

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CC CASE NO: CCT19/2022**  
**HC GDP CASE NO: J32097/2020**

In the *ex parte* application of:

**THE CITY OF CAPE TOWN**

Applicant for admission  
as *Amicus Curiae*

*In re:*

**ORGANISATION UNDOING TAX ABUSE**

Applicant

And

**MINISTER OF TRANSPORT**

First Respondent

**MINISTER OF CO-OPERATIVE GOVERNANCE AND  
TRADITIONAL AFFAIRS**

Second Respondent

**ROAD TRAFFIC INFRINGEMENT AUTHORITY**

Third Respondent

**APPEALS TRIBUNAL**

Fourth Respondent

**ROAD TRAFFIC MANAGEMENT CORPORATION**

Fifth Respondent

---

**NOTICE OF APPLICATION FOR ADMISSION AS AN *AMICUS CURIAE***  
**IN TERMS OF RULE 10(4)**

---

**KINDLY TAKE NOTICE THAT** the Applicant seeking admission as an *Amicus Curiae* ('**the City**') hereby makes application for an order in the following terms:

1. Admitting the City as an *Amicus Curiae* in the abovementioned matter.
2. Granting the City leave to –
  - 2.1. make written submissions at a date directed by this Honourable Court;  
and
  - 2.2. make oral submissions at the hearing of this matter.
3. Further and/or alternative relief.

**TAKE FURTHER NOTICE** that the affidavit of **VINCENT JAMES BOTTO** and the annexures thereto will be used in support of this Application.

**TAKE FURTHER NOTICE** that the City has appointed the address of their correspondent attorneys Ulrich Roux and Associates, Ground Floor, 15 Chaplin Road, Illovo, Sandton, 2196, as the address at which it will accept notice and service of all process in these proceedings. The City's attorneys will also accept service at the following email addresses: [gavin@msinc.africa](mailto:gavin@msinc.africa).

DATED AT CAPE TOWN ON THIS THE 28<sup>th</sup> DAY OF SEPTEMBER 2022.

**MS** Inc.  
MCACISO STANSFIELD

  
**MCACISO STANSFIELD INC**  
Attorneys for The City of Cape Town  
26 Rocklands Avenue  
Vredehoek  
Tel: 021 612 0904  
Fax: 086 535 9631  
[gavin@msinc.africa](mailto:gavin@msinc.africa)  
Ref: G Stansfield

TO: **THE REGISTRAR**  
Constitutional Court  
Email: [generaloffice@concourt.org.za](mailto:generaloffice@concourt.org.za)

AND TO: **JENNINGS INCORPORATED**  
Attorneys for Applicant  
222 Smit Street  
21<sup>st</sup> Floor  
Braamfontein  
Johannesburg  
Email: [andri@jinc.co.za](mailto:andri@jinc.co.za)

AND TO: **STATE ATTORNEY – PRETORIA**  
Attorneys for the First Respondent  
SALU Building  
316 Thabo Sehume and Francis Baard Streets  
Ref: 2562/2020/Z22  
Email: [nagongqo@justice.gov.za](mailto:nagongqo@justice.gov.za)

AND TO: **MINISTER OF CO-OPERATIVE GOVERNANCE  
AND TRADITIONAL AFFAIRS**  
Second Respondent  
c/o Office of the State Attorney  
SALU Building  
316 Thabo Sehume and Francis Baard Streets  
Ref: 2562/2020/Z22  
Email: [nagongqo@justice.gov.za](mailto:nagongqo@justice.gov.za)

AND TO: **MNCEDISI NDLOVU & SEDUMEDI ATTORNEYS**

Attorneys for Third Respondent

2<sup>nd</sup> Floor, 16 Fricker Road

Illovo

2196

Ref: Ms Phungula / Mr Khoza / MAT5292

Email: [Feziwe@ndlovu-sedumedi.co.za](mailto:Feziwe@ndlovu-sedumedi.co.za)

AND TO: **NOKO RAMABOYA ATTORNEYS INC.**

Attorneys for Fifth Respondent

Ga Noko

927 Stanza Bopape Street

Arcadia

Pretoria

Email: [victorn@nokoinc.co.za](mailto:victorn@nokoinc.co.za)

[solekham@nokoinc.co.za](mailto:solekham@nokoinc.co.za)

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CC CASE NO: CCT19/2022**

In the *ex parte* application of:

**THE CITY OF CAPE TOWN**

Applicant for admission  
*as Amicus Curiae*

*In re:*

**ORGANISATION UNDOING TAX ABUSE**

Applicant

And

**MINISTER OF TRANSPORT**

First Respondent

**MINISTER OF CO-OPERATIVE GOVERNANCE AND  
TRADITIONAL AFFAIRS**

Second Respondent

**ROAD TRAFFIC INFRINGEMENT AUTHORITY**

Third Respondent

**APPEALS TRIBUNAL**

Fourth Respondent

**ROAD TRAFFIC MANAGEMENT CORPORATION**

Fifth Respondent

---

**AFFIDAVIT IN SUPPORT FOR APPLICATION FOR ADMISSION**

***AS AN AMICUS CURIAE***

---

I, the undersigned

**VINCENT JAMES BOTTO**

do hereby make oath and say:



