

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 7955/21

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC Applicant

And

BAKWENA PLATINUM CORRIDOR Respondent
CONCESSIONAIRE (PTY) LTD

In re: the In Limine Application between:

BAKWENA PLATINUM CORRIDOR Applicant
CONCESSIONAIRE (PTY) LTD

And

ORGANISATION UNDOING TAX ABUSE NPC First Respondent

SOUTH AFRICAN NATIONAL ROAD AGENCY SOC Second Respondent
LIMITED

THE MINISTER OF TRANSPORT N.O. Third Respondent

SKHUMBUZO MACOZOMA N.O. Fourth Respondent
(In his capacity as information officer)

In re: the Main PAIA Application between:

ORGANISATION UNDOING TAX ABUSE NPC Applicant

And

SOUTH AFRICAN NATIONAL ROAD AGENCY SOC First Respondent
LIMITED

THE MINISTER OF TRANSPORT N.O. Second Respondent

SKHUMBUZO MACOZOMA N.O. Third Respondent
(in his capacity as information officer)

BAKWENA PLATINUM CORRIDOR Fourth Respondent
CONCESSIONAIRE (PTY) LTD

FILING SHEET:
RESPONDENT'S ANSWERING AFFIDAVIT - RULE 30 AND 30A

PRESENTED HERewith FOR FILING:

RESPONDENT'S ANSWERING AFFIDAVIT

Signed at SANDTON on 8 November 2022

DocuSigned by:

Barr-Mary Tyzack

UC85794EAE5F422...

Fasken

(incorporated in South Africa as
Bell Dewar Inc.)

Respondent's Attorneys

(Fourth Respondent in main
application)

Building 2

Inanda Greens

54 Wierda Road West

Sandton

Ref: Rakhee Bhoora/
Jesicca Rajpal/ Barr-Mary
Tyzack/151486.00004

Tel: (011) 586 6076

e- rbhoora@fasken.com

mail jrajpal@fasken.com

: btyzack@fasken.com

c/o **SAVAGE JOOSTE &
ADAMS**

Kings Gate 5, 10th Street

Cnr Brooklyn Road & Justice

Mahomed Street Menlo Park,

Pretoria

Tel: 012 452 8200

Fax: 012 452 8201

To: **THE REGISTRAR OF THE HIGH
COURT GAUTENG DIVISION,
PRETORIA**

And **JENNINGS INCORPORATED**

Per electronic service

To: Applicant's Attorneys
(Applicant in main application)
149 Anderson Street
Brooklyn, Pretoria
Tel: 012 110 4442
Email: andri@jinc.co.za
Ref: A JENNINGS/OUT006

And **WERKSMANS ATTORNEYS**

Per electronic service

To: (Attorneys for 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
kradoo@werksmans.com
Ref: MS S MOERANE / MS K
RAPOO / SOUT3114.192
c/o **MABUELA ATTORNEYS**
4th Floor Charter House
179 Bosman Street
Pretoria
Tel: 012 325 3966/7

And **THE OFFICE OF THE STATE
ATTORNEY**

Per electronic service

To: (Attorneys for Second Respondent
in main application)
SALU Building, 26th Floor
316 Thabo Sehume Street
Pretoria
0001
Email:
[StateAttorneyPretoria@justice.gov
.za](mailto:StateAttorneyPretoria@justice.gov.za)
Ref: 00439/2021/Z13t

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

CASE NO: 7955/21

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC

Applicant

And

BAKWENA PLATINUM CORRIDOR

Respondent

CONCESSIONAIRE (PTY) LTD

In re: the In Limine Application between:

BAKWENA PLATINUM CORRIDOR

Applicant

CONCESSIONAIRE (PTY) LTD

And

ORGANISATION UNDOING TAX ABUSE NPC

First Respondent

SOUTH AFRICAN NATIONAL ROAD AGENCY

Second Respondent

SOC LIMITED

THE MINISTER OF TRANSPORT N.O.

Third Respondent

SKHUMBUZO MACOZOMA N.O.

Fourth Respondent

(In his capacity as information officer)

In re: the Main PAIA Application between:

ORGANISATION UNDOING TAX ABUSE NPC

Applicant

And

SOUTH AFRICAN NATIONAL ROAD AGENCY

First Respondent

SOC LIMITED

THE MINISTER OF TRANSPORT N.O.

Second Respondent

SKHUMBUZO MACOZOMA N.O.

