

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

CASE NUMBER: 7954/2021

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC

APPLICANT

and

SOUTH AFRICAN NATIONAL ROAD AGENCY LTD

1ST RESPONDENT

SKHUMBUZO MACOZOMA N.O
(in his capacity as Information Officer)

2ND RESPONDENT

NOTICE OF MOTION

TAKE NOTICE that application will be made on behalf of the above-mentioned applicant on a date to be allocated by the Registrar of the above Honourable Court at 10h00 or as soon as counsel may be heard for an order in the following terms:

1. That the first and second respondent are found to be in contempt of the Court order issued out of this Court on 15 November 2021;
2. That the first and second respondent have failed to comply with the Court order dated 15 November 2021;
3. That the second respondent be committed to prison for a period of 30 days, which committal is suspended for a period of one year on condition that the respondents comply with the order granted on 15 November 2021, within 10 days from date of service of this order;

4. Should the first and second respondent's fail to comply with this Court order, the applicant be allowed to approach the above Court for an order for the second respondent's committal to prison, on the same papers, duly supplemented as necessary;
5. The first respondent is ordered to pay the costs of this application on a scale between attorney and client;
6. Interest on the aforesaid costs at 7% per annum until date of payment;
7. Further and/or alternative relief.

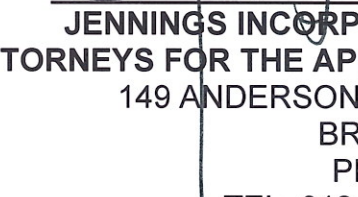
TAKE FURTHER NOTICE that the accompanying affidavit of **ANDRI JENNINGS**, together with annexures thereto, will be used in support of this application.

TAKE FURTHER NOTICE that the applicants retain the appointed of Jennings Incorporated, with the appointed address, at which the applicants will accept notice and service of all proceedings in these proceedings.

TAKE FURTHER NOTICE that if you intend opposing this application you are requested to:

- a) notify the Applicants' Attorneys in writing, of your intention to do so, within five days from date of service of this application upon you; and
- b) within 15 days after you have so given notice of your intention to oppose this application, to file your answering affidavits, if any; and
- c) To appoint, in such notification, and address at which you will accept notice and service of all documents in these proceedings.

DATED AND SIGNED AT PRETORIA ON 24 JANUARY 2022.


JENNINGS INCORPORATED
ATTORNEYS FOR THE APPLICANT
149 ANDERSON STREET
BROOKLYN
PRETORIA
TEL: 012 110 4442
EMAIL:
REF: A JENNINGS/OUT010

TO: THE REGISTRAR OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

AND TO: **EDWARD NATHAN SONNENBERGS INC.**
ATTORNEYS FOR THE RESPONDENTS
THE MARC
TOWER 1
129 RIVONIA ROAD
SANDTON
TEL: 011 269 7600
FAX: 010 596 6176
EMAIL:
Ref: Mr S Mbatha / Ms T Modubu
C/O MACINTOSH CORSS FARQUARSON
834 Pretorius Street
Arcadia
Pretoria
Tel: 012 342 4855
Ref: C Nell

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

CASE NUMBER: 7954/2021

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC

APPLICANT

and

SOUTH AFRICAN NATIONAL ROAD AGENCY LTD

1ST RESPONDENT

SKHUMBUZO MACOZOMA N.O
(in his capacity as Information Officer)

2ND RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned

ANDRI JENNINGS

Do hereby declare under oath as follows:

1.

- 1.1. I am an adult female legal practitioner- attorney employed at Jennings Incorporated, situated at 149 Anderson Street, Brooklyn, Pretoria, Gauteng Province. We are the attorneys of record on behalf of the applicant.



1.2. By virtue of the appointment and instructions received from the applicant I am duly authorized to depose to this affidavit in support of the relief sought in the notice of motion.

1.3 The facts contained in this affidavit fall within my personal knowledge and belief, except where the contrary clearly appears from the context or where otherwise stated and are true and correct.

2.

THE PARTIES

2.1 The applicant is the Organisation Undoing Tax Abuse, (herein "OUTA"), a non-profit company, duly incorporated in terms of the law of the Republic of South Africa, with its registered address at Unit 4, Boskruin Village Office Park, Cnr President Fouché and Hawken Road, Bromhof, Gauteng.

2.2 The first respondent is the South African National Road Agency Limited (herein "SANRAL"), a public company with registration number 1998/009584/06 and registered in terms of the Company Laws of the Republic of South Africa and established in terms of the South African National Roads Agency Limited and National Roads Act, 1998 ("the SANRAL Act"), with its principal place of business situated at 48 Tamboe Avenue, Val de Grace, Pretoria.

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2.3 SANRAL is a public body as defined in section 1 of Promotion of Access to Information Act, 200, (hereafter “PAIA”), on the basis that it exercises a public power or performs a public function in terms of, *inter alia*, the SANRAL Act.