1. I am the Executive Director: Safety and Security of the City of Cape Town (**'the City'**), with offices situated at 5<sup>th</sup> Floor Civic Centre, 12 Hertzog Boulevard, Cape Town. I am duly authorised to depose to this affidavit and to institute this application on behalf of the City, acting as I am in my official capacity. The enforcement of traffic laws falls within the purview of my authority at the City.
2. The allegations in this affidavit are true and correct and, save where the context indicates to the contrary, are within my personal knowledge. Where I make submissions of a legal nature, I do so on the advice of the City's legal representatives, which advice I believe to be true and correct.
3. This is an application in terms of Rule 10(4) of the Rules of the Constitutional Court in which the City seeks leave to be admitted as an *amicus curiae* in these proceedings.
4. The proceedings before the Court concern the judgment and order of the Pretoria High Court which, on 13 January 2022, declared the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 (**'the AARTO Act'**) and the Administrative Adjudication of Road Traffic Offences Amendment Act 4 of 2019 (**'the Amendment Act'**) unconstitutional and invalid.
5. The Applicant's (**'OUTA'**) core argument is that: (a) Parliament has no legislative competence to enact laws on matters relating to provincial roads or traffic or in relation to traffic and parking at local government level, and in so doing Parliament has acted beyond the scope of the legislative powers

Handwritten signature and initials in black ink, located at the bottom right of the page.

conferred on it<sup>1</sup>; (b) the AARTO Act purports to vest the administrative enforcement powers over municipal traffic laws in the Third Respondent (“**the Authority**”) which is a national organ of state and the Amendment Act compounds the problem by vesting powers of appeal in the Appeals Tribunal which is another national organ of state.<sup>2</sup>

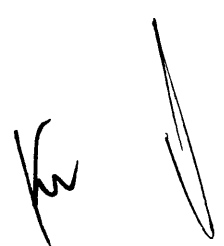
6. The High Court found that the AARTO and the Amendment Acts (**‘the AARTO legislation’**) unlawfully intrude upon the exclusive executive and legislative competence of local and provincial governments and, as such, are unconstitutional.<sup>3</sup>
7. If granted leave for admission as an *Amicus Curiae* in this application, the City will advance argument only in respect of the impermissible intrusion of the AARTO legislation on the executive competence of local government.
8. This affidavit is structured as follows:
  - 8.1. First, I describe the City’s interest in the matter.
  - 8.2. Second, I summarise the parties’ submissions.
  - 8.3. Third, I set out the City’s intended submissions in the proceedings, and explain why the City’s intended submissions are relevant, useful and different.

---

<sup>1</sup> Vol 1, FA, p 15, par 28 and 29.

<sup>2</sup> Vol 1, FA, p 16, par 32.

<sup>3</sup> Vol 3, Judgment, p 257, par 45 (see to par 40 to 44).

Handwritten signature and scribble in the bottom right corner of the page.

8.4. Fourth, I address the issue of the consent of the parties.

**I. THE CITY'S INTEREST IN THE MATTER**

9. The central issue in this litigation is whether the AARTO legislation impermissibly transgresses on the terrain of the local government competencies.
10. An "*issuing authority*" is defined in section 1 of the AARTO Act as including a local authority contemplated in Chapter 7 of the Constitution, the Local Government Transition Act, No. 209 of 1993, or any other applicable law.
11. The City is a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998.
12. The City will therefore be such an issuing authority, and as a consequence, the AARTO legislation will impact on the enforcement and adjudication functions of the City and other municipalities.
13. In the circumstances, it is submitted that the City has a clear interest in the matter, and is in a position to offer assistance to the Court in its determination of the issues before it.

Handwritten signature and a large, stylized mark or flourish.



## II. THE PARTIES' SUBMISSIONS

14. Cognisant not to repeat any submissions that have already been made by the parties, the City is of the respectful view that it can make submissions of substance that are different from those of the other parties.
  
15. The parties' submissions concern:
  - 15.1. The general principles applicable to, and the proper interpretation of, Schedules 4 and 5 of the Constitution;
  
  - 15.2. Whether the AARTO and Amendment Acts intrude upon the municipalities' exclusive executive competence, and the provinces' exclusive legislative competence;
  
  - 15.3. The scope of section 44(2) of the Constitution;
  
  - 15.4. The severability of any unconstitutional provisions of the AARTO and Amendment Acts;
  
  - 15.5. The adequacy of the service requirements set out in section 17 of the Amendment Act; and
  
  - 15.6. The question of remedy.

Handwritten initials 'KW' and a signature.

**III. THE LEGAL ARGUMENT THE CITY INTENDS TO ADVANCE IF ADMITTED AS AN *AMICUS CURIAE***

16. The City's proposed submissions are confined to two central submissions of relevance in the proceedings:

16.1. First, that the enforcement and adjudication in terms of the AARTO system should reside at the local government level, and not at the national government level. The City will argue that there is support for such an approach in foreign jurisdictions.

16.2. Second, that the AARTO legislation adversely impacts local government's financial and fiscal powers.


17. Neither of these aspects have been raised by the parties to the litigation. They will, I respectfully say, assist the Court in making a proper determination of the issues before it. The City therefore contends that it will be in a position to assist the Court by making novel submissions in relation to these issues.

18. I now elaborate briefly on the submissions proposed to be made in this regard.

**Regulation at the local level**

19. The City will frame its argument as follows:

19.1. First, in terms of section 156(1) of the Constitution a municipality has executive authority in respect of, and has the right to administer: (a) the local government matters listed in Part B of Schedule 4 and Part B of



Schedule 5; and (b) any other matter assigned to it by national or provincial legislation.

19.2. Second, the competences that are the subject of local government executive competences include traffic and parking.

