

# 9

"X" A 26/5/22

"FA"  
017-4  
26/5/2022

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

**CASE NO: 7955/21**

BEFORE THE HONOURABLE MADAM JUSTICE POTTERILL ON 26 MAY 2022

In the Application to Intervene between:

**BAKWENA PLATINUM CORRIDOR  
CONCESSIONAIRE (PTY) LIMITED**

Private Bag X67, Pretoria 0001

2022-05-26

Intervening Party

GD-PRET-016

and

**ORGANISATION UNDOING TAX ABUSE NPC**

First Respondent

**SOUTH AFRICAN NATIONAL ROAD AGENCY LTD  
SOC LTD**

Second Respondent

**THE MINISTER OF TRANSPORT N.O.**

Third Respondent

**SKHUMBUZO MACOZOMA N.O.**

Fourth Respondent

(in his capacity as Information Officer)

In re the Main Application between:

**ORGANISATION UNDOING TAX ABUSE NPC**

Applicant

and

**SOUTH AFRICAN NATIONAL ROAD AGENCY LTD  
SOC LTD**

First Respondent

**THE MINISTER OF TRANSPORT N.O.**

Second Respondent

**SKHUMBUZO MACOZOMA N.O.**

Third Respondent

(in his capacity as Information Officer)

017-4  
26/5/22

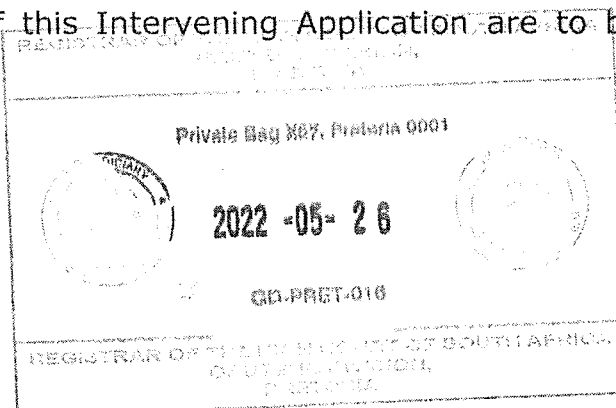
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**DRAFT ORDER**


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Having read the papers filed in the Intervening Application and having heard the Applicant's Counsel it is ordered that: :-

1. The Applicant is granted leave to intervene in the application brought in terms of section 78(2)(c) of the Promotion of Access to Information Act, 2000 in the above Honourable Court under case number 7955/2021 on 16 February 2021 (the "**Main Application**") as Fourth Respondent;
2. The Applicant is granted leave to file its Notice of Intention to Oppose the Main Application within 5 (five) days of the granting of this order in the application for leave to intervene;
3. The Applicant is granted leave to file its Answering Affidavit in the Main Application within 20 days of the granting of this order in the application for leave to intervene;
4. Directing that the time periods relating to the filing of affidavits, and any other procedural aspect in the Main Application are suspended, pending the filing of the Applicant's Answering Affidavit; and
5. The costs of this Intervening Application are to be costs in the Main Application.




BY ORDER

  
The Registrar of the above Honourable Court

Counsel for the Applicant (Intervening Party):  
Advocate N Gaffoor  
[advnadiagaffoor@lawcircle.co.za](mailto:advnadiagaffoor@lawcircle.co.za)  
084 570 2023

Attorney for the Applicant (Intervening Party):  
Rakhee Bhoola  
[rbhoola@fasken.com](mailto:rbhoola@fasken.com)  
082 614 5719

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA JOHANNESBURG	
Private Bag X67, Pretoria 0001	
	2022-05-26
GD-PRET-016	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA JOHANNESBURG	

"FA2(a)"

## Andri Jennings

**From:** Andri Jennings  
**Sent:** 25 July 2022 03:57 PM  
**To:** 'Sarah Moerane'; 'Smagadlela@werksmans.com'  
**Cc:** Jessica Rajpal; Rakhee Bhoora; Roy Hsiao; Irene Pienaar; Delia Turner  
**Subject:** RE: Organisation Undoing Tax Abuse NPC / South African National Roads Agency SOC Limited and Others [IWOV-LITIGATION.FID535664] - OUT006  
**Attachments:** LETTER WERKSMANS AND FASKEN 25.07.2022.pdf

Tracking:	Recipient	Recall
	'Sarah Moerane'	
	'Smagadlela@werksmans.com'	
	Jessica Rajpal	
	Rakhee Bhoora	
	Roy Hsiao	
	Irene Pienaar	Succeeded: 2022-07-25 04:01 PM
	Delia Turner	Failed: 2022-07-25 04:01 PM

Good day.

Please find attached hereto a letter for your urgent attention.

Kind Regards/Vriendelike Groete,  
Andri Jennings  
Director/Direkteur



Head Office: 149 Anderson Street, Brooklyn, Pretoria | O: 012 110 4442  
18 Ross Street, Cullinan | O: 012 110 4442  
222 Smit Street, 21st Floor, Braamfontein, Johannesburg | O: 010 005 4572  
21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 258 8770

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**From:** Sarah Moerane <SMoerane@werksmans.com>  
**Sent:** 18 July 2022 10:46 AM  
**To:** Andri Jennings <andri@jinc.co.za>

14

**Cc:** Jesicca Rajpal <Jrajpal@fasken.com>; Rakhee Bhoora <rbhoora@fasken.com>

**Subject:** Organisation Undoing Tax Abuse NPC / South African National Roads Agency SOC Limited and Others  
[IWOV-LITIGATION.FID535664]

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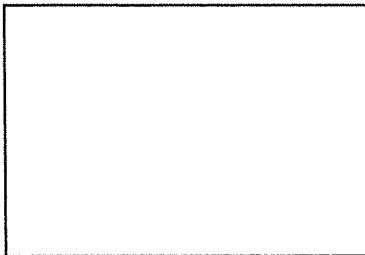
**WERKSMANS**  
ATTORNEYS

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Dear Sirs

Herewith our letter.

Yours faithfully



**Sarah Moerane**

**Director**

T +27 11 535 8128 F +27 11 535 8628 E [smoerane@werksmans.com](mailto:smoerane@werksmans.com)

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JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT006

YOUR REFERENCE:

DATE: 25 July 2022

TO: WERKSMANS ATTORNEYS

BY EMAIL: [SMoerane@werksmans.com](mailto:SMoerane@werksmans.com)  
[Smagadlela@werksmans.com](mailto:Smagadlela@werksmans.com)

REF: Ms S Moerane/Ms S Magadlela/SOUT3114.192/#7889403v1

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BY EMAIL: [Hsiaor@fasken.com](mailto:Hsiaor@fasken.com)  
[rbhoora@fasken.com](mailto:rbhoora@fasken.com)  
[Jrajpal@fasken.com](mailto:Jrajpal@fasken.com)

REF: Rakhee Bhoora / Jessica Rajpal / Roy Hsiao / 151486.00004

Sirs

ORGANISATION UNDOING TAX ABUSE // SANRAL & OTHERS - CASE NO: 7955/2021

Further to your letter dated 18 July 2022 and the request for an extension of time for your client ("SANRAL") to file its answering affidavit in the above matter by 19 August 2022, we record the following:

1. In principle our client would not have an objection to grant the indulgence requested. However, in this particular instance such an indulgence will prejudice our client *if* our client is not afforded the same courtesy pertaining to the affidavit filed by Bakwena Platinum Corridor Concessionaire (Pty) Ltd ("Bakwena") pursuant to a Rule 6(5)(d)(iii) notice on 1 July 2022. The absence of such an arrangement would mean that our client will have to



file its affidavit in response to Bakwena's affidavit by 5 August 2022, and will then later be expected to file a separate affidavit in response to SANRAL's affidavit.

2. We believe that there will be much overlapping on the issues raised by Bakwena in its affidavit and those to be raised by SANRAL. For our client to have to file two separate affidavits as a result of your client's failure to keep to the prescribed time periods, will lead to an unnecessary duplication of work and costs.
3. In the premises we are also addressing this letter to Bakwena's attorneys, Messrs Fasken Inc. We suggest that the parties agree to your request, but that it then also be agreed that our client be afforded until 9 September 2019 to file its affidavit(s) in response to both the Bakwena- and SANRAL affidavits.
4. Without the time periods being extended as suggested above, we are of the view that our client will be prejudiced and will in such circumstances not be able to agree to your client's request for an extension of time.
5. We look forward to an urgent response from both sets of attorneys.
6. Our client's rights in this regard remain reserved. This letter will be made available to the Court hearing the matter if so required.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,  
Andri Jennings  
Director

A handwritten signature in black ink, consisting of a stylized 'A' followed by a 'J'.

"FA2(b)"

**Andri Jennings**

**From:** Roy Hsiao <Hsiaor@fasken.com>  
**Sent:** 02 August 2022 09:44 AM  
**To:** Andri Jennings; Delia Turner; Irene Pienaar; Sarah Moerane; Smagadlela@werksmans.com  
**Cc:** Rakhee Bhoora; Jessica Rajpal  
**Subject:** Organisation Undoing Tax Abuse NPC / South African National Road Agency Limited and Others - Case No. 7955/2021 [FMD-BDOCS.FID361776]  
**Attachments:** 4730941v1\_Letter to Jennings Inc - 2 August 2022.docx.pdf  
**Importance:** High

Dear Madam,

Please see the attached letter.

Regards

 Roy Hsiao  
SENIOR ASSOCIATE

**FASKEN**

Bell Dewar Inc.  
T. +27 11 586 6071 | M. +27 82 614 5710 | F. +27 11 586 6071  
Hsiaor@fasken.com | www.fasken.com/en/Roy-Hsiao  
Inanda Greens, 54 Wierda Road West, Sandton, Johannesburg, 2196



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*Nous vous prions de ne pas vous présenter au bureau sans rendez-vous et veuillez nous excuser d'avance si nous ne vous serrons pas la main. Si le risque de propagation du virus COVID-19 augmente et atteint notre capacité à fournir des services juridiques ou de représenter nos clients, nous ferons tout en notre pouvoir pour prendre les meilleures dispositions afin d'obtenir des reports et/ou des ajournements. Nous vous remercions pour votre compréhension.*

> Centre de ressources sur la COVID-19 pour les entreprises

Handwritten signature or initials in black ink, consisting of a stylized 'P' followed by a '4'.

