendant prays that the plaintiff's claim be dismissed with costs.

8. **EIGHTH SPECIAL PLEA**

8.1 Paragraphs 1.1 to 1.3 hereof are repeated.

- 8.2 The plaintiff failed to provide reasonable alternative, non-tolled routes to the GFIP highways.
- 8.3 That failure violated the defendant's constitutional rights to:
- 8.3.1 freedom of movement (as entrenched in section 21(1) of the Constitution);
- 8.3.2 equal protection of the law (as entrenched in section 9(1) of the Constitution).
- 8.4 The toll declarations are consequently unconstitutional and invalid.
- 8.5 Paragraph 1.7 hereof is repeated.

WHEREFORE the defendant prays that the plaintiff's claim be dismissed with costs.

PLEA OVER

9. AD PARAGRAPHS 1-3

The defendant admits the allegations contained herein.

10. **AD PARAGRAPHS 4-7**

10.1 On 28 March 2008 and 28 July 2008, the plaintiff purported to declare the sections of national road identified in paragraphs 5.1 to 5.4 and 7.1 to 7.2 of the Particulars of Claim to be toll roads. Copies of such purported declarations are attached hereto as "D1" to "D7".

10.2 Save as aforesaid, the allegations contained herein are denied.

10.3 Without derogating from the generality of the foregoing denial, the defendant repeats paragraphs 1 to 5, and 8 hereof.

11. **AD PARAGRAPH 8**

11.1 The defendant admits the GFIP highways are located within the court's jurisdiction.

11.2 Save as aforesaid, the defendant notes the allegation contained herein.

12. **AD PARAGRAPHS 9-11**

The defendant notes the allegations contained herein.

13. **AD PARAGRAPHS 12-13**

13.1 The defendant admits:

13.1.1 that on 19 November 2013:

13.1.1.1 the plaintiff purported to publish the 2013 conditions of toll in terms of section 27(1)(b) of the SANRAL Act;

13.1.1.2 the head of Department of Transport purported to publish the 2013 toll tariffs in terms of section 27(3)(a) of the SANRAL Act;

13.1.2 that on 17 June 2015:

13.1.2.1 the plaintiff purported to publish the 2015 conditions of toll in terms of section 27(1)(b) of the SANRAL Act; and

13.1.2.2 the head of department purported to publish the 2015 toll tariffs determined by the Transport Minister in terms of section 27(3)(a) of the SANRAL Act.

13.2 The defendant denies that the 2013 conditions of toll, the 2013 toll tariffs, the 2015 conditions of toll or the 2015 toll tariffs are lawful and valid.

13.3 Without derogating from the generality of the foregoing denial, the defendant pleads that:

13.3.1 the validity of the administrative action identified in paragraphs 12.1, 12.2, 13.1 and 13.2 of the Particulars of Claim depended on the legal validity of the toll declarations;

13.3.2 the toll declarations were unlawful and invalid for the reasons set out in paragraphs 1 to 5, and 8 hereof; and

13.3.3 by consequence, the 2013 conditions of toll, the 2013 toll tariffs, the 2015 conditions of toll or the 2015 toll tariffs are unlawful and invalid.

14. AD PARAGRAPHS 14-16

14.1 The defendant admits being the registered owner of the following vehicles during the period 22 January 2014 to 31 August 2015:

14.1.1 TPJ 322 GP;

14.1.2 WPZ 792 GP

14.1.3 WPD 972 GP

14.1.4 Save as aforesaid, the defendant denies the allegations contained herein.

14.2 Without derogating from the generality of the foregoing denial, the defendant denies each and every alleged e-toll transaction contained in annexure "A" to the Particulars of Claim.

15. **AD PARAGRAPHS 16-18**

15.1 The defendant repeats paragraph 14.1 hereof.

15.2 Save as aforesaid, the defendant denies the allegations contained herein.

16. **AD PARAGRAPH 19**

16.1 The defendant repeats paragraphs 13.2 to 13.3 hereof.

16.2 Save as aforesaid, the allegations contained herein are denied.

17. **AD PARAGRAPH 20**

17.1 The defendant admits not paying the plaintiff the amount, or part thereof, for e-toll liability allegedly incurred between 22 January 2014 and 31 August 2015.

17.2 The defendant denies it is liable to pay the plaintiff the claimed amount, or any amount at all.

18. **AD PARAGRAPHS 21-26**

The defendant denies the allegations contained herein.

19. **AD PARAGRAPH 27**

19.1 The defendant admits not paying the plaintiff the claimed amount, or part thereof, for e-toll liability allegedly incurred between 22 January 2014 and 31 August 2015.

19.2 Save as aforesaid, the defendant denies the allegations contained herein.

20. **AD PARAGRAPHS 28**

The defendant denies the allegations contained herein, including the entire content of the schedule.

21. **AD PARAGRAPH 29**

21.1 The defendant notes the allegations contained herein.

21.2 The defendant denies, however, that:

21.2.1 it is lawful for the plaintiff to charge VAT on tolls;

21.2.2 the 2013 and 2015 tariffs notices comply with section 7(1) of the VAT Act;

21.2.3 invoices issued by the plaintiff for e-toll liability comply with and/or section 20(2) or 20(4) read with section 20(1) of the VAT Act.

21.2.4 Without derogating from the generality of the foregoing denial, the defendant repeats paragraphs 7.1 to 7.8 hereof.

22. AD PARAGRAPHS 30-31

22.1 The defendant denies that it is liable to pay to the plaintiff the amount claimed or any amount at all.

22.2 Save as aforesaid, the defendant denies the allegations contained herein.

DATED AT SANDTON ON THIS THE 10th DAY OF MAY 2017.


 JOHANNES CHRISTIAN VAN DER WALT

A practising attorney with Right of Appearance
 In the High Court of South Africa in terms of section 4(2)
 of the Right of Appearance in Court Act, Act 62 of 1995


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