19.3. Third, traffic and parking are capable of enforcement at local government level and there is support for such an approach in certain foreign jurisdictions.

20. If admitted, the City will focus primarily on the third of the above-mentioned three points (it being accepted that the first two points have been addressed by the parties to the litigation). The City will argue that even where a demerit point system has been adopted in certain jurisdictions, local government entities continue to play a key role in the enforcement and adjudicative functions. By way of example, the City will refer to the following:

20.1. In South Australia:

20.1.1. The South Australia Road Traffic Act of 1961 identifies enforcement officers for Australian Road Laws and provides that persons appointed by local government structures (authorised persons) are responsible for, *inter alia*, enforcing certain provisions of road traffic legislation in the area of the council for which the person is an authorised person.

Handwritten signature and initials in the bottom right corner of the page.

20.1.2. Section 246 of the Local Government Act of 1999 (“**the LGA SA**”) confirms the power of councils to make by-laws in certain areas and expressly provides that in a case of a by-law relating to the driving, parking or standing of vehicles, such by-laws may provide that the owner and the driver of a vehicle driven, parked or standing in contravention of the by-law are each guilty of an offence and liable to the relevant penalty.

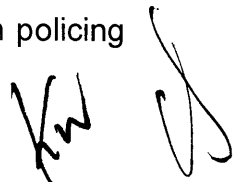
20.1.3. The LGA SA deals with the general powers of councils and provides that councils may raise funds by recovering “fees, charges, penalties or other money payable to the council.”

20.1.4. Provision is made for the judicial enforcement of road traffic law.

20.2. In Alberta, Canada:

20.2.1. In terms of the Traffic Safety Act of 2000 (“**the TSA**”), the council of a municipality may, with respect to a highway under its direction, control and management, make bylaws that are not inconsistent with its provisions, in respect of a range of areas.

20.2.2. Fines and penalties imposed under the TSA belong to the Crown in right of Alberta. Subject to certain qualifications, fines and penalties imposed under the TSA in respect of: (a) contraventions occurring in a municipality for which policing



services are required to be provided (under certain provisions of the Police Act) belong to the municipality that is required to provide the policing services; (b) contraventions (for example where violation tickets are issued under the Provincial Offences Procedure Act or notices of administrative penalty are issued under the Provincial Administrative Penalties Act by peace officers employed by a municipality) belong to that municipality.

21. The City will argue that, in light of the approach adopted in certain comparative jurisdictions, there is no conceivable reason as to why municipalities have, in terms of the AARTO legislation, been denuded of their rightful constitutional role in respect of areas that fall within its exclusive competence.

### **Financial and fiscal implications**

22. If admitted, the City will present argument as to the fiscal and financial implications of the AARTO legislation for local government. The City's argument will focus on the following:

- 22.1. Municipalities are only allowed to raise own revenues from the revenue sources assigned to a municipality by the Constitution and national legislation.

- 22.2. It follows that any nationally imposed restrictions on municipalities' fiscal powers and functions reduce municipal fiscal capacity.

Two handwritten signatures in black ink, one appearing to be 'KW' and the other a stylized signature.

22.3. The AARTO legislation not only imposes such restrictions, but concomitantly requires additional operational expenditure, thereby adversely affecting the fiscal capacity and efficiency of municipalities.

22.4. Revenue from traffic fines, penalties for by-law contraventions, licence fees and permits, agency payments, and interest, while smaller than other sources of revenue, are still significant as in most instances they contribute to the pool of revenue that a municipality can use for redistributive and local economic development purposes.

**Relevant, Useful and Different**

23. The City contends that the submissions set out above will assist the Court in determining whether the AARTO legislation impermissibly transgresses on the terrain of the local government executive competencies.

24. The City's account of the enforcement and adjudication roles of local government in comparable jurisdictions is relevant to the overreach of the AARTO legislation. In essence, it shows that the objectives of the AARTO legislation may be achieved in a constitutionally permissible way.

25. The City's analysis of the fiscal and financial implications of the requirements imposed on local government by the AARTO legislation is relevant to the issues before the Court, will be useful to the Court in its evaluation of the impact of the AARTO legislation on the functioning of municipalities, and it is different from the analyses undertaken by the parties. In essence, these submissions will

KW



show that the model underpinning the AARTO legislation has an adverse impact on local government.

#### IV. THE CONDUCT OF THE CITY IN COMPLYING WITH RULE 10

26. On 19 September 2022, the City's attorneys addressed a letter to the attorneys for: (a) the Applicant; (b) the First Respondent; (c) the Third Respondent; (d) Fifth Respondent, requesting consent to the admission of the City as an *amicus curiae*, to present written and oral submissions before the Court. A copy of this letter is attached marked annexure "CCT1".
27. On 19 September 2022, the Applicant's legal representatives replied to the City's request, granting consent to its admission as an *amicus curiae*. A copy of this letter is attached marked annexure "CCT2".
28. On 22 September 2022, the Third Respondent's legal representatives replied ("CCT3") to the City's request, refusing consent to its admission as an *amicus curiae* for two reasons, neither of which withstand scrutiny:
- 28.1. First, on the basis that it appears that the City wishes to rely on additional evidence not before the Court. This is not correct; the City does not seek to present any additional evidence to this Court. As part of the record in this matter, the Applicant referred to correspondence in which it noted that:<sup>4</sup>

---

<sup>4</sup> Vol 1, Annexure SF5, p 93, par 22 to 24.