**By E-mail****Rakhee Bhoora**

Phone: +27 11 586 6076

Fax: +27 11 586 6176

rbhoora@fasken.com

To: Andri Jennings  
Jennings Incorporated

E-mail: [andri@jinc.co.za](mailto:andri@jinc.co.za)

To: Sarah Moerane  
Werksmans Attorneys

E-mail: [smoerane@werksmans.co.za](mailto:smoerane@werksmans.co.za)

From: Rakhee Bhoora/Jessica Rajpal/Roy Hsiao/151486.00004

Date: 2 August 2022

Subject: **Organisation Undoing Tax Abuse NPC / South African National Road Agency Limited and Others - Case No. 7955/2021**

Dear Mesdames

1. We refer to the letter from Werksmans dated 18 July 2022 as well as your letter dated 25 July 2022, wherein, you both, for separate reasons, seek an agreement, to which our client ("Bakwena") would be a party for the delayed filing of affidavits in the Main Application, on behalf of your respective clients', being the South African National Roads Agency Limited ("SANRAL") and the Organisation Undoing Tax Abuse NPC ("OUTA").
2. It is our view that any discussions in respect of the agreeing of time periods for the filing of Answering Affidavits in respect of the merits of the Main Application, are entirely premature at this stage.
3. As you are aware, Bakwena delivered a notice in terms of Uniform Rule 6(5)(d)(iii) on 1 July 2022 in regard to our client's application on a point of law ("the *in limine*

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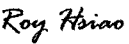
application”), essentially based on an Exception, which seeks to dispose of the Main Application in its entirety.

4. In this regard, paragraphs 7 to 9 and 25 of our client’s founding affidavit in the *in limine* Application sets out that it is not only appropriate, but procedurally correct, that the *in limine* Application should be dealt with prior to the merits of the Main Application even being considered; and moreover, that the determination of the Main Application be stayed until a final determination is made in respect of our client’s point of law.
5. It is trite that Rule 6(5)(d)(iii) envisages the raising of a legal point, where the party raising the legal point has reserved the right to file an answering affidavit in the event that the point of law fails. Bakwena, has done so in this particular instance, and Bakwena would only be required to file an answering affidavit in the Main Application in due course, and if the point of law is not successful.
6. The purpose of raising an *in limine* aspect separately from the merits of an application is to avoid the filing of potentially unnecessary affidavits, and the costs associated with preparing such potentially unnecessary affidavits. The proposed filing of affidavits by SANRAL, and in turn, OUTA in respect of the issues raised in the Main Application, running in parallel to our client’s *in limine* application makes a complete mockery of the purpose of the principle and the Rule.
7. It is clear that OUTA will not be in a position to file a replying affidavit in respect of the merits of the Main Application, until after Bakwena has filed its answering affidavit in respect of the merits of the Main Application, should it be necessary to do so.
8. The implication that OUTA intends to file a “replying affidavit” to the answering affidavit of SANRAL and incorporate in such affidavit an answer to the *in limine* application is nonsensical.
9. The suggestion that this will avoid OUTA having to file two separate affidavits and incur unnecessary costs is entirely misconceived, as OUTA will still have to file a replying affidavit to the contents of Bakwena’s answering affidavit, should such affidavit need to be filed in due course.
10. The filing of an affidavit that incorporates a response to SANRAL’s answering affidavit in the answer to the *in limine* point would result in OUTA incurring unnecessary costs of its own volition.

11. Naturally, should our client succeed in its *in limine* Application, the entire Main Application will consequentially be disposed of, without the need for any party, whether it be SANRAL, Bakwena or OUTA, to file any further affidavits.
12. Simply stated, the entire basis for the continuation of the Main Application is dependent on the outcome of our client's *in limine* Application. Consequently, it would not be appropriate or legally and procedurally correct that the time periods for the Main Application should continue to run, requiring SANRAL to deliver answering papers, until such time as the *in limine* application has been finally determined.
13. The time periods for the filing of any further affidavits in the Main Application, whether it be in respect of OUTA, SANRAL or Bakwena, should be suspended until such time as the *in limine* Application has been finally determined.
14. Moreover, the subject matter of the Main Application relates to documents that belong purely to Bakwena. The filing of any affidavits that engage with Bakwena's documents prior to the disposal of the *in limine* Application, which we might add canvasses a material legal basis for the dismissal of the Main Application, will severely prejudice Bakwena's rights.
15. Under these circumstances, and although the filing of our client's *in limine* Application automatically suspends the delivery of further affidavits in the Main Application, we propose, in order to avoid any confusion, that agreement be reached between the parties that until such time as Bakwena's *in limine* Application has been finally determined, the filing of affidavits in the Main Application is suspended.
16. As regards the procedural time limits provided for in our client's *in limine* Application, given that OUTA has delivered an intention to oppose our client's *in limine* Application, it is required to – as pointed out in your letter – deliver its answering affidavit within 15 days thereof, being Friday, 5 August 2022.
17. Should OUTA however require an indulgence to file its answering affidavit (in the *in limine* application), our client has no objection in entertaining such an indulgence, if requested.
18. However, should such an indulgence be premised upon OUTA intending to respond to '*both the Bakwena and [anticipated] SANRAL affidavits*' in one affidavit, such request would be and is, misconstrued, and would not be agreed to.

19. In the circumstances and as stated above, it would be appropriate that the parties agree that the Main Application is held in abeyance pending the final determination of our client's *in limine* Application.
20. We accordingly anticipate, that in the absence of an indulgence, OUTA will deliver its answering affidavit in the *in limine* Application on or before Friday, 5 August 2022.
21. All our client's rights are reserved.

Yours faithfully

DocuSigned by:  
  
64D9E3825BD24F7...  
**Fasken**  
#4730941v1

"FA2(c)"

**Andri Jennings**

**From:** Andri Jennings  
**Sent:** 05 August 2022 02:07 PM  
**To:** Roy Hsiao; Sarah Moerane; Smagadlela@werksmans.com  
**Cc:** Rakhee Bhoora; Jessica Rajpal; Delia Turner; Irene Pienaar  
**Subject:** RE: Organisation Undoing Tax Abuse NPC / South African National Road Agency Limited and Others - Case No. 7955/2021 [FMD-BDOCS.FID361776] - OUT006  
**Attachments:** LETTER FASKEN AND WERKSMANS 05.08.2022.pdf

Good day.

We refer to the abovementioned matter.

Please find attached hereto our letter for your attention.

Kind Regards/Vriendelike Groete,  
Andri Jennings  
Director/Direkteur



Head Office: 149 Anderson Street, Brooklyn, Pretoria | O: 012 110 4442  
18 Ross Street, Cullinan | O: 012 110 4442  
222 Smit Street, 21st Floor, Braamfontein, Johannesburg | O: 010 005 4572  
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**From:** Roy Hsiao <Hsiao@fasken.com>  
**Sent:** 02 August 2022 09:44 AM  
**To:** Andri Jennings <andri@jinc.co.za>; Delia Turner <delia@jinc.co.za>; Irene Pienaar <irene@jinc.co.za>; Sarah Moerane <SMoerane@werksmans.com>; Smagadlela@werksmans.com  
**Cc:** Rakhee Bhoora <rbhoora@fasken.com>; Jessica Rajpal <Jrajpal@fasken.com>  
**Subject:** Organisation Undoing Tax Abuse NPC / South African National Road Agency Limited and Others - Case No. 7955/2021 [FMD-BDOCS.FID361776]  
**Importance:** High

Dear Madam,

Please see the attached letter.

14



## JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT006

YOUR REFERENCE:

DATE: 05 August 2022

---

TO: WERKSMANS ATTORNEYS

BY EMAIL: [SMoerane@werksmans.com](mailto:SMoerane@werksmans.com)  
[Smagadlelo@werksmans.com](mailto:Smagadlelo@werksmans.com)

REF: Ms S Moerane/Ms S Magadlela/SOUT3114.192/#7889403v1

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BY EMAIL: [Hsiaor@fasken.com](mailto:Hsiaor@fasken.com)  
[rbhoora@fasken.com](mailto:rbhoora@fasken.com)  
[Jrajpal@fasken.com](mailto:Jrajpal@fasken.com)

REF: Rakhee Bhoora / Jessica Rajpal / Roy Hsiao / 151486.00004

Sirs

ORGANISATION UNDOING TAX ABUSE // SANRAL & OTHERS - CASE NO: 7955/2021

1. We refer to your letter dated 2 August 2022.
2. Various views on procedural aspects are expressed in your letter with which we respectfully disagree. Although we do not believe it prudent to litigate by way of correspondence, we deem it necessary to briefly answer to some of the views expressed. Where we fail to deal with any specific allegations same should not be construed as an admission thereof.



3. We are of the view that the manner in which your client's application in terms of Rule 6(5)(d)(iii) was brought is contrary to what the Rule envisages and amounts to an abuse of the process. The intention of the Rule is not to have an *in limine* point heard as a completely separate and new application wherein our client is expected to file an answering affidavit and your client is then given an opportunity to reply. According to our interpretation of the authorities, a Rule 6(5)(d)(iii) notice wherein a point *in limine* is raised takes the place of an answering affidavit.
4. If only a Rule 6(5)(d)(iii) notice is filed, all allegations in our client's founding affidavit must be taken as established facts by the court. The allegations contained in our client's founding affidavit in the main application therefore stand uncontested at this time. The authorities are clear that should your client have wished to answer to the merits as well, it should have done so together with any *in limine* points it raised.
5. Your client does not obtain an automatic right to later file an answering affidavit on the merits where it opted only to raise an *in limine* point and not answer to the merits within the prescribed time periods. Moreover, in terms of the court order that was granted by the Honourable Potterill J on 26 May 2022, your client was ordered to file its answering affidavit to the main application within 20 days. Your client therefore has no further entitlement to later file an answering affidavit as contended for in your letter.
6. SANRAL, as a respondent, is also not excused from filing its answering affidavit in accordance with the prescribed time periods merely because your client is raising a purported *in limine* point.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a 'y'.

7. In the premises, we disagree with your contention that the filing of your client's Rule 6(5)(d)(iii) application suspends the delivery of further affidavits, and further do not agree that the main application should be held in abeyance pending the final determination of your client's Rule 6(5)(d)(iii) application.
8. It appears in any event that the affidavit filed in support of your client's Rule 6(5)(d)(iii) notice goes beyond only raising a point of law and raises issues on the merits that require an answer from our client. These issues should have been raised in an answering affidavit: raising it by way of a separate application to afford your client an opportunity to then file a replying affidavit, (which it would normally not be afforded) further evidences the inappropriateness of the process followed by your client. This will be fully dealt with in our client's affidavit filed in answer to your client's Rule 6(5)(d)(iii) application and in subsequent legal argument.
9. We therefore hold the view that our client will only be obliged to file its replying affidavit (which will also contain an answer to your client's Rule 6(5)(d)(iii) notice) once all the respondents have filed their answering affidavits in the main application. Should condonation be required, our client will request same from the court hearing the matter.
10. Please note that a copy of this letter as well as the related preceding correspondence will be made available to the court hearing the matter.
11. Our client's rights remain reserved in full.

