

**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

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.”

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.

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 31st DAY OF AUGUST 2022.



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