*'22. When AARTO is implemented throughout the country, issuing authorities like Municipalities, Metro Councils, the RTMC and others will lose 50% of their income on all traffic fines not [sic] paid within 32 days. This will have a huge negative influence on the already cash strapped municipalities and metro councils across the country.*

*23. Statistics show that the compliance rate in the two metros where AARTO was implemented 10 years ago, are below 5%. This is mainly because of the RTIA's inability to administer the scheme.*

*24. If the same compliance rate is achieved throughout the country, municipalities and metro councils will be left with huge shortage in their budgets.'*

28.2. Second, on the basis that it does not appear that the submissions now sought to be advanced will assist the Court in making its decision. This too is not correct. The City has explained that basis on which it contends that these submissions will be of assistance to the Court.

29. Also on 22 September 2022, the Fifth Respondent's legal representatives replied to the City's request ("CCT4"), refusing consent to its admission as an *amicus curiae* on the basis that the submissions fail to satisfy the requirements of rule 10 read with rule 31 of the Constitutional Court Rules:

29.1. It is contended that the City's submissions as set out in its letter fail to state how the information on the implementation of the demerit system in other jurisdictions will assist in the adjudication of the matter; that the submissions are not detailed, and fail to engage with the issues before

KW S



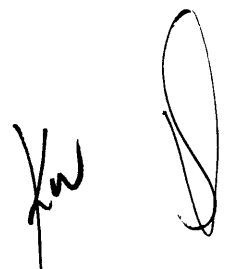
Court, which are whether the Acts referred to are unconstitutional or not; and that due to limited information the Fifth Respondent cannot consent to the admission of the City as *Amicus Curiae* and reserves its right to reconsider the position once the submissions are comprehensive.

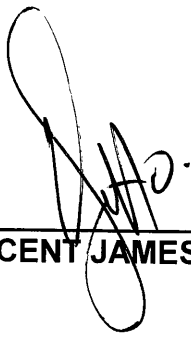
29.2. These contentions are denied. I submit that the City's letter contained a sufficient explanation for purposes of seeking consent. I further submit that the present application meets the requirements in terms of Rule 10. It has also been explained how the comparative analysis of the position in foreign statutes, and the analysis of the AARTO legislation, proffered by the City will be of assistance to the Court in relation to the issues before it.

30. As at the time of deposing to this affidavit, the City has not received responses from any of the other Respondents in this matter. I should explain that the letter requesting consent from the State Attorney was inadvertently sent to the incorrect address on 19 September 2022. It was however subsequently resent to the correct address ("CCT5").

## V. CONCLUSION

31. The City prays for an order in terms of the notice of motion to which this affidavit is attached, admitting the City as an *Amicus Curiae* for the purpose of making written and oral legal submissions.

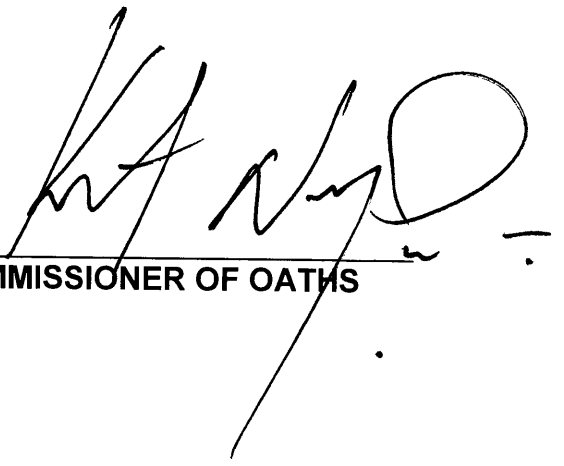
Two handwritten signatures in black ink are located at the bottom right of the page. The signature on the left is a stylized, cursive 'Kw' with a vertical line extending downwards. The signature on the right is a large, loopy, cursive 'S'.



---

VINCENT JAMES BOTTO

I hereby certify that the deponent declares that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at CAPE TOWN this 28<sup>th</sup> day of September 2022 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended, have been complied with.



---

COMMISSIONER OF OATHS

**KSHETHRA NAIDOO**  
Commissioner of Oaths, Ex Officio  
Practising Attorney, R.S.A  
2<sup>nd</sup> Floor, Sedgwick House  
24 Bloem Street, Cape Town  
Tel. 021 204 0591



MCACISO STANSFIELD

26 Rocklonds Avenue,  
Vredehoek, Cape Town, 8001  
t: 021 612 0904  
f: 086 535 9631  
www.msinc.africa

Jennings Incorporated  
Via email: andri@jinc.co.za

State Attorney  
Via email: naqonggo@justice.gov.za

Mncedisi Ndlovu & Sedumedi Attorneys  
Via email: feziwe@ndlovu-sedumedi.co.za  
thami@ndlovu-sedumedi.co.za

Matter Code:	CTY – 023
Our Ref:	Stansfield
Your Ref:	
Date:	19 September 2022

Dear Sir / Madam

**ORGANISATION UNDOING TAX ABUSE / MINISTER OF TRANSPORT AND OTHERS CCT CASE NO: 19/2022 (COURT A QUO: 32097/2020) – ADMISSION OF THE CITY OF CAPE TOWN AS AMICUS CURIAE**

1. We act on behalf of the City of Cape Town ('the City').
2. The purpose of this letter is to seek consent for the admission of the City as an *Amicus Curiae* in the proceedings before the Constitutional Court. The City seeks admission as an *Amicus Curiae* to advance written and oral submissions on the basis set out herein.
3. The proceedings before the Constitutional Court in which the City seeks leave for admission as an *Amicus Curiae* concern the judgment and order of the Pretoria High Court which, on 13 January 2022, declared the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 ('the AARTO Act') and the Administrative Adjudication of Road Traffic Offences Amendment Act 4 of 2019 ('the Amendment Act') unconstitutional and invalid.
4. In what follows, we: (a) describe the City's interest in the matter; and (b) set out the position that the City intends adopting in the proceedings if it is admitted as an *Amicus Curiae*.