14

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,

Andri Jennings

Director

14

"FA2(d)"

**Andri Jennings**

**From:** Roy Hsiao <Hsiaor@fasken.com>  
**Sent:** 17 August 2022 11:04 AM  
**To:** Andri Jennings; Delia Turner; Irene Pienaar; Sarah Moerane; Smagadlela@werksmans.com  
**Cc:** Rakhee Bhoora; Jessica Rajpal  
**Subject:** Organisation Undoing Tax Abuse NPC / South African National Road Agency Limited and Others - Case No. 7955/2021 [FMD-BDOCS.FID361776]  
**Attachments:** 4760351v1\_Letter to Jennings Inc - 17 August 2022.docx.pdf

Dear Madam,

Please see the attached letter.

Regards

 **Roy Hsiao**  
SENIOR ASSOCIATE

**FASKEN**

Bell Dewar Inc.  
T. +27 11 586 6071 | M. +27 82 614 5710 | F. +27 11 586 6071  
Hsiaor@fasken.com | [www.fasken.com/en/Roy-Hsiao](http://www.fasken.com/en/Roy-Hsiao)  
Inanda Greens, 54 Wierda Road West, Sandton, Johannesburg, 2196



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14

personne. Nous avons amélioré les communications numériques par téléphone, par vidéoconférence, par courrier électronique sécurisé, par l'intermédiaire de Fasken Plus, etc.

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> [Centre de ressources sur la COVID-19 pour les entreprises](#)

## By E-mail

**Rakhee Bhoora**

Phone: +27 11 586 6076

Fax: +27 11 586 6176

[rbhoora@fasken.com](mailto:rbhoora@fasken.com)

To: Andri Jennings  
Jennings Incorporated

E-mail: [andri@jinc.co.za](mailto:andri@jinc.co.za)

To: Sarah Moerane  
Werksmans Attorneys

E-mail: [smoerane@werksmans.co.za](mailto:smoerane@werksmans.co.za)


From: Rakhee Bhoora/Jessica Rajpal/Roy Hsiao/151486.00004

Date: 17 August 2022

Subject: **Organisation Undoing Tax Abuse NPC / South African National Road Agency Limited and Others - Case No. 7955/2021**

Dear Madam

1. We refer to your letter dated 5 August 2022.
2. We do not intend to deal with each and every allegation contained in your letter, as we have no intention of litigating by way of correspondence, but disagree with your legal and procedural contentions.
3. Our client's position in regard to its *in limine* Application is clearly set out in our letter dated 2 August 2022, and no purpose would be served in repeating such position.
4. We specifically deny that our client's *in limine* Application is an abuse of process and is inappropriate.
5. Your client's belated approach of taking issue with our client's *in limine* Application appears to be entirely dilatory.



6. In the absence of your client's answering affidavit, we have no choice but to take the steps necessary to apply for a hearing date.
7. We also intend to approach the Deputy Judge President to have the application placed under case management.
8. Should your client change its attitude and wish to agree to what was proposed in our previous correspondence, please advise our offices thereof, by no later than close of business on Friday 19 August 2022. Should we not hear from you, we will commence with the steps as set out above.
9. All our client's rights are reserved.

Yours faithfully

DocuSigned by:  
*Roy Hsiao*  
64D9E3825BD24F7...  
**Fasken**  
#4760351v1

"FA2(e)"

**Andri Jennings**

**From:** Roy Hsiao <Hsiaor@fasken.com>  
**Sent:** 30 August 2022 05:13 PM  
**To:** 'AnNieuwoudt@judiciary.org.za'; Lutendo Muneri; Andri Jennings; Delia Turner; Irene Pienaar; Sarah Moerane; Smagadlela@werksmans.com  
**Cc:** Rakhee Bhoora; Jessica Rajpal  
**Subject:** Organisation Undoing Tax Abuse NPC / South African National Road Agency Ltd and Three Others - Case No. 7955/2021 [FMD-BDOCS.FID361776]  
**Attachments:** Letter to DJP - Case Management - 30 August 2022.pdf  
**Importance:** High

Dear Ms Lutendo,

Please see the attached letter for the attention of the Honourable Deputy Judge President.

The Respondents' attorneys of record are copied on this email.

A hard copy of the letter will be delivered during the course of tomorrow.

Best regards,

 Roy Hsiao  
SENIOR ASSOCIATE

**FASKEN**

Bell Dewar Inc.  
T. +27 11 586 6071 | M. +27 82 614 5710 | F. +27 11 586 6071  
Hsiaor@fasken.com | www.fasken.com/en/Roy-Hsiao  
Inanda Greens, 54 Wierda Road West, Sandton, Johannesburg, 2196

**WWL**  
**AWARDS**  
Mining

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30 August 2022

**Rakhee Bhoora**

Phone: +27 11 586 6076

Fax: +27 11 586 6176

[rbhoora@fasken.com](mailto:rbhoora@fasken.com)*By Hand and E-mail***His Lordship Mr Justice A Ledwaba**

Office of the Honourable Deputy Judge

President

Office 7.15

Paul Kruger &amp; Madiba Street

Pretoria Central

0002

Email address:

[AnNieuwoudt@judiciary.org.za](mailto:AnNieuwoudt@judiciary.org.za) /[LuMuneri@judiciary.org.za](mailto:LuMuneri@judiciary.org.za)

Our ref: Rakhee Bhoora/Jessica Rajpal/Roy Hsiao/151486.00004

**Organisation Undoing Tax Abuse NPC / South African National Road Agency Ltd and Three Others – Case No. 7955/2021**

Dear Honourable Deputy Judge President

1. We act on behalf of Bakwena Platinum Corridor Concessionaire (Pty) Limited (“Bakwena”), which is the Applicant in the Rule 6(5)(d)(iii) Application (and the Fourth Respondent in the Main Application), which applications are dealt with in greater detail below.
2. The Organisation Undoing Tax Abuse NPC (“OUTA”) is the First Respondent in the Rule 6(5)(d)(iii) Application and is the Applicant in the Main Application.
3. OUTA instituted an application for access to certain information and documents in terms of section 78(2)(c) of the Promotion of Access to Information Act, No. 2 of 2000 from the South African National Road Agency Limited (“SANRAL”) (“the Main Application”), following upon SANRAL’s deemed refusal of OUTA’s PAIA request.



4. SANRAL and Skhumbuzo Macozoma N.O. are the Second and Fourth Respondents respectively in the Rule 6(5)(d)(iii) Application (and the First and Third Respondents in the Main Application) and are represented by Werksmans Attorneys.
5. The Minister of Transport is the Third Respondent in the Rule 6(5)(d)(iii) Application (and the Second Respondent in the Main Application) represented by the State Attorneys. The Minister of Transport is cited in the Main Application only in the event that he may have a legal interest in the matter. No relief is sought against the Minister of Transport in any of the proceedings filed under the matter.
6. The Main Application was only instituted as against SANRAL, SANRAL's Information Officer and the Minister.
7. In terms of the Main Application OUTA seeks, *inter alia*, the setting aside of SANRAL's decision to refuse OUTA's request for access to information, and directing SANRAL to provide the requested information to OUTA within a period of 15 days.
8. Bakwena contends that the information sought by OUTA in terms of its PAIA request is information that belongs to Bakwena, as the documentation and information sought contains confidential and proprietary information of Bakwena.
9. Accordingly, and on or about 25 June 2021, Bakwena instituted an application to intervene ("the Intervention Application") in the Main Application. The Intervention Application was unopposed, and Bakwena was granted leave to intervene as the Fourth Respondent in the Main Application by Her Madam Justice Potterill on 26 May 2022.
10. Having been joined as a respondent to the Main Application, Bakwena delivered its Notice to Oppose (in the Main Application) on 6 June 2022.
11. On 1 July 2022, Bakwena delivered an application in terms of Rule 6(5)(d)(iii) ("the *In Limine* Application"), in which it raised a point of law to the effect that the Main Application discloses no cause of action, alternatively discloses insufficient averments to sustain a cause of action that would justify the relief sought by OUTA, and Bakwena seeks the dismissal of the Main Application should the point of law succeed.
12. Shortly after the delivery of Bakwena's Rule 6(5)(d)(iii) Application and following the delivery of OUTA's notice of opposition, correspondence was exchanged between the parties regarding the filing of affidavits in the Main Application. During this exchange a

disagreement arose regarding the procedural aspects relating to the *In Limine* Application.

### **Purpose of Letter**

13. We accordingly address this letter to the Honourable Deputy Judge President, with the aim of seeking case management of the matter, in order to avoid delays and disputes in the hearing of the applications. It is envisaged that as part of such case management process, a date can be agreed or allocated for the hearing of the *In Limine* Application.
14. Case management of the matter is sought as a result of the clear dispute that has arisen between Bakwena and OUTA regarding the procedural aspects of Bakwena's *In Limine* Application.
15. Whilst OUTA has delivered a Notice of Opposition to the *In Limine* Application instituted by Bakwena, it has not delivered its Answering Affidavit, and refuses to do so on the basis that it claims that Bakwena's Rule 6(5)(d)(iii) Application constitutes an abuse of process, is inappropriate and should be dealt with as part of Bakwena's Answering Affidavit to the Main Application.
16. Bakwena's position is that its Rule 6(5)(d)(iii) Application deals with a crisp *in limine* legal issue, which is essentially an Exception, and if Bakwena were to succeed with such *in limine* Application it would be dispositive of the Main Application.
17. We are of the view that it would accordingly be both practical and desirable that the *in limine* Application be determined prior to the hearing of the Main Application, as it would save both time and costs. Naturally, the Main Application (and the filing of further affidavits in the Main Application) should be held in abeyance until the finalization of the Rule 6(5)(d)(iii) Application.
18. Correspondence between the parties relating to the dispute is attached hereto marked as Annexures "A" to "E".