Third Respondent

(in his capacity as information officer)

BAKWENA PLATINUM CORRIDOR

Fourth Respondent

CONCESSIONAIRE (PTY) LTD

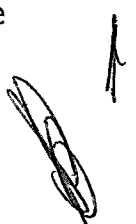
**ANSWERING AFFIDAVIT
RULE 30 AND 30A**

I, the undersigned,

SIMON EVERITT

do hereby state under oath as follows:-

1. I am an adult male and the Chief Executive Officer of Bakwena Platinum Corridor Concessionaire (Pty) Ltd, the Fourth Respondent in the matter ("**Bakwena**").
2. I am duly authorised to depose to this affidavit on behalf of the Fourth Respondent. I am the deponent to the Founding Affidavit in the *In Limine* Application instituted by Bakwena.
3. The facts contained in this affidavit are, unless the context indicates otherwise, within my personal knowledge and are to the best of my belief, both true and correct.
4. Where I make use of headings in this affidavit I do so for the purposes of convenience only and do not thereby intend to limit any facts stated under a particular heading only to the topic covered by such heading.
5. The present application to which I respond in this affidavit is premised largely on issues of legal matter and interpretation. It will therefore



be necessary for me to advance certain propositions of law. Where I make legal submissions, I do so upon the advice of Bakwena's legal representatives, which advice I accept as correct. To the extent necessary, the legal propositions will be expanded upon in argument at the hearing of the matter in due course.

INTRODUCTION AND OVERVIEW

6. I have read the notice of motion and founding affidavit deposed to on behalf of the Applicant, the Organisation Undoing Tax Abuse NPC ("**OUTA**"), in this application. OUTA seeks *inter alia* the following relief:-

6.1 Prayer 1 – *"That the Notice in terms of Rule 6(5)(d)(iii) of the Uniform Rules of Court brought by way of an application by the respondent under the above case number, together with the enrolment thereof on the unopposed roll, be set aside."*

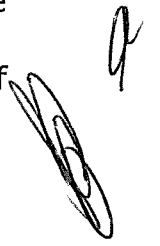
6.2 Prayer 2 – *"That the respondent be afforded an opportunity to comply within 15 (fifteen) days from the date of this order with prayer 3 of the court order granted under the above case number by the Honourable Potterill J on 26 May 2022 by either filing an answering affidavit in terms of the provisions of Uniform Rule 6(5)(d)(ii) or delivering a notice in terms of Rule 6(5)(d)(iii) in lieu of the answering affidavit."*



7. In this affidavit, I submit that there is no basis for the grant of either of OUTA's prayers of relief. Accordingly, I shall submit that the application should be dismissed. With reference to each of OUTA's prayers of relief, the reasons why the application should be dismissed are summarised as follows:-

7.1 OUTA premises its relief sought in *Prayer 1* upon Rule 30 of the Uniform Rules in which it contends that Bakwena's Rule 6(5)(d)(iii) Notice brought by way of an application ("**the In Limine Application**") is an irregular step. OUTA appears to have done so as an afterthought which is evident from the fact that its Notice in terms of Rule 30 was delivered outside the time periods prescribed under Rule 30. I will expand on this with reference to OUTA's conduct, below. Ironically, OUTA suggests that it institutes the present application in order to, effectively, compel and/or uphold compliance with the Rules of Court, yet OUTA itself has failed to adhere to the provisions of Rule 30 in instituting this application. I accordingly submit that *Prayer 1* need not detain the Honourable Court given that it is common cause that the Rule 30 Notice had been delivered out of time.

7.2 Whilst OUTA does however seek condonation for the late filing of its Rule 30 Notice as a precursor to the present application, it does so perfunctorily, with no proper basis for the condonation actually being advanced. OUTA was well aware of



Bakwena's *In Limine* Application which was delivered on 1 July 2022. Despite the exchange of correspondence between Bakwena, OUTA and the South African National Roads Agency SOC Limited ("**SANRAL**"), OUTA sought to deliver its Rule 30 Notice only on 31 August 2022, well beyond the 10 days prescribed under Rule 30. On this basis alone, I submit that the application based on Rule 30(1) and the relief sought in *Prayer 1* was doomed from the outset and should be dismissed.

7.3 Nonetheless, I make submissions on the merits of the relief sought in *Prayer 1* out of caution and, in the event that this Honourable Court is inclined to grant OUTA condonation for the late filing of its Rule 30 Notice. In this regard –

7.3.1 OUTA's contention in seeking to set aside the *In Limine* Application is premised upon a narrow reading of Rule 6(5)(d)(iii) in total disregard of the fact that the *In Limine* Application deals with a crisp *in limine* legal point, which essentially amounts to an exception.