**THE CITY'S INTEREST IN THE MATTER**

5. The applications before the Constitutional Court concern the constitutional validity of the AARTO legislation. The central issue is whether the AARTO legislation impermissibly transgresses on the terrain of the local government competencies.
6. An "issuing authority" is defined in section 1 of the AARTO Act as including a local authority contemplated in Chapter 7 of the Constitution, the Local Government Transition Act, No. 209 of 1993, or any other applicable law.
7. The City is a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998.
8. The City will therefore be such an issuing authority, and as a consequence, the AARTO legislation will impact on the enforcement and adjudication functions of the City and other municipalities.
9. In the circumstances, the City has a clear interest in the matter, and is in a position to offer assistance to the Court in its determination of the issues before it.

ZOLA MCACISO  
Director  
LLB LLM

GAVIN STANSFIELD  
Director  
BA LLB LLM HDipCoLaw Cert.Pension Law

HEINEKE BRAND  
Director  
B5ocSci BA(Hons) LLB LLM

m: 062 732 1339 e: zola@msinc.africa

m: 082 412 1598 e: gavin@msinc.africa

m: 078 318 3952 e: heineke@msinc.africa


## A SUMMARY OF THE CITY'S SUBMISSIONS IF ADMITTED AS AN *AMICUS CURIAE*

10. With due regard to the respective positions taken by the parties in this litigation and mindful of the role of an *Amicus Curiae*, if admitted, the City will limit itself to submissions that are relevant, useful and have not been addressed by the parties to the litigation.
11. If admitted, the City intends making two central submissions:
  - 11.1 First, that the enforcement and adjudication in terms of the AARTO system should reside at the local government level, and not at the national government level. In advancing this submission, reference will be made to the enforcement and adjudication roles of different spheres of government in comparable statutes including Canada and Australia, countries which have implemented a demerit points system.
  - 11.2 Second, that the AARTO legislation adversely impacts local government's financial and fiscal powers. In this regard, the City will advance the following submissions:
    - 11.2.1 Municipalities are only allowed to raise own revenues from the revenue sources assigned to a municipality by the Constitution and national legislation.
    - 11.2.2 It follows that any nationally imposed restrictions on municipalities' fiscal powers and functions reduce municipal fiscal capacity.
    - 11.2.3 The AARTO legislation not only imposes such restrictions, but concomitantly requires additional operational expenditure, thereby adversely affecting the fiscal capacity and efficiency of municipalities.
    - 11.2.4 Revenue from traffic fines, penalties for bylaw contraventions, licence fees and permits, agency payments, and interest, while smaller than other sources of revenue, are still significant as in most instances they contribute to the pool of revenues that a municipality can use for redistributive and local economic development purposes.

## REQUEST FOR CONSENT

12. We accordingly request that the parties' consent in writing to the City being admitted as an *Amicus Curiae*, to present written and oral submissions before the Court.
13. We ask that you provide us with your response on or before 22 September 2022.
14. Please contact the author hereof should you require any further clarity on any aspect of the above.

Yours faithfully



**GAVIN STANSFIELD**  
**MCACISO STANSFIELD INC.**





JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT002  
YOUR REFERENCE: CTY - 023  
DATE: 19 September 2022

---

TO: MCACISO STANSFIELD INCORPORATED

BY EMAIL: [gavin@msinc.africa](mailto:gavin@msinc.africa)

Sirs

ORGANISATION UNDOING TAX ABUSE / MINISTER OF TRANSPORT AND OTHERS CCT CASE NO: 19/2022  
(COURT A QUO: 32097/2020) - ADMISSION OF THE CITY OF CAPE TOWN AS AMICUS CURIAE

1. We refer to the abovementioned matter as well as your letter dated 19 September 2022.
2. We confirm that our client consents to the request as contained in paragraph 12 and 13 of your abovementioned letter, to be admitted as *Amicus Curiae*.
3. Further to the above, we herewith include a link to the electronic copy of the bundles as filed at the Constitutional Court for your ease of reference.

<https://www.dropbox.com/s/vwd1vuztepyop3z/32097-2020%20Volume%201%20to%20Volume%204%20%281%29.zip?dl=0>

4. We trust that the above is in order.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,  
Andri Jennings  
Director

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

Reg No: 2018/065399/21 | VAT No: 4660291974

Andri Jennings (LLB - UP) Director | Delia Turner (LLB - UP) Associate Attorney

Cindy Pestano (LLB - UNISA) Conveyancer | Malizzo van der Linde (LLB - NWU) Attorney

Annandé van der Merwe (B.Com (LAW), LLB - UP) Consultant | Leon van der Merwe (LLB - UP) Consultant



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

Head Office: 149 Anderson Street, Brooklyn, Pretoria | O: 012 110 4442

18 Ross Street, Cullinan | O: 012 110 4442

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



By email: [gavin@msinc.africa](mailto:gavin@msinc.africa)  
Mr Gavin Stansfield  
Director  
Mcaciso Stansfield Inc