### **Nature of the Dispute**

19. OUTA contends that its refusal to deliver an Answering Affidavit, is justified, on the basis that despite Bakwena having instituted an interlocutory application (in long form)



in terms of Rule 6(5)(d)(iii), such an application (and the issues raised therein in respect of Bakwena's contentions on a point of law) cannot be heard as a separate application. OUTA furthermore asserts that a point of law in terms of Rule 6(5)(d)(iii) must be raised in a party's answering affidavit (to the Main Application). Consequently OUTA contends that Bakwena's Application in terms of Rule 6(5)(d)(iii) is inappropriate and constitutes an abuse of process. We refer in such regard to the contents of annexure "D".

20. Bakwena is of the view that Rule 6(5)(d)(iii) envisages a party, in this instance Bakwena, being entitled to raise a legal point as a point *in limine* in a separate application, and that it is not only appropriate but also procedurally correct. As such the *in limine* application, which is limited to a single legal issue, may dispose of an entire application without the need to deal with the merits of the entire application.
21. Such procedure must be desirable, as it potentially avoids the unnecessary determination of issues that need not be heard, and also avoids the unnecessary wasting of the Court's time, and the incurring of legal costs for all the parties.
22. Despite attempting to reach agreement on how to deal with the matter in a practical manner, OUTA remains unwilling to proceed on the basis that Bakwena has proposed. As such, an impasse has arisen between the parties.
23. It is on this basis that Bakwena has in the interim, sought the enrolment of the matter on the unopposed roll in terms of 13.10 of the Practice Manual, as amended, in light of OUTA failing to deliver its Answering Affidavit despite having delivered its Notice of Intention to Oppose the Rule 6(5)(d)(iii) Application.
24. It is also on this basis that Bakwena has approached the Honourable Deputy Judge President to seek case management of the matter as we anticipate that any enrolment of the matter on the unopposed roll will be opposed by OUTA on the day, leading to a delay and a waste of costs. It is in the interest of the parties to have a structured and managed approach given the nature of the matter and to avoid the risks of further unnecessary costs being incurred and prejudice to a parties rights.

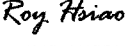
#### **Parties' legal representatives**

25. The applicant's legal representatives are:

25.1 Advocate G Nel S.C: 082 496 9206 / [gerryNel@law.co.za](mailto:gerryNel@law.co.za)

- 25.2 Advocate A Saldulker : 072 461 7147 / [saldulker@counsel.co.za](mailto:saldulker@counsel.co.za)
- 25.3 Rakhee Bhoora: 082 614 5719 / [rbhoora@fasken.com](mailto:rbhoora@fasken.com);
- 25.4 Jessica Rajpal: 082 614 5723 / [jrajpal@fasken.com](mailto:jrajpal@fasken.com); and
- 25.5 Roy Hsiao: 082 614 5710 / [hsiaor@fasken.com](mailto:hsiaor@fasken.com).
26. The first respondent's legal representatives are:
- 26.1 Andri Jennings: 012 110 4442 / [andri@jinc.co.za](mailto:andri@jinc.co.za); and
- 26.2 Delia Turner: 012 110 4442 / [delia@jinc.co.za](mailto:delia@jinc.co.za).
27. The second respondent's legal representatives are:
- 27.1 Sarah Moerane: 011 535 8128 / [smoerane@werksmans.com](mailto:smoerane@werksmans.com); and
- 27.2 Sinazo Magadlela: 011 535 8128 / [smagadlela@werksmans.com](mailto:smagadlela@werksmans.com).
28. The Respondents legal representatives are copied in on this letter.
29. We respectfully request the Honourable Deputy Judge President for a meeting for the case management of the matter, alternatively, the allocation of a Judge for case management.

Yours faithfully

DocuSigned by:  
  
64D9E3825BD24F7...  
**Fasken**  
#4775706v1

"A"



**DELIVERED BY EMAIL**

Jennings Incorporated  
Attention: Andri Jennings  
Email: [andri@jinc.co.za](mailto:andri@jinc.co.za)

Copy to:  
Fasken  
Attention: Rakhee Bhoora / Jessica Rajpal  
Email: [Jrajpal@fasken.com](mailto:Jrajpal@fasken.com)  
[rbhoora@fasken.com](mailto:rbhoora@fasken.com)

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YOUR REFERENCE: A JENNINGS / OUT003  
OUR REFERENCE: Ms S Moerane/Ms S Magadlela /SOUT3114.192/#7889403v1  
DIRECT PHONE: +27 11 535 8128  
DIRECT FAX: +27 11 535 8628  
EMAIL ADDRESS: [smoerane@werksmans.com](mailto:smoerane@werksmans.com) / [smagadlela@werksmans.com](mailto:smagadlela@werksmans.com)

18 July 2022

Dear Sirs

**SOUTH AFRICAN NATIONAL ROADS AGENCY / ORGANISATION UNDOING TAX ABUSE  
CASE NUMBER: 7955/2021**

- 1 We refer to the above matter and your email dated 27 June 2022.
- 2 We note that in terms of the order obtained by Bakwena Platinum Corridor Concessionaire (Pty) Ltd ("Bakwena") on 26 May 2022, our client's answering affidavit was due for service and filing on 24 June 2022.
- 3 We are currently in process of changing our client's counsel team, with the result that new team will have to familiarise themselves with the matter in order to commence with the drafting of the answering affidavit.
- 4 In light of the above, we have been instructed to, which we hereby do, request an indulgence to file our client's answering affidavit on or before close of business on Friday, 19 August 2022.
- 5 We trust our client's request will be favourably considered by your client.
- 6 We look forward to your response.

Yours faithfully

Werksmans Attorneys

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

**Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa**  
**Directors** D Hertz (Chairman) OL Abraham LK Alexander C Andropoulos JKOF Antunes RL Armstrong DA Arteiro K Badal T Bata LM Becker JD Behr AR Berman NMN Bhengu HGB Boshoff TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman KJ Fyfe D Gewer JA Gobetz R Gootkin GF Griessel N Harduth J Hollesen MGH Honiball BB Hotz T Inno HC Jacobs TL Janse van Rensburg AV Jara G Johannes S July J Kallmeyer A Kenny R Killoran N Kirby HA Kotze S Krige PJ Krusche H Laskov P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Mardon NT Matshebela JE Meiring H Michael SM Moerane C Moraitis PM Mosebo NPA Motsiri L Naidoo K Neluheni JJ Niemand BW Ntuli BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter AA Pyzikowski RJ Raath A Ramdhin MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla FT Sikhavhakhavha LK Silberman S Sinden DE Singo JA Smit BM Sono CI Stevens PO Steyn J Stockwell DH Swart JG Theron PW Tindle SA Tom JJ Truter KJ Trudgeon M Tyfield DN van den Berg AA van der Merwe JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield L Watson D Wegierski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies **Consultant** DH Rabin

JOHANNESBURG • CAPE TOWN • STELLENBOSCH



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS &amp; COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT006

YOUR REFERENCE:

DATE: 25 July 2022

TO: WERKSMANS ATTORNEYS

BY EMAIL: [SMoerane@werksmans.com](mailto:SMoerane@werksmans.com)  
[Smagadlala@werksmans.com](mailto:Smagadlala@werksmans.com)

REF: Ms S Moerane/Ms S Magadlala/SOUT3114.192/#7889403v1

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BY EMAIL: [Hsiaor@fasken.com](mailto:Hsiaor@fasken.com)  
[rbhoora@fasken.com](mailto:rbhoora@fasken.com)  
[Jrajpal@fasken.com](mailto:Jrajpal@fasken.com)

REF: Rakhee Bhoora / Jessica Rajpal / Roy Hsiao / 151486.00004

Sirs

ORGANISATION UNDOING TAX ABUSE // SANRAL & OTHERS - CASE NO: 7955/2021

Further to your letter dated 18 July 2022 and the request for an extension of time for your client ("SANRAL") to file its answering affidavit in the above matter by 19 August 2022, we record the following:

1. In principle our client would not have an objection to grant the indulgence requested. However, in this particular instance such an indulgence will prejudice our client *if* our client is not afforded the same courtesy pertaining to the affidavit filed by Bakwena Platinum Corridor Concessionaire (Pty) Ltd ("Bakwena") pursuant to a Rule 6(5)(d)(iii) notice on 1 July 2022. The absence of such an arrangement would mean that our client will have to



file its affidavit in response to Bakwena's affidavit by 5 August 2022, and will then later be expected to file a separate affidavit in response to SANRAL's affidavit.

2. We believe that there will be much overlapping on the issues raised by Bakwena in its affidavit and those to be raised by SANRAL. For our client to have to file two separate affidavits as a result of your client's failure to keep to the prescribed time periods, will lead to an unnecessary duplication of work and costs.
3. In the premises we are also addressing this letter to Bakwena's attorneys, Messrs Fasken Inc. We suggest that the parties agree to your request, but that it then also be agreed that our client be afforded until 9 September 2019 to file its affidavit(s) in response to both the Bakwena- and SANRAL affidavits.
4. Without the time periods being extended as suggested above, we are of the view that our client will be prejudiced and will in such circumstances not be able to agree to your client's request for an extension of time.
5. We look forward to an urgent response from both sets of attorneys.
6. Our client's rights in this regard remain reserved. This letter will be made available to the Court hearing the matter if so required.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,  
Andri Jennings  
Director

A handwritten signature, possibly reading '14', is located in the bottom right corner of the page.

**FASKEN**

Bell Dewar Incorporated  
Attorneys, Notaries and Conveyancers

fasken.com

B-BBEE Level 2 | ISO 9001:2015

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**By E-mail**

**Rakhee Bhoora**  
Phone: +27 11 586 6076  
Fax: +27 11 586 6176  
rbhoora@fasken.com

To: Andri Jennings  
Jennings Incorporated

E-mail: [andri@jinc.co.za](mailto:andri@jinc.co.za)

To: Sarah Moerane  
Werksmans Attorneys

E-mail: [smoerane@werksmans.co.za](mailto:smoerane@werksmans.co.za)

From: Rakhee Bhoora/Jessica Rajpal/Roy Hsiao/151486.00004

Date: 2 August 2022

Subject: **Organisation Undoing Tax Abuse NPC / South African  
National Road Agency Limited and Others - Case No.  
7955/2021**

Dear Mesdames

1. We refer to the letter from Werksmans dated 18 July 2022 as well as your letter dated 25 July 2022, wherein, you both, for separate reasons, seek an agreement, to which our client ("Bakwena") would be a party for the delayed filing of affidavits in the Main Application, on behalf of your respective clients', being the South African National Roads Agency Limited ("SANRAL") and the Organisation Undoing Tax Abuse NPC ("OUTA").
2. It is our view that any discussions in respect of the agreeing of time periods for the filing of Answering Affidavits in respect of the merits of the Main Application, are entirely premature at this stage.
3. As you are aware, Bakwena delivered a notice in terms of Uniform Rule 6(5)(d)(iii) on 1 July 2022 in regard to our client's application on a point of law ("the *in limine*

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application”), essentially based on an Exception, which seeks to dispose of the Main Application in its entirety.

