



## CONSTITUTIONAL COURT OF SOUTH AFRICA

**National Treasury and Others v Opposition to Urban Tolling Alliance and Others**

**Case CCT 38/12**

**Date of Hearing: 15 August 2012**

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### MEDIA SUMMARY

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

On Wednesday 15 August 2012, at 10h00, the Constitutional Court will hear an urgent application for leave to appeal directly to the Court against an interim interdict granted by the North Gauteng High Court, Pretoria (High Court), restraining the South African National Roads Agency (SANRAL) from implementing its decision to toll certain Gauteng freeways.

The urgent application is brought by the National Treasury together with SANRAL and other government agencies that have not filed affidavits. The respondents are the Opposition to Urban Tolling Alliance (OUTA), a voluntary association, the South African Vehicle Rental and Leasing Association, Quadpara Association of South Africa, South African National Consumer Union and the National Consumer Commission.

On 28 April 2012, the High Court granted OUTA an interim restraining order against the applicants, pending the final determination of an application for the review and setting aside the decisions to declare certain Gauteng roads as toll roads and to set aside the environmental authorisations that were granted for the purpose of the Gauteng Freeway Improvement Project (GFIP) under an environmental law.

The applicants contend that the application for leave to appeal raises important constitutional issues that are integral to the rule of law and the doctrine of separation of powers and that have wide-ranging consequences for public finance and the national economy. They submit that an urgent direct appeal to this Court is justified because there is a pressing public interest in the expedited, final determination of the question whether alternative means must in the interim be found to fund the GFIP should the interim order stand. They further contend that the grant of the interim interdict by the High Court is inconsistent with the separation of powers. They request this Court to determine whether the High Court applied the correct test for the grant of an interim interdict, given the polycentric, policy-laden and budgetary nature of the decisions that the respondents seek to have reviewed and set aside.

The respondents submit that before the High Court, the first and second applicants accepted the standard test for the grant of an interim interdict and that the High Court proceeded to apply that test. The respondents argue that the commencement of e-tolling will have prejudicial consequences for many thousands of commuters in Gauteng. They say that the costs of its implementation are so excessive as to be reviewable on the ground that they are unreasonable. They submit that the grant of interim relief merely serves to preserve for a few months longer the status quo that existed for some time and that therefore the balance of convenience favours the granting of the interim relief. The respondents further contend that the decisions under attack are not political, economic or so policy-laden as to warrant judicial deference.

The Road Freight Association (RFA) has applied to be admitted as an intervening party. It seeks to argue that the State improperly vested in SANRAL, a private corporation, autonomous, proprietary and regulatory rights over road links that form an indispensable government function. In effect, the argument goes, the State has improperly devolved coercive policing powers upon a private entity without regulatory oversight. That, it is argued, makes the Sanral Act unconstitutional. The RFA further contends that the road tolling infringes on the positive and negative elements of the right to freedom of movement.