**Mncedisi Ndlovu & Sedumedi Attorneys Inc.**  
2<sup>nd</sup> Floor 16 Fricker Road Illovo 2196  
PO Box 10100 Johannesburg 2000  
Tel: 011 268 5225/ 6804/ 5217  
Fax: 011 268 6805  
Email: [Feziwe@ndlovu-sedumedi.co.za](mailto:Feziwe@ndlovu-sedumedi.co.za)  
[www.mnsattorneys.co.za](http://www.mnsattorneys.co.za)

Company Registration No 2004/012769/21

OUR REF: Ms Phungula/ Mr Khoza/ MAT5292

REF:

DATE: 22-Sep-22

Dear Sirs,

**ORGANISATION UNDOING TAX ABUSE // MINISTER OF TRANSPORT, MINISTER OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, ROAD TRAFFIC INFRINGEMENT AUTHORITY, APPEALS TRIBUNAL AND ROAD TRAFFIC MANAGEMENT CORPORATION - CASE NO CCT 19/2022**

1. We refer to the above matter and your letter dated 19 September 2022.
2. We confirm that we act on behalf of the Road Traffic Infringement Authority ("RTIA"), the third respondent in the above matter.
3. In the above mentioned letter, the City of Cape Town ('the City') requests the litigants to consent to it joining the proceedings as an *amicus curiae*, for purposes of making oral and legal argument. It appears that the City wishes merely to advance written and oral submissions.
4. Our client does not consent to the City intervening as an *amicus curiae* for two reasons:
  - 4.1. First, it appears that the City in effect wishes to rely on additional evidence, not before the Court, which would be prejudicial to our client; and
  - 4.2. Second, it does not appear, with respect, that the submissions now sought to be advanced will assist the Court in making its decision.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Mncedisi Ndlovu', written over a horizontal line.

**MNCEDISI NDLOVU & SEDUMEDI ATTORNEYS**

Handwritten initials 'KW' in black ink, followed by a larger, stylized signature in black ink.



"CCT4"

MCACISO STANSFIELD INC.  
**CAPE TOWN**  
PER EMAIL: [gavin@msinc.africa](mailto:gavin@msinc.africa)  
[zola@msinc.africa](mailto:zola@msinc.africa)  
[heineke@msinc.africa](mailto:heineke@msinc.africa)

*Your Ref: Stansfield*

*Our Ref: NOKO/MAGADLELA/M19431(3)*

*Date: 22 SEPTEMBER 2022*

DEAR SIR OR MADAM

**ORGANISATION UNDOING TAX ABUSE // MINISTER OF TRANSPORT AND OTHERS CCT CASE NO: 19/2022 (COURT A QUO: 32097/2020) - ADMISSION OF THE CITY OF CAPE TOWN AS AMICUS CURIAE**

1. We confirm that we act on behalf of Road Traffic Management Corporation (fifth respondent) and your letter dated 19 September 2022 addressed to Jennings Incorporated has been forwarded to us for our attention and client's reply.
2. Our instructions is to convey our client's refusal to consent to your client's admission as amicus curiae primarily on the basis that the submission fails to satisfy the requirements of rule 10 read with rule 31 of the Constitutional Court rules. Our client specifically instructed us as follows:
  - 2.1. Your client's abbreviated submissions fails to state how the information on the implementation of the demerit system in other jurisdictions will assist in the adjudication over the matter currently before the Constitutional Court.

---

Address: Ga Noko, 927 Stanza Bopape Street, Arcadia, Pretoria, 0007, P O Box 8119, Pretoria, 0001 E-mail.: [info@nokoinc.co.za](mailto:info@nokoinc.co.za), PTA lodgment 558, Docex 267 PTA, Tel No: (012) 323 7776/7777, Fax No: (012) 323 6238, Website: [www.nrainc.co.za](http://www.nrainc.co.za)

Attorneys: Mokate Victor Noko B. Iuris. (UNW) LL.B. (UNW) LL.M.(UP) Dip Insolvency Prac. (UP), PG Dip. Labour Law (UJ). Andrea Gillian Julius (LL.B. UWC), **Associate Firms:** Mculu Inc., KMT Attorneys, Ramushu Morare Inc.\*Associate\*.

**NOKO RAMABOYA ATTORNEYS INC Registration no: 2016/210225/21** (Incorporating Noko Inc.)

2.2. The submissions are not detailed and fails to engage with the issues before Court which are whether the Acts referred to are unconstitutional or not.

2.3. Due to limited information our client cannot give a consent to the admission of City of Cape Town as amicus curiae and reserves its right to reconsider the position once the submissions are comprehensive.