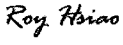
4. In this regard, paragraphs 7 to 9 and 25 of our client’s founding affidavit in the *in limine* Application sets out that it is not only appropriate, but procedurally correct, that the *in limine* Application should be dealt with prior to the merits of the Main Application even being considered; and moreover, that the determination of the Main Application be stayed until a final determination is made in respect of our client’s point of law.
5. It is trite that Rule 6(5)(d)(iii) envisages the raising of a legal point, where the party raising the legal point has reserved the right to file an answering affidavit in the event that the point of law fails. Bakwena, has done so in this particular instance, and Bakwena would only be required to file an answering affidavit in the Main Application in due course, and if the point of law is not successful.
6. The purpose of raising an *in limine* aspect separately from the merits of an application is to avoid the filing of potentially unnecessary affidavits, and the costs associated with preparing such potentially unnecessary affidavits. The proposed filing of affidavits by SANRAL, and in turn, OUTA in respect of the issues raised in the Main Application, running in parallel to our client’s *in limine* application makes a complete mockery of the purpose of the principle and the Rule.
7. It is clear that OUTA will not be in a position to file a replying affidavit in respect of the merits of the Main Application, until after Bakwena has filed its answering affidavit in respect of the merits of the Main Application, should it be necessary to do so.
8. The implication that OUTA intends to file a “replying affidavit” to the answering affidavit of SANRAL and incorporate in such affidavit an answer to the *in limine* application is nonsensical.
9. The suggestion that this will avoid OUTA having to file two separate affidavits and incur unnecessary costs is entirely misconceived, as OUTA will still have to file a replying affidavit to the contents of Bakwena’s answering affidavit, should such affidavit need to be filed in due course.
10. The filing of an affidavit that incorporates a response to SANRAL’s answering affidavit in the answer to the *in limine* point would result in OUTA incurring unnecessary costs of its own volition.



11. Naturally, should our client succeed in its *in limine* Application, the entire Main Application will consequentially be disposed of, without the need for any party, whether it be SANRAL, Bakwena or OUTA, to file any further affidavits.
12. Simply stated, the entire basis for the continuation of the Main Application is dependent on the outcome of our client's *in limine* Application. Consequently, it would not be appropriate or legally and procedurally correct that the time periods for the Main Application should continue to run, requiring SANRAL to deliver answering papers, until such time as the *in limine* application has been finally determined.
13. The time periods for the filing of any further affidavits in the Main Application, whether it be in respect of OUTA, SANRAL or Bakwena, should be suspended until such time as the *in limine* Application has been finally determined.
14. Moreover, the subject matter of the Main Application relates to documents that belong purely to Bakwena. The filing of any affidavits that engage with Bakwena's documents prior to the disposal of the *in limine* Application, which we might add canvasses a material legal basis for the dismissal of the Main Application, will severely prejudice Bakwena's rights.
15. Under these circumstances, and although the filing of our client's *in limine* Application automatically suspends the delivery of further affidavits in the Main Application, we propose, in order to avoid any confusion, that agreement be reached between the parties that until such time as Bakwena's *in limine* Application has been finally determined, the filing of affidavits in the Main Application is suspended.
16. As regards the procedural time limits provided for in our client's *in limine* Application, given that OUTA has delivered an intention to oppose our client's *in limine* Application, it is required to – as pointed out in your letter – deliver its answering affidavit within 15 days thereof, being Friday, 5 August 2022.
17. Should OUTA however require an indulgence to file its answering affidavit (in the *in limine* application), our client has no objection in entertaining such an indulgence, if requested.
18. However, should such an indulgence be premised upon OUTA intending to respond to 'both the Bakwena and [anticipated] SANRAL affidavits' in one affidavit, such request would be and is, misconstrued, and would not be agreed to.

19. In the circumstances and as stated above, it would be appropriate that the parties agree that the Main Application is held in abeyance pending the final determination of our client's *in limine* Application.
20. We accordingly anticipate, that in the absence of an indulgence, OUTA will deliver its answering affidavit in the *in limine* Application on or before Friday, 5 August 2022.
21. All our client's rights are reserved.

Yours faithfully

DocuSigned by:  
  
64D9E3825BD24F7...  
**rasken**  
#4730941v1

14



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT006

YOUR REFERENCE:

DATE: 05 August 2022

TO: WERKSMANS ATTORNEYS

BY EMAIL: [SMoerane@werksmans.com](mailto:SMoerane@werksmans.com)  
[Smagadlela@werksmans.com](mailto:Smagadlela@werksmans.com)

REF: Ms S Moerane/Ms S Magadlela/SOUT3114.192/#7889403v1

COPIED: FASKEN (INCORPORATED AS BELL DEWAR INC.

BY EMAIL: [Hsiaor@fasken.com](mailto:Hsiaor@fasken.com)  
[rbhoora@fasken.com](mailto:rbhoora@fasken.com)  
[Jrajpal@fasken.com](mailto:Jrajpal@fasken.com)

REF: Rakhee Bhoora / Jessica Rajpal / Roy Hsiao / 151486.00004

Sirs

ORGANISATION UNDOING TAX ABUSE // SANRAL & OTHERS - CASE NO: 7955/2021

1. We refer to your letter dated 2 August 2022.
2. Various views on procedural aspects are expressed in your letter with which we respectfully disagree. Although we do not believe it prudent to litigate by way of correspondence, we deem it necessary to briefly answer to some of the views expressed. Where we fail to deal with any specific allegations same should not be construed as an admission thereof.



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3. We are of the view that the manner in which your client's application in terms of Rule 6(5)(d)(iii) was brought is contrary to what the Rule envisages and amounts to an abuse of the process. The intention of the Rule is not to have an *in limine* point heard as a completely separate and new application wherein our client is expected to file an answering affidavit and your client is then given an opportunity to reply. According to our interpretation of the authorities, a Rule 6(5)(d)(iii) notice wherein a point *in limine* is raised takes the place of an answering affidavit.
4. If only a Rule 6(5)(d)(iii) notice is filed, all allegations in our client's founding affidavit must be taken as established facts by the court. The allegations contained in our client's founding affidavit in the main application therefore stand uncontested at this time. The authorities are clear that should your client have wished to answer to the merits as well, it should have done so together with any *in limine* points it raised.
5. Your client does not obtain an automatic right to later file an answering affidavit on the merits where it opted only to raise an *in limine* point and not answer to the merits within the prescribed time periods. Moreover, in terms of the court order that was granted by the Honourable Potterill J on 26 May 2022, your client was ordered to file its answering affidavit to the main application within 20 days. Your client therefore has no further entitlement to later file an answering affidavit as contended for in your letter.
6. SANRAL, as a respondent, is also not excused from filing its answering affidavit in accordance with the prescribed time periods merely because your client is raising a purported *in limine* point.

A handwritten signature or set of initials, possibly '14', written in black ink.

7. In the premises, we disagree with your contention that the filing of your client's Rule 6(5)(d)(iii) application suspends the delivery of further affidavits, and further do not agree that the main application should be held in abeyance pending the final determination of your client's Rule 6(5)(d)(iii) application.
8. It appears in any event that the affidavit filed in support of your client's Rule 6(5)(d)(iii) notice goes beyond only raising a point of law and raises issues on the merits that require an answer from our client. These issues should have been raised in an answering affidavit: raising it by way of a separate application to afford your client an opportunity to then file a replying affidavit, (which it would normally not be afforded) further evidences the inappropriateness of the process followed by your client. This will be fully dealt with in our client's affidavit filed in answer to your client's Rule 6(5)(d)(iii) application and in subsequent legal argument.
9. We therefore hold the view that our client will only be obliged to file its replying affidavit (which will also contain an answer to your client's Rule 6(5)(d)(iii) notice) once all the respondents have filed their answering affidavits in the main application. Should condonation be required, our client will request same from the court hearing the matter.
10. Please note that a copy of this letter as well as the related preceding correspondence will be made available to the court hearing the matter.
11. Our client's rights remain reserved in full.

14

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,

Andri Jennings

Director

14

**FASKEN**

Bell Dewar Incorporated  
Attorneys, Notaries and Conveyancers  
  
fasken.com  
  
B-BBEE Level 2 | ISO 9001:2015

PHYSICAL Inanda Greens  
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Sandton  
2196  
South Africa

**"E"**  
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Benmore, 2010  
South Africa  
  
T +27 11 586 6000  
F +27 11 586 6104

**By E-mail**

**Rakhee Bhoora**  
Phone: +27 11 586 6076  
Fax: +27 11 586 6176  
rbhoora@fasken.com

To: Andri Jennings  
Jennings Incorporated

E-mail: [andri@jinc.co.za](mailto:andri@jinc.co.za)

To: Sarah Moerane  
Werksmans Attorneys

E-mail: [smoerane@werksmans.co.za](mailto:smoerane@werksmans.co.za)

From: Rakhee Bhoora/Jessica Rajpal/Roy Hsiao/151486.00004

Date: 17 August 2022

Subject: **Organisation Undoing Tax Abuse NPC / South African  
National Road Agency Limited and Others - Case No.  
7955/2021**

Dear Madam

1. We refer to your letter dated 5 August 2022.
2. We do not intend to deal with each and every allegation contained in your letter, as we have no intention of litigating by way of correspondence, but disagree with your legal and procedural contentions.
3. Our client's position in regard to its *in limine* Application is clearly set out in our letter dated 2 August 2022, and no purpose would be served in repeating such position.
4. We specifically deny that our client's *in limine* Application is an abuse of process and is inappropriate.
5. Your client's belated approach of taking issue with our client's *in limine* Application appears to be entirely dilatory.

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6. In the absence of your client's answering affidavit, we have no choice but to take the steps necessary to apply for a hearing date.
7. We also intend to approach the Deputy Judge President to have the application placed under case management.
8. Should your client change its attitude and wish to agree to what was proposed in our previous correspondence, please advise our offices thereof, by no later than close of business on Friday 19 August 2022. Should we not hear from you, we will commence with the steps as set out above.
9. All our client's rights are reserved.