2.4 The second respondent is Skhumbuzo Macomoza, (“Mr Macomoza”), an adult male, whose full and further particulars are unknown to the applicant, who is cited in his official capacity as the Chief Executive Officer and thus Information Officer of the SANRAL, with his place of employment at 48 Tambotie Avenue, Val de Grace, Pretoria. Mr Macomoza is cited herein for any legal interest he may have as the Information Officer of SANRAL.

3.

On 5 November 2021, an application was brought in order to set aside the first respondent and/or second respondent of the applicant’s request for access to records as set out in the application requesting information in terms of PAIA. The first respondent was directed to provide the requested records to the applicant within 15 days of the order being served on it. In terms of the Court order the period to furnish the requested records expired on 10 December 2021. A copy of the Court Order is attached as annexure “A”.

4.

This application is launched as a result of the respondents deliberate, intentional, refusal or failure to comply with the Court order dated 15 November 2021. The Court order was served on the respondents on 19 November 2021. Copies of the

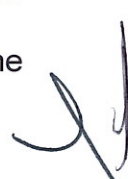
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returns of service in respect of the filing notice and the Court order is attached hereto as annexure “B1-2” on both respondents.

5.

On 29 November 2021, EDWARD NATHAN SONNENBERGS INC. c/o MACINTOSH CROSS FARQUHARSON (hereafter “ENS”), served a notice of appointment as attorneys of record and was subsequently invited and provided access to the matter on Caselines to ensure that it had access to all the pleadings in the matter.

- 5.1. It is submitted that the Court order has indeed come to the attention of the respondents and its now attorney of record, in light of the service effected upon them.
- 5.2. On 13 December 2021, the respondent was afforded an indulgence to file its proposed rescission application which it undertook to file on or before 5 January 2022, despite the respondent having been aware of the application since 22 February 2021 and the subsequent order granted on 15 November 2021. On 4 January 2022, ENS sent an e-mail advising that they intended to bring the rescission application by 21 January 2022. No reason was provided for the further delay, so the respondents were given until 14 January 2022 to serve and file its rescission application.
- 5.3. Despite the extension of time and on the respondents own proposed deadline of 21 January 2022, to which was not agreed to, the

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respondents have failed to furnish a rescission application and have merely used the threat thereof as a delay tactic.

5.4. The first respondent's failure to comply with the order should, with respect, be frowned upon by this Court especially taking into account the period of delay from the date the order was granted, and further indulgence extended to the respondents, given the opportunity to serve and file the forever promised but never forthcoming rescission application.

6.

The applicant is a non-profit company, exclusively serving the interest of civil society, the requested records serve public interest. The applicant is not in the business of invoking unnecessary and costly litigation due to the respondent's mala fide attitude and refusal to comply with the order of this Court. I submit that a punitive order is justified in the circumstance.

7.


I humbly submit that the applicant has shown:

1. The existence of the order of Court as against the respondents;
2. That the respondents have knowledge of the order;
3. That the respondents have wilfully, and mala fide failed to comply with the order and provided no compelling reasons for such failure;

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4. That the applicant is severely prejudiced as a result of the actions of the respondents in preventing the applicant from receiving the requested records.

I submit that a proper case is before the Court, and request an order as set out in the Notice of Motion.


DEPONENT

SIGNED AND SWORN TO BEFORE ME AT Pretoria ON THIS THE 24th DAY OF January 2022, THE DEPONENT HAVING ACKNOWLEDGED THAT THE DEPONENT KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND CONSIDERS THE OATH BINDING ON THE DEPONENT'S CONSCIENCE AND UTTERED THE WORDS "SO HELP ME GOD".


COMMISSIONER OF OATHS

CAPACITY:

FULL NAMES:

PHYSICAL ADDRESS:

BERNARD BEZUIDENHOUT

KOMMISSARIS VAN EDE
COMMISSIONER OF OATHS
PRAKTISERENDE PROKUREUR R.S.A
PRACTISING ATTORNEY R.S.A
149 ANDERSON STREET
BROOKLYN, PRETORIA, 0181

"A"
0002-1
1-7
Schiff
15.11.21

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

On this the 5th day of November 2021 before the Honourable Justice

Van der Schyff J

Case Number: 7954/2021

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC

Applicant

and

**SOUTH AFRICAN NATIONAL ROAD AGENCY
LTD**

First Respondent

SKHUMBUZO MACOZOMANO

Second Respondent

DRAFT ORDER

AFTER HAVING READ the papers and having considered the matter, the following order is made:

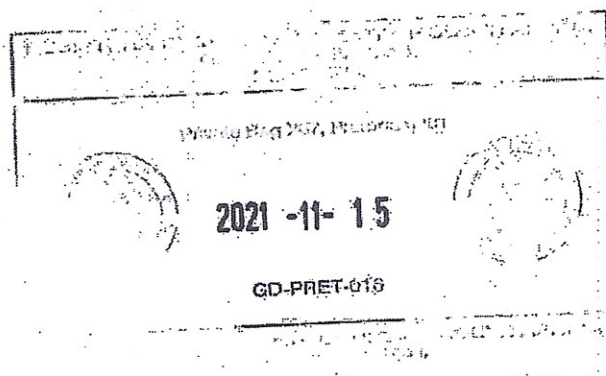
0002-1

1. ~~An order~~ Setting aside ^T the refusal by the First Respondent, and/or Second Respondent, of the Applicant's request for access to the records, requested in its request for information in terms of the PAIA and dated 24 August 2020 ("the request"); *is set aside sf*
2. ~~Directing~~ ^T the First Respondent ^{is directed sf.} to provide the requested records to the Applicant within 15 (fifteen) days ^{being} of the granting of this order ^{sewed on it sf.}
3. ~~Directing~~ ^T the First Respondent ^{is sf} to pay the costs of the application.

By order



The Registrar





TAX INVOICE

Our Ref: 2111/4504

Case No: 7954/21

In the case between:

ORGANISATION UNDOING TAX ABUSE NPC and SOUTH AFRICAN NATIONAL ROADS AGENCY LTD (1ST)	APPLICANT RESPONDENT
Address as specified: 48 TIMBOTIE AVENUE, VAL DE GRACE	
COURT ORDER	

RETURN OF SERVICE

On 19th day of November 2021 at 14:10 at 48 TIMBOTIE AVENUE, VAL DE GRACE being the business address of **SOUTH AFRICAN NATIONAL ROADS AGENCY LTD (1ST)** I duly served a copy of the **COURT ORDER** upon **MS D MAHLANGU (RECEPTIONIST)** after the original was shown and the nature and contents thereof explained. The said person who is apparently older than sixteen years of age and apparently in charge at the given address accepted copies of the document on behalf of the **1ST RESPONDENT**. [Rule 4(1)(a)(ii)].

(Signed) DEPUTY SHERIFF: J M LETOABA-SANRAL

From: Sheriff
C.F. NEL
POSBUS/PO BOX 714
DOCEX 147, PRETORIA
PRETORIA. 0001
Tel: 012 342 7240
Fax: 012 342 7239
Email: maggys@shefeast.co.za

Account info for bank deposits/transfers:
ABSA BANK (VERMEULEN STREET)
Name: C.F. NEL (BESIGHEID)
No. 4050053322

To: GAUTENG DIVISION, PRETORIA
PRETORIA

JENNINGS INC - 012 110 4442

Your VAT No:

Account No: 8225
Your reference: OUT010

DESCRIPTION OF FEES	FEES
Service	70.50
Travelling	54.00
Urgent	235.00
Post and Petties (uplift)	6.00
Email Return of Service	19.00
Registration	11.00
Return & Copy	42.50
Sub-total Fees	438.00
Plus VAT	65.70
TOTAL OWING	R 503.70
Invoice No: 293775 My VAT No: 4790168993	
Invoice issued on 23-Nov-2021.	
You may require this account to be taxed and vouched within 90 days of date of issue.	



TAX INVOICE

Our Ref: H2111/4506
Case No: 7954/21

In the case between:

ORGANISATION UNDOING TAX ABUSE NPC and MACOZOMA S N.O. (2ND)	APPLICANT RESPONDENT
Address as specified: 48 TIMBOTIE AVENUE, VAL DE GRACE	
COURT ORDER	

RETURN OF SERVICE

On 19th day of November 2021 at 14:10 at 48 TIMBOTIE AVENUE, VAL DE GRACE being the work address of MACOZOMA S N.O. (2ND) I duly served a copy of the COURT ORDER upon MS D MAHLANGU (RECEPTIONIST) after the original was shown and the nature and contents thereof explained. The said person who is apparently older than sixteen years of age and apparently in charge at the given address accepted copies of the document in the temporary absence of the 2ND RESPONDENT [Rule 4(1)(a)(iii)].

(Signed) DEPUTY SHERIFF: J M LETOABA-SANRAL

From: Sheriff
C.F. NEL
POSBUS/PO BOX 714
DOCEX 147, PRETORIA
PRETORIA. 0001
Tel: 012 342 7240
Fax: 012 342 7239
Email: maggys@shefeast.co.za

Account info for bank deposits/transfers:
ABSA BANK (VERMEULEN STREET)
Name: C.F. NEL (BESIGHEID)
No. 4050053322

To: GAUTENG DIVISION, PRETORIA
PRETORIA

JENNINGS INC

Your VAT No:

Account No: 8225
Your reference: OUT010

DESCRIPTION OF FEES	FEES
Service	70.50
Travelling	54.00
Email Return of Service	19.00
Registration	11.00
Return & Copy	42.50
Sub-total Fees	197.00
Plus VAT	29.55
TOTAL OWING	R 226.55
Invoice No: 293777 My VAT No: 4790168993	
Invoice issued on 23-Nov-2021.	
You may require this account to be taxed and vouched within 90 days of date of issue.	

Small Claims