Yours faithfully

**NOKO RAMABOYA ATTORNEYS INC**

Per: M.V Noko

[victorn@nokoinc.co.za](mailto:victorn@nokoinc.co.za)

[solekhayam@nokoinc.co.za](mailto:solekhayam@nokoinc.co.za)

CC: [nagongopo@justice.co.za](mailto:nagongopo@justice.co.za)

[feziwe@ndlovu-sedumedi.co.za](mailto:feziwe@ndlovu-sedumedi.co.za)

[andri@iinc.co.za](mailto:andri@iinc.co.za)

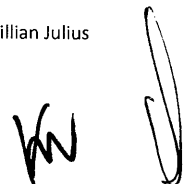
[generaloffice@concourt.org.za](mailto:generaloffice@concourt.org.za)

---

Address: Ga Noko, 927 Stanza Bopape Street, Arcadia, Pretoria, 0007, P O Box 8119, Pretoria, 0001 E-mail.: [info@nokoinc.co.za](mailto:info@nokoinc.co.za), PTA lodgment 558, Docex 267 PTA, Tel No: (012) 323 7776/7777, Fax No: (012) 323 6238, Website: [www.nrainc.co.za](http://www.nrainc.co.za)

Attorneys: Mokate Victor Noko B. Juris. (UNW) LL.B. (UNW) LL.M.(UP) Dip Insolvency Prac. (UP), PG Dip. Labour Law (UJ). Andrea Gillian Julius (LL.B. UWC), **Associate Firms:** Mculu Inc., KMT Attorneys, Ramushu Morare Inc.\*Associate\*.

**NOKO RAMABOYA ATTORNEYS INC Registration no: 2016/210225/21** (Incorporating Noko Inc.)





**Rekha Kassan**

**From:** Andri Jennings <andri@jinc.co.za>  
**Sent:** Monday, 19 September 2022 4:59 PM  
**To:** Gavin Stansfield  
**Cc:** Irene Pienaar; Delia Turner; naqonggo@justice.gov.za; feziwe@ndlovu-sedumedi.co.za; thami@ndlovu-sedumedi.co.za; Victorn@nokoinc.co.za; Solekhaya  
**Subject:** RE: ORGANISATION UNDOING TAX ABUSE / MINISTER OF TRANSPORT AND OTHERS CCT CASE NO: 19/2022 (COURT A QUO: 32097/2020)  
**Attachments:** LETTER TO MS INC 19.09.2022.pdf; AARTO - Letter in re amicus - 19 Sept 2022.pdf

Good day.

We refer to the email and letter below and acknowledge receipt thereof.

Please find attached hereto a letter for your attention.

We trust that the above is in order.

Kind Regards/Vriendelike Groete,  
Andri Jennings  
Director/Direkteur



**JENNINGS**  
INCORPORATED  
ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

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: 010 035 4572  
21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 258 8770

VAT No: 4660291974 | Reg No: 2019/066399/21 | [www.jinc.co.za](http://www.jinc.co.za)

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

The contents of this electronic message and any attachments relating to the official business of Jennings Incorporated ("the Firm") are proprietary to the Firm. They are confidential, legally privileged and protected by law. Views and opinions are those of the sender and do not represent the Firm's views and opinions nor constitute any commitment by or obligation on the Firm unless otherwise stated or agreed to in writing by the Firm. The person addressed in this electronic message is the sole authorised recipient. If you have received this message in error, you are to delete it immediately and notify the sender that it has unintentionally reached you. You may not use or disclose the contents of this message or any attachments thereto to any other person or entity.

**From:** Gavin Stansfield <gavin@msinc.africa>  
**Sent:** 19 September 2022 08:12 AM  
**To:** Andri Jennings <andri@jinc.co.za>; naqonggo@justice.gov.za; feziwe@ndlovu-sedumedi.co.za; thami@ndlovu-sedumedi.co.za  
**Subject:** ORGANISATION UNDOING TAX ABUSE / MINISTER OF TRANSPORT AND OTHERS CCT CASE NO: 19/2022 (COURT A QUO: 32097/2020)

Dear Sir / Madam

We act on behalf of the City of Cape Town.

Kindly find correspondence herewith for your attention. Kindly acknowledge receipt.

Yours faithfully

GAVIN STANSFIELD | Director

MCACISO STANSFIELD INC.

m: 082 412 1598 t: 021 612 0904


e: [gavin@msinc.africa](mailto:gavin@msinc.africa) f: 086 535 9631

[www.msinc.africa](http://www.msinc.africa)

MS Inc.

MCACISO STANSFIELD

The information transmitted by this email is intended only for the person or entity to which it is addressed. This email may contain proprietary, business-confidential and/or privileged material. If you are not the intended recipient of this message, be aware that any use, review, retransmission, distribution, reproduction or any action taken in reliance upon this message is strictly prohibited. If you received this in error, please contact the sender and delete the material from all computers.



Jennings Incorporated  
Via email: andri@jinc.co.za

State Attorney  
Via email: naqonggo@justice.gov.za

Mncedisi Ndlovu & Sedumedi Attorneys  
Via email: feziwe@ndlovu-sedumedi.co.za  
thami@ndlovu-sedumedi.co.za

Matter Code:	CTY – 023
Our Ref:	Stansfield
Your Ref:	
Date:	19 September 2022

Dear Sir / Madam

**ORGANISATION UNDOING TAX ABUSE / MINISTER OF TRANSPORT AND OTHERS CCT CASE NO: 19/2022 (COURT A QUO: 32097/2020) – ADMISSION OF THE CITY OF CAPE TOWN AS AMICUS CURIAE**

1. We act on behalf of the City of Cape Town (**'the City'**).
2. The purpose of this letter is to seek consent for the admission of the City as an *Amicus Curiae* in the proceedings before the Constitutional Court. The City seeks admission as an *Amicus Curiae* to advance written and oral submissions on the basis set out herein.
3. The proceedings before the Constitutional Court in which the City seeks leave for admission as an *Amicus Curiae* concern the judgment and order of the Pretoria High Court which, on 13 January 2022, declared the Administrative Adjudication of Road Traffic Offences Act 46 of 1998 (**'the AARTO Act'**) and the Administrative Adjudication of Road Traffic Offences Amendment Act 4 of 2019 (**'the Amendment Act'**) unconstitutional and invalid.
4. In what follows, we: (a) describe the City's interest in the matter; and (b) set out the position that the City intends adopting in the proceedings if it is admitted as an *Amicus Curiae*.