Yours faithfully

DocuSigned by:  
*Roy Hsiao*  
64D9E3825BD24F7...  
**fasken**  
#4760351v1

"FA2(F)"

**Andri Jennings**

**From:** Andri Jennings  
**Sent:** 01 September 2022 12:16 PM  
**To:** 'AnNieuwoudt@judiciary.org.za'; Lutendo Muneri; Sidesha.sidesha@gmail.com; Siviwe Sidesha  
**Cc:** Rakhee Bhoora; Jessica Rajpal; Roy Hsiao; Delia Turner; Irene Pienaar; Sarah Moerane; Smagadlala@werksmans.com; StateAttorneyPretoria@justice.gov.za  
**Subject:** RE: Organisation Undoing Tax Abuse NPC / South African National Road Agency Ltd and Three Others - Case No. 7955/2021 (OUT006)  
**Attachments:** LETTER TO DJP DATED 1 SEPTEMBER 2022.pdf; ANNEXURE A RULE 30 AND 30A.pdf

Good day.

We refer to the abovementioned matter as well as the email and attached letter below.

Kindly find attached hereto a letter addressed to the Honourable Judge President, in respect of the below request for Case Management from FASKEN (Incorporated as Bell Dewar Inc.) and it contains the reasons why our client does not believe referral to Case Management is warranted at this stage.

We confirm that we will hand deliver a copy of our letter shortly.

We trust that the above is in order.

Kind Regards/Vriendelike Groete,  
Andri Jennings  
Director/Direkteur



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

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18 Ross Street, Cullinan | O: 012 110 4442  
222 Smit Street, 21st Floor, Braamfontein, Johannesburg | O: 010 005 4572  
21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 258 8770

VAT No: 4660291974 | Reg No: 2018/065399/21 | [www.jinc.co.za](http://www.jinc.co.za)

**KINDLY NOTE:** We will never change or amend our trust banking details via e-mail or other any other electronic forum. Please contact our office for formal verification should you receive any correspondence or communication.

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**From:** Roy Hsiao <Hsiaor@fasken.com>

**Sent:** 30 August 2022 05:13 PM

**To:** 'AnNieuwoudt@judiciary.org.za' <AnNieuwoudt@judiciary.org.za>; Lutendo Muneri <LuMuneri@judiciary.org.za>; Andri Jennings <andri@jinc.co.za>; Delia Turner <delia@jinc.co.za>; Irene Pienaar

4



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT006  
YOUR REFERENCE: 7955/2021  
DATE: 01 September 2022

---

TO: DEPUTY JUDGE PRESIDENT  
THE HONOURABLE MR JUSTICE LEDWABA  
BY EMAIL AND BY HAND

AND TO: WERKSMANS ATTORNEYS

BY EMAIL: [SMoerane@werksmans.com](mailto:SMoerane@werksmans.com)  
[Smagadiela@werksmans.com](mailto:Smagadiela@werksmans.com)

REF: Ms S Moerane/Ms S Magadiela/SOUT3114.192/#7889403v1

AND TO: FASKEN (INCORPORATED AS BELL DEWAR INC.

BY EMAIL: [Hsiao@fasken.com](mailto:Hsiao@fasken.com)  
[rbhoora@fasken.com](mailto:rbhoora@fasken.com)  
[Jrajpal@fasken.com](mailto:Jrajpal@fasken.com)

REF: Rakhee Bhoora / Jesicca Rajpal / Roy Hsiao / 151486.00004

AND TO: THE STATE ATTORNEY

BY EMAIL: [StateAttorneyPretoria@justice.gov.za](mailto:StateAttorneyPretoria@justice.gov.za)

REF: 00439/2021/Z13

Sirs

IN RE: ORGANISATION UNDOING TAX ABUSE NPC//SOUTH AFRICAN NATIONAL ROAD AGENCY AND THREE  
OTHERS - CASE NO: 7955/2021

[www.jinc.co.za](http://www.jinc.co.za)

Reg No: 2018/065399/Z1 | VAT No: 4660291974

Andri Jennings (LLB - UP) Director

Delia Turner (LLB - UP) Associate Attorney | Cindy Pestano (LLB - UNISA) Conveyancer  
Malizva van der Linde (LLB - NWU) Attorney | Ian Jennings - Candidate Legal Practitioner



[office@jinc.co.za](mailto:office@jinc.co.za)

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222 Smit Street, 21<sup>st</sup> Floor, Braamfontein, Johannesburg | O: 010 005 4572

21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 258 8770

1. We act on behalf of the Organisation Undoing Tax Abuse (“OUTA”) in the above matter. We refer to the letter addressed to the Honourable Deputy Judge President Ledwaba by Fasken Attorneys, acting on behalf of Bakwena Platinum Corridor Concessionaire (Pty) Ltd (“Bakwena”) wherein a Case Management meeting was requested by way of correspondence sent by email on 30 August 2022 at 5:13pm.
2. We do not believe the appointment of a Case Manager to resolve interlocutory procedural issues which are provided for in the Uniform Rules of Court is warranted. In this case the dispute pertains to the correct procedure to follow when raising a legal point in terms of Rule 6(5)(d)(iii). There are no complex issues that cannot be resolved by the proper utilisation of the Uniform Rules of Court, as OUTA has done.
3. Our client has served the attached Rule 30 and 30A notice on 31 August 2022 (attached as annexure “A”) which, if not resolved, will lead to a formal application in terms of the Uniform Rules of Court, and which will require a judgment.
4. The background in short is:
  - 4.1 Bakwena was joined as fourth respondent in the main application that was brought by OUTA by virtue of a court order granted by the Honourable Potterill J on 26 May 2022, wherein Bakwena was ordered to file an answering affidavit within 20 days thereof.
  - 4.2 Instead of filing an answering affidavit as directed by the court order, Bakwena proceeded to file its Rule 6(5)(d)(iii) notice by way of a new interlocutory application. OUTA filed a notice of intention to oppose

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but was subsequently advised by counsel that the Uniform Rules do not make provision for legal points to be raised by way of a new, separate application as was done by Bakwena. OUTA has not taken further steps in this regard.

- 4.3 On 29 August 2022 Bakwena proceeded to request enrollment of its Rule 6(5)(d)(iii) application on the unopposed roll, and according to Caselines a date of 2 December 2022 has been allocated.
- 4.4 On 31 August 2022 OUTA filed its notice in terms of Rule 30 and 30A contending that Bakwena's Rule 6(5)(d)(iii) application and enrollment thereof is irregular, *alternatively* do not comply with the Rules of Court and/or the order granted.
5. We have attempted to address this issue through correspondence with Messrs Fasken, on record for Bakwena, in order to save time and costs, but an agreement could not be reached about the correct application of the Rule.
6. We are of the view that the matter is not capable of being resolved through Case Management, and further do not believe that the purpose of Case Management is to have applications decided and/or use Case Management as a substitution for formal court processes as provided for by the Uniform Rules.
7. In light of the above, we submit that the matter should follow its normal course in court and that referral to Case Management for purposes of resolving this dispute will be unnecessary.

A handwritten signature or set of initials, possibly 'JY', written in black ink.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,

Andri Jennings

Director

14

"A"

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case no: 7955/21

In the matter between:

**BAKWENA PLATINUM CORRIDOR  
CONCESSIONAIRE (PTY) LTD**

**Applicant**

and

**ORGANISATION UNDOING TAX ABUSE NPC**

**First Respondent**

**SOUTH AFRICAN NATIONAL ROAD AGENCY  
SOC LIMITED**

**Second Respondent**

**THE MINISTER OF TRANSPORT N.O.**

**Third Respondent**

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

**Fourth Respondent**

In re: the Main Application between:

**ORGANISATION UNDOING TAX ABUSE NPC**

**Applicant**

and

**SOUTH AFRICAN NATIONAL ROAD AGENCY  
SOC LIMITED**

**First Respondent**

**THE MINISTER OF TRANSPORT N.O.**

**Second Respondent**

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

**Third Respondent**

**BAKWENA PLATINUM CORRIDOR  
CONCESSIONAIRE (PTY) LTD**

**Fourth Respondent**

---

NOTICE IN TERMS OF RULE 30 AND 30A

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**TAKE NOTICE THAT** the first respondent (applicant in the main application and also hereinafter referred to as "OUTA") contends that the application brought by the applicant (fourth respondent in the main application and also hereinafter referred to as "Bakwena") in terms of Rule 6(5)(d)(iii) constitute an irregular step as contemplated by Rule 30, *alternatively* amounts to non-compliance with the court order granted by the Honourable Potterill on 26 May 2022 and/or the provisions of Rule 6(5)(d)(iii) as contemplated by Rule 30A on the grounds as set out below.

**TAKE NOTICE FURTHER THAT** the first respondent contends that the application to have the applicant's Rule 6(5)(d)(iii) application enrolled on the unopposed roll constitutes an irregular step as contemplated by Rule 30 on the grounds set out below.

1. The main application was launched by OUTA on or about 16 February 2021 out of the above Honourable Court under the above case number.
2. On 26 May 2022 the Honourable Potterill J granted Bakwena leave to intervene as fourth respondent in the main application. A copy of the order is attached as annexure "A". Prayer 3 of the order granted by the Honourable Potterill J directs:

*"The Applicant is granted leave to file its Answering Affidavit in the Main Application within 20 days of the granting of this order in the application for leave to intervene."*

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3. Bakwena has failed to file an answering affidavit within the directed time and there is accordingly at this stage no answering papers filed by Bakwena in the main application.

**Bakwena's Notice in terms of Rule 6(5)(d)(iii) dated 1 July 2022:**

4. On or about 1 July 2022 Bakwena filed a "*Notice in terms of Rule 6(5)(d)(iii)*" in the form of an application together with a founding affidavit wherein dismissal of the main application brought by OUTA is sought with costs. Bakwena's "*Notice in terms of Rule 6(5)(d)(iii)*" required OUTA to file a notice of intention to oppose and an answering affidavit within the time periods prescribed in Rule 6. The first respondent filed a notice of intention to oppose on 15 July 2022 but has not taken any further steps.
5. The Uniform Rules of Court do not make provision for a notice in terms of Rule 6(5)(d)(iii) to be filed by way of a new and separate interlocutory application wherein a respondent in an application that wishes to raise a point of law only is provided with an opportunity to file both a founding- and a replying affidavit.
6. The Uniform Rules further do not make provision for the main application brought by OUTA to be dismissed by way of an interlocutory application in circumstances where answering- and replying affidavits are yet to be filed in the main application.

Handwritten signature or initials, possibly reading '14' or similar, located at the bottom right of the page.

7. In the premises Bakwena's "*Notice in terms of Rule 6(5)(d)(iii)*" brought as a separate application instead of filing such a notice *in lieu* of an answering affidavit or as part thereof, constitutes an irregular step, *alternatively* fails to comply with the order granted by the Honourable Potterill J on 26 May 2022 and/or the provisions of Rule 6(5)(d)(iii).

**Bakwena's application for the Rule 6(5)(d)(iii) application to be set down on the unopposed roll:**

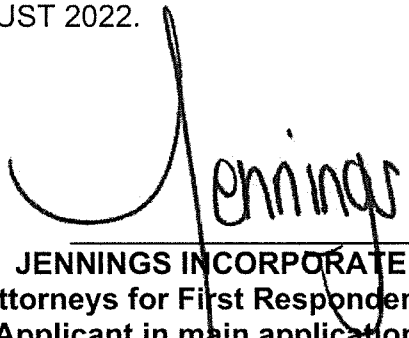
8. On 29 August 2022 Bakwena applied for a date to set down its Rule 6(5)(d)(iii) application on the unopposed roll. According to Caselines a date on the unopposed roll has been allocated for 2 December 2022.
9. The main application is also opposed by the second respondent ("SANRAL") who is yet to file its answering affidavit in the main application, to which OUTA will have an opportunity to reply. Applying for and obtaining a date on the unopposed roll for dismissal of OUTA's main application in circumstances where all the affidavits in the main application have not been filed, is irregular.
10. Furthermore, enrolling Bakwena's Rule 6(5)(d)(iii) application on the unopposed roll with the objective of having the main application dismissed, in circumstances where Bakwena has failed to file an answering affidavit in the main application as directed by the above Honourable Court on 26 May 2022, also constitutes an irregular step.



11. Finally, by its very nature, a notice filed by a respondent in terms of Rule 6(5)(d)(iii) implies that the matter is opposed, as such a notice is filed *in lieu* of an answering affidavit. The court hearing the matter will have to consider OUTA's founding affidavit filed in the main application together with the Rule 6(5)(d)(iii) notice. Therefore, enrolling the matter for hearing on the unopposed roll is irregular.

**TAKE NOTICE FURTHER THAT** the first respondent hereby affords the applicant ten (10) days from service to remove the causes of complaint and comply with prayer 3 of the Court Order granted by the Honourable Potterill J on 26 May 2022, failing which the first respondent intends to apply to the above Honourable Court to set aside the applicant's application brought in terms of Rule 6(5)(d)(iii), together with the enrollment thereof on the unopposed roll.

SIGNED AT PRETORIA ON THIS 31<sup>st</sup> DAY OF AUGUST 2022.

  
**JENNINGS INCORPORATED**  
**Attorneys for First Respondent**  
**(Applicant in main application)**  
149 Anderson Street  
Brooklyn, Pretoria  
Tel: 012 110 4442  
Email: [andri@jinc.co.za](mailto:andri@jinc.co.za)  
Ref: A JENNINGS/OUT006

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT  
PRETORIA

14

AND TO: **FASKEN** *Per electronic service*  
**(INCORPORATED IN SOUTH AFRICA AS BELL DEWAR INC)**  
**Attorneys for Applicant**  
**(Fourth Respondent in main application)**  
 Building 2, Inanda Greens  
 54 Wierda Road West  
 Sandton  
**Tel:** 011 586 6076  
**Fax:** 011 586 6176  
**Email:** [rbhoora@fasken.com](mailto:rbhoora@fasken.com)  
[irajpal@fasken.com](mailto:irajpal@fasken.com)  
[rscott@fasken.com](mailto:rscott@fasken.com)  
**Ref:** Rakhee Bhoora/Jessica Rajpal/R Scott  
**c/o SAVAGE JOOSTE & ADAMS**  
 Kings Gate 5, 10<sup>th</sup> Street  
 Cnr Brooklyn Road & Justice Mahomed Street  
 Menlo Park  
 Pretoria  
**Tel:** 012 452 8200  
**Fax:** 012 452 8201

AND TO: **WERKSMANS ATTORNEYS** *Per electronic service*  
**Attorneys for Second and Third Respondents**  
**(First and Third Respondents in main application)**  
 The Central, 96 Rivonia Road  
 Sandton,  
 Johannesburg  
**Tel:** 011 535 8128  
**Fax:** 011 535 8628  
**Email:** [smoerane@werksmans.com](mailto:smoerane@werksmans.com)  
[kradoo@werksmans.com](mailto:kradoo@werksmans.com)  
**Ref:** MS S MOERANE/MS K RAPOO/SOUT3114.192  
**c/o MABUELA ATTORNEYS**  
 4<sup>th</sup> Floor Charter House  
 179 Bosman Street  
 Pretoria  
**Tel:** 012 325 3966/7

AND TO: **THE OFFICE OF THE STATE ATTORNEY** *Per electronic service*  
**Attorneys for the Third Respondent**  
**(Second Respondent in main application)**  
 SALU Building, 26<sup>th</sup> Floor  
 316 Thabo Sehume Street  
 Pretoria  
 0001  
**Email:** [StateAttorneyPretoria@justice.gov.za](mailto:StateAttorneyPretoria@justice.gov.za)  
**Ref:** 00439/2021/Z13t

14

"FA2(g)"

**Andri Jennings**

**From:** Roy Hsiao <Hsiaor@fasken.com>  
**Sent:** 02 September 2022 12:55 PM  
**To:** 'AnNieuwoudt@judiciary.org.za'; Lutendo Muneri; Andri Jennings; Delia Turner; Irene Pienaar; Sarah Moerane; Smagadlela@werksmans.com  
**Cc:** Rakhee Bhoora; Jesicca Rajpal  
**Subject:** Organisation Undoing Tax Abuse NPC / South African National Road Agency Ltd and Three Others - Case No. 7955/2021 [FMD-BDOCS.FID361776]  
**Attachments:** 4780456v1\_Letter to DJP - Case Management - 2 September 2022.docx.pdf  
**Importance:** High


Dear Ms Lutendo,

We refer to the above matter.

Please see the attached letter for the attention of the Honourable Deputy Judge President.

A hard copy of the letter will be delivered during the course of Monday, 5 September 2022.

Regards  
Roy

 Roy Hsiao  
SENIOR ASSOCIATE

**FASKEN**

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*> [Centre de ressources sur la COVID-19 pour les entreprises](#)*

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2 September 2022

**Rakhee Bhoora**

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[rbhoora@fasken.com](mailto:rbhoora@fasken.com)

*By Hand and E-mail*

**His Lordship Mr Justice A Ledwaba**  
Office of the Honourable Deputy Judge  
President  
Office 7.15  
Paul Kruger & Madiba Street  
Pretoria Central  
0002

Email address:

[AnNieuwoudt@judiciary.org.za](mailto:AnNieuwoudt@judiciary.org.za) /

[LuMuneri@judiciary.org.za](mailto:LuMuneri@judiciary.org.za)

Our ref: Rakhee Bhoora/Jessica Rajpal/Roy Hsiao/151486.00004

**Organisation Undoing Tax Abuse NPC / South African National Road Agency Ltd and  
Three Others – Case No. 7955/2021**

Dear Honourable Deputy Judge President

1. We refer to our letter dated 30 August 2022 (hand delivered on 31 August 2022) as well as the letter dated 1 September 2022 from Jennings Incorporated, acting on behalf of the First Respondent, OUTA.
2. As we had anticipated in our letter wherein we requested case management of the matter, OUTA, without delivering its Answering Affidavit to Bakwena's Rule 6(5)(d)(iii) *In Limine* Application ("Bakwena's *In Limine* Application"), has responded to Bakwena's enrolment of the *In Limine* Application on the unopposed roll (as provided for in paragraph 13.10 of the Practice Manual), with two intended applications that will unnecessarily increase costs, cause delays, and prejudice the parties', and in particular, Bakwena's clear rights in the matter.
3. Following the delivery of our letter dated 30 August 2022 and the steps taken by Bakwena to enrol the *In Limine* Application (as set out in our letter), OUTA has delivered –



- 3.1 a Notice in terms of Rule 30 and 30A on 31 August 2022, wherein it contends that the *In Limine* Application instituted by Bakwena constitutes an irregular step, alternatively, amounts to non-compliance with the court order by Her Madam Justice Potterill on 26 May 2022 requiring Bakwena to deliver an Answering Affidavit in the Main Application. OUTA does so despite Rule 30A not being applicable (as it is employed for purposes of compliance with the Rules). As regards OUTA's Notice in terms of Rule 30 and Rule 30A, the Notice in itself is not only irregular but has been delivered outside the time limits imposed by the Uniform Rules of Court. The Notice appears to be a complete afterthought and simply an attempt to avoid the hearing of the *In Limine* Application at all costs;
- 3.2 an application to compel SANRAL (and Skhumbuzo Macozoma N.O.) to deliver its Answering Affidavit in the Main Application, presumably in an attempt to entrench OUTA's position that the Main Application must proceed, notwithstanding Bakwena's *In Limine* Application having been instituted, but not yet heard; and
- 3.3 the letter dated 1 September 2022 addressed to your office stating that the matter does not warrant case management as the issues are not complex and can be resolved by proper utilization of the Uniform Rule of Court, which OUTA claims it has done.
4. Whilst it may technically be correct that the issues are not particularly complex, it is the manner in which OUTA has conducted itself in the matter thus far, and clearly intends to conduct itself going forward, that warrants case management of the matter. The suggestion that case management can be avoided by a proper utilization of the Rules is negated by OUTA's clear failure to so utilize the Rules.
5. Bakwena's *In Limine Application* was delivered on 1 July 2022 and given the extent of OUTA's complaints at this belated stage, it begs the question as to why, at the time of delivery of Bakwena's *In Limine Application* or shortly thereafter, the issues now raised were not raised. In fact, OUTA delivered its Notice of Opposition but did nothing thereafter.

6. The only inference that can be drawn from OUTA's conduct is that this is an attempt by OUTA to avoid the hearing of Bakwena's *In Limine Application*, which is a self-standing application, and is material to the entire basis of OUTA's Main Application.
7. The conduct by OUTA, as anticipated, is the very reason that Bakwena seeks case management in order to ensure a structured and managed approach is followed in the matter.
8. We submit that OUTA has, by its own conduct, demonstrated that there is a need for case management of the matter. The parties are clearly not in agreement. The notices and applications delivered by OUTA are fundamentally flawed and certainly appear to be nothing other than an attempt to avoid the determination of Bakwena's *In Limine Application*.
9. The mere fact that OUTA wishes to avoid the case management of an application that has a number of associated interlocutory applications is in itself very strange.
10. We believe that it is therefore in the interests of the parties, the Court, and justice, that the matter be case managed, not only to avoid any prejudice against all of the parties, including Bakwena, but also to avoid incurring unnecessary costs. At the risk of repeating ourselves, in light of the interlocutory applications, or potential interlocutory applications to be instituted by OUTA, it is even more important that the matter be case managed.
11. Consequently, we once again, respectfully request the Honourable Deputy Judge President for a meeting for the case management of the matter, alternatively, the allocation of a Judge for case management.