**THE CITY'S INTEREST IN THE MATTER**

5. The applications before the Constitutional Court concern the constitutional validity of the AARTO legislation. The central issue is whether the AARTO legislation impermissibly transgresses on the terrain of the local government competencies.
6. An *"issuing authority"* is defined in section 1 of the AARTO Act as including a local authority contemplated in Chapter 7 of the Constitution, the Local Government Transition Act, No. 209 of 1993, or any other applicable law.
7. The City is a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998.
8. The City will therefore be such an issuing authority, and as a consequence, the AARTO legislation will impact on the enforcement and adjudication functions of the City and other municipalities.
9. In the circumstances, the City has a clear interest in the matter, and is in a position to offer assistance to the Court in its determination of the issues before it.

ZOLA MCACISO  
Director  
LLB LLM

GAVIN STANSFIELD  
Director  
B.A. LL.M. NDip. Adv. Cert. Pr. Att. (Cape Prov.)

HEINEKE BRAND  
Director  
BSc. (BA) LLB LL.M.

m: 082 752 1598 e: zola@msinc.africa m: 082 412 1598 e: gavin@msinc.africa m: 075 318 3552 e: heineke@msinc.africa

**A SUMMARY OF THE CITY'S SUBMISSIONS IF ADMITTED AS AN *AMICUS CURIAE***

10. With due regard to the respective positions taken by the parties in this litigation and mindful of the role of an *Amicus Curiae*, if admitted, the City will limit itself to submissions that are relevant, useful and have not been addressed by the parties to the litigation.
11. If admitted, the City intends making two central submissions:
  - 11.1 First, that the enforcement and adjudication in terms of the AARTO system should reside at the local government level, and not at the national government level. In advancing this submission, reference will be made to the enforcement and adjudication roles of different spheres of government in comparable statutes including Canada and Australia, countries which have implemented a demerit points system.
  - 11.2 Second, that the AARTO legislation adversely impacts local government's financial and fiscal powers. In this regard, the City will advance the following submissions:
    - 11.2.1 Municipalities are only allowed to raise own revenues from the revenue sources assigned to a municipality by the Constitution and national legislation.
    - 11.2.2 It follows that any nationally imposed restrictions on municipalities' fiscal powers and functions reduce municipal fiscal capacity.
    - 11.2.3 The AARTO legislation not only imposes such restrictions, but concomitantly requires additional operational expenditure, thereby adversely affecting the fiscal capacity and efficiency of municipalities.
    - 11.2.4 Revenue from traffic fines, penalties for bylaw contraventions, licence fees and permits, agency payments, and interest, while smaller than other sources of revenue, are still significant as in most instances they contribute to the pool of revenues that a municipality can use for redistributive and local economic development purposes.

**REQUEST FOR CONSENT**

12. We accordingly request that the parties' consent in writing to the City being admitted as an *Amicus Curiae*, to present written and oral submissions before the Court.
13. We ask that you provide us with your response on or before 22 September 2022.
14. Please contact the author hereof should you require any further clarity on any aspect of the above.

Yours faithfully



**GAVIN STANSFIELD  
MCACISO STANSFIELD INC.**





A JENNINGS COMPANY | 1700015664 | 011 460 2287 | 011 460 2288 | 011 460 2289

OUR REFERENCE: A JENNINGS/OUT002  
YOUR REFERENCE: CTY - 023  
DATE: 19 September 2022

---

TO: MCACISO STANSFIELD INCORPORATED

BY EMAIL: [gavin@msinc.africa](mailto:gavin@msinc.africa)

Sirs

**ORGANISATION UNDOING TAX ABUSE / MINISTER OF TRANSPORT AND OTHERS CCT CASE NO: 19/2022  
(COURT A QUO: 32097/2020) - ADMISSION OF THE CITY OF CAPE TOWN AS AMICUS CURIAE**

1. We refer to the abovementioned matter as well as your letter dated 19 September 2022.
2. We confirm that our client consents to the request as contained in paragraph 12 and 13 of your abovementioned letter, to be admitted as *Amicus Curiae*.
3. Further to the above, we herewith include a link to the electronic copy of the bundles as filed at the Constitutional Court for your ease of reference.

<https://www.dropbox.com/s/vwd1vuztepuop3z/32097-2020%20Volume%201%20to%20Volume%204%20%281%29.zip?dl=0>

4. We trust that the above is in order.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,  
Andri Jennings  
Director

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

Reg No. 2018/055736/21 | VAT No. 466029874

Andri Jennings (LLB - UP) Director | Debra Turner (LLB - UP) Associate Attorney

Cody Restani (LLB - UP/ISA) Conveyancer | Melissa van der Linde (LLB - NHQ) Attorney

Phaedrus van der Merwe (B.Com II, ACC, LLD - UP) Consultant | Liesel van der Merwe (LLB - UP) Consultant

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

Head Office, 149 Anderson Street, Brooklyn, Pretoria | P.O. Box 4442

18 Post Street, Cullinan | P.O. Box 4442

222 Smit Street, 21<sup>st</sup> Floor, Braamfontein, Johannesburg | P.O. Box 605 4572

21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | P.O. Box 258 8770