Yours faithfully

DocuSigned by:

**Rakhee Bhoola**

84D6CA94D7134BF...

**Fasken**

#4780456v1

"FA3"

**Andri Jennings**

**From:** Andri Jennings  
**Sent:** 31 August 2022 04:21 PM  
**To:** Roy Hsiao  
**Cc:** Rakhee Bhoora; Jesicca Rajpal; Delia Turner; Irene Pienaar; Sarah Moerane; Smagadlela@werksmans.com  
**Subject:** RE: Organisation Undoing Tax Abuse NPC / South African National Road Agency Ltd and Three Others - Case No. 7955/2021 - OUT006  
**Attachments:** RULE 30 AND 30A.pdf

Good day,

We refer to the abovementioned matter.

In terms of Rule 4A(1)(c) of the Uniform Rules of Court, which provides for the service of documents and notices to be effected by electronic mail, we hereby serve the following legal processes:

**1. NOTICE IN TERMS OF RULE 30 AND 30A.**

We trust that the above is in order.

Kindly acknowledge receipt hereof.

Kind Regards/Vriendelike Groete,  
Andri Jennings  
Director/Direkteur



**JENNINGS**

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

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

**Case no: 7955/21**

In the matter between:

**BAKWENA PLATINUM CORRIDOR  
CONCESSIONAIRE (PTY) LTD**

**Applicant**

and

**ORGANISATION UNDOING TAX ABUSE NPC**

**First Respondent**

**SOUTH AFRICAN NATIONAL ROAD AGENCY  
SOC LIMITED**

**Second Respondent**

**THE MINISTER OF TRANSPORT N.O.**

**Third Respondent**

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

**Fourth Respondent**

In re: the Main Application between:

**ORGANISATION UNDOING TAX ABUSE NPC**

**Applicant**

and

**SOUTH AFRICAN NATIONAL ROAD AGENCY  
SOC LIMITED**

**First Respondent**

**THE MINISTER OF TRANSPORT N.O.**

**Second Respondent**

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

**Third Respondent**

**BAKWENA PLATINUM CORRIDOR  
CONCESSIONAIRE (PTY) LTD**

**Fourth Respondent**

---

**NOTICE IN TERMS OF RULE 30 AND 30A**

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**TAKE NOTICE THAT** the first respondent (applicant in the main application and also hereinafter referred to as "OUTA") contends that the application brought by the applicant (fourth respondent in the main application and also hereinafter referred to as "Bakwena") in terms of Rule 6(5)(d)(iii) constitute an irregular step as contemplated by Rule 30, *alternatively* amounts to non-compliance with the court order granted by the Honourable Potterill on 26 May 2022 and/or the provisions of Rule 6(5)(d)(iii) as contemplated by Rule 30A on the grounds as set out below.

**TAKE NOTICE FURTHER THAT** the first respondent contends that the application to have the applicant's Rule 6(5)(d)(iii) application enrolled on the unopposed roll constitutes an irregular step as contemplated by Rule 30 on the grounds set out below.

1. The main application was launched by OUTA on or about 16 February 2021 out of the above Honourable Court under the above case number.
2. On 26 May 2022 the Honourable Potterill J granted Bakwena leave to intervene as fourth respondent in the main application. A copy of the order is attached as annexure "A". Prayer 3 of the order granted by the Honourable Potterill J directs:

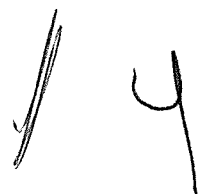
*"The Applicant is granted leave to file its Answering Affidavit in the Main Application within 20 days of the granting of this order in the application for leave to intervene."*

Handwritten signature or initials, possibly reading 'J 4'.

3. Bakwena has failed to file an answering affidavit within the directed time and and there is accordingly at this stage no answering papers filed by Bakwena in the main application.

**Bakwena's Notice in terms of Rule 6(5)(d)(iii) dated 1 July 2022:**

4. On or about 1 July 2022 Bakwena filed a "*Notice in terms of Rule 6(5)(d)(iii)*" in the form of an application together with a founding affidavit wherein dismissal of the main application brought by OUTA is sought with costs. Bakwena's "*Notice in terms of Rule 6(5)(d)(iii)*" required OUTA to file a notice of intention to oppose and an answering affidavit within the time periods prescribed in Rule 6. The first respondent filed a notice of intention to oppose on 15 July 2022 but has not taken any further steps.
5. The Uniform Rules of Court do not make provision for a notice in terms of Rule 6(5)(d)(iii) to be filed by way of a new and separate interlocutory application wherein a respondent in an application that wishes to raise a point of law only is provided with an opportunity to file both a founding- and a replying affidavit.
6. The Uniform Rules further do not make provision for the main application brought by OUTA to be dismissed by way of an interlocutory application in circumstances where answering- and replying affidavits are yet to be filed in the main application.

Handwritten signature or initials, possibly reading 'JY'.

7. In the premises Bakwena's "*Notice in terms of Rule 6(5)(d)(iii)*" brought as a separate application instead of filing such a notice *in lieu* of an answering affidavit or as part thereof, constitutes an irregular step, *alternatively* fails to comply with the order granted by the Honourable Potterill J on 26 May 2022 and/or the provisions of Rule 6(5)(d)(iii).

**Bakwena's application for the Rule 6(5)(d)(iii) application to be set down on the unopposed roll:**

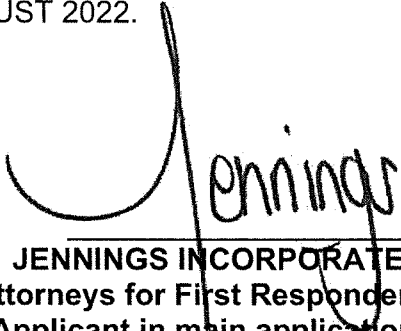
8. On 29 August 2022 Bakwena applied for a date to set down its Rule 6(5)(d)(iii) application on the unopposed roll. According to Caselines a date on the unopposed roll has been allocated for 2 December 2022.
9. The main application is also opposed by the second respondent ("SANRAL") who is yet to file its answering affidavit in the main application, to which OUTA will have an opportunity to reply. Applying for and obtaining a date on the unopposed roll for dismissal of OUTA's main application in circumstances where all the affidavits in the main application have not been filed, is irregular.
10. Furthermore, enrolling Bakwena's Rule 6(5)(d)(iii) application on the unopposed roll with the objective of having the main application dismissed, in circumstances where Bakwena has failed to file an answering affidavit in the main application as directed by the above Honourable Court on 26 May 2022, also constitutes an irregular step.

A handwritten signature in black ink, consisting of a stylized 'J' or 'I' followed by a flourish.

11. Finally, by its very nature, a notice filed by a respondent in terms of Rule 6(5)(d)(iii) implies that the matter is opposed, as such a notice is filed *in lieu* of an answering affidavit. The court hearing the matter will have to consider OUTA's founding affidavit filed in the main application together with the Rule 6(5)(d)(iii) notice. Therefore, enrolling the matter for hearing on the unopposed roll is irregular.

**TAKE NOTICE FURTHER THAT** the first respondent hereby affords the applicant ten (10) days from service to remove the causes of complaint and comply with prayer 3 of the Court Order granted by the Honourable Potterill J on 26 May 2022, failing which the first respondent intends to apply to the above Honourable Court to set aside the applicant's application brought in terms of Rule 6(5)(d)(iii), together with the enrollment thereof on the unopposed roll.

SIGNED AT PRETORIA ON THIS 31<sup>st</sup> DAY OF AUGUST 2022.

  
**JENNINGS INCORPORATED**  
**Attorneys for First Respondent**  
**(Applicant in main application)**  
149 Anderson Street  
Brooklyn, Pretoria  
Tel: 012 110 4442  
Email: [andri@jinc.co.za](mailto:andri@jinc.co.za)  
Ref: A JENNINGS/OUT006

TO: THE REGISTRAR OF THE ABOVE HONOURABLE COURT  
PRETORIA



AND TO: **FASKEN** *Per electronic service*  
**(INCORPORATED IN SOUTH AFRICA AS BELL DEWAR INC)**  
**Attorneys for Applicant**  
**(Fourth Respondent in main application)**  
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 54 Wierda Road West  
 Sandton  
**Tel:** 011 586 6076  
**Fax:** 011 586 6176  
**Email:** [rbhoora@fasken.com](mailto:rbhoora@fasken.com)  
[irajpal@fasken.com](mailto:irajpal@fasken.com)  
[rscott@fasken.com](mailto:rscott@fasken.com)  
**Ref:** Rakhee Bhoora/Jessica Rajpal/R Scott  
**c/o SAVAGE JOOSTE & ADAMS**  
 Kings Gate 5, 10<sup>th</sup> Street  
 Cnr Brooklyn Road & Justice Mahomed Street  
 Menlo Park  
 Pretoria  
**Tel:** 012 452 8200  
**Fax:** 012 452 8201

AND TO: **WERKSMANS ATTORNEYS** *Per electronic service*  
**Attorneys for Second and Third Respondents**  
**(First and Third Respondents in main application)**  
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 Sandton,  
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**Fax:** 011 535 8628  
**Email:** [smoerane@werksmans.com](mailto:smoerane@werksmans.com)  
[kradoo@werksmans.com](mailto:kradoo@werksmans.com)  
**Ref:** MS S MOERANE/MS K RAPOO/SOUT3114.192  
**c/o MABUELA ATTORNEYS**  
 4<sup>th</sup> Floor Charter House  
 179 Bosman Street  
 Pretoria  
**Tel:** 012 325 3966/7

AND TO: **THE OFFICE OF THE STATE ATTORNEY** *Per electronic service*  
**Attorneys for the Third Respondent**  
**(Second Respondent in main application)**  
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 316 Thabo Sehume Street  
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 0001  
**Email:** [StateAttorneyPretoria@justice.gov.za](mailto:StateAttorneyPretoria@justice.gov.za)  
**Ref:** 00439/2021/Z13t

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