7.3.2 OUTA misconstrues Rule 6(5)(d)(iii) by obfuscating the fact that Bakwena enrolled the *In Limine* Application on the unopposed roll. The enrolment of the *In Limine* Application is a procedural issue, and is completely separate and entirely distinct from Rule 6(5)(d)(iii), but in accordance with Paragraph 13.10 of the Practice Manual. OUTA's challenge is



based on a misconception and/or obfuscation, advances no merit in its application and is fundamentally flawed.

7.3.3 I am advised that a Court with its inherent jurisdiction is empowered and moreover, entitled to deal with separate issues in applications *in limine*.

7.3.4 I will demonstrate that the *In Limine* Application is not only fair, but moreover appropriate and procedurally correct, in order to dispose of the Main Application brought by OUTA, albeit on founding papers that do not disclose a cause of action, nor makes out a *prima facie* case for the relief sought therein (in the Main Application).

7.4 I shall submit, in relation to *Prayer 2*, that there is likewise no merit whether or not such relief is sought in the alternative (as set out in the Rule 30 and 30A Notice and alleged in Paragraph 38 of the Founding Affidavit to the present application). The contention – whilst ambitiously framed in OUTA’s notice of motion, which effectively seeks compliance with the Order of Her Madam Justice Potterill dated 26 May 2022 (“**the 26 May Court Order**”) – is neither genuinely advanced nor substantiated in the founding papers. Indeed, this much is so given that OUTA premises its contention on Rule 30A, and more specifically, the contention that Bakwena failed to comply with an order of court, namely that of Her Madam Justice Potterill in



the filing of an answering affidavit to the Main Application. The contention however, I submit, is misplaced and a fallacy premised upon a opportunistic and excessively generous reading of the provisions of Rule 30A(1), as amended in terms of Government Gazette GN 2133 of 3 June 2022, which came into operation on 8 July 2022, including provision for 'Court Orders' and/or orders or directions made 'by a court'.

7.5 OUTA advances no argument on the point, and indeed whether or not reference to '*Court Orders*' or '*an order or direction made by a court*' under Rule 30(A)(1) is applicable in this particular instance as opposed to being circumscribed in its trite scope as providing a general remedy for non-compliance with the rules, and in turn, directions and orders made by a court in the management of its processes in terms of directions and orders.

7.6 Regardless, I shall submit that the relief sought in *Prayer 2* of the Notice of Motion should nonetheless be dismissed for two reasons:

7.6.1 the first is that OUTA's reliance on the alleged 'non-compliance' of the 26 May Court Order mischaracterises the contents and import thereof, alternatively, seeks to buttress an interpretation before this Honourable Court that is clearly misconstrued;

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7.6.2 the second is that, notwithstanding any order which granted leave for Bakwena to file an answering affidavit in the Main Application (as the 26 May Court Order did), Bakwena was nevertheless still entitled to utilise any and all remedies available to it in terms of the Uniform Rules in order to protect its rights once Bakwena was granted leave to intervene and was joined as a respondent to the Main Application.

8. I shall expand on these submissions in the paragraphs that follow, where I will structure the remainder of this affidavit under the following aspects, in turn –

8.1 Firstly, I shall explain why I respectfully submit that OUTA's application in terms of Rule 30(1) is stillborn, and why the Court need not even consider the merits of the application.


8.2 Secondly, in the event that the preliminary point is rejected and the Honourable Court is inclined to grant OUTA condonation to bring this application under Rule 30(1), I shall set out the relevant factual background which gave rise to the *In Limine* application, and in turn, the present Rule 30 and 30A application;

8.3 Thirdly, I shall set out why OUTA's grounds for relief are without merit, in terms of which I will deal with–

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- 8.3.1 in relation to *Prayer 1*, the provisions of Rule 6(5)(d)(iii) within the context of Bakwena's *In Limine* Application in dealing with separate issues in application *in limine*; and
- 8.3.2 in relation to the purported alternative *Prayer 2*, the misplaced application of Rule 30A, and OUTA's mischaracterisation of the 26 May Court Order.
- 8.4 Fourthly, I shall, to the extent necessary for me to do so, respond to the specific paragraphs of OUTA's founding papers *ad seriatim*.

PRELIMINARY POINT – OUTA'S RULE 30 NOTICE

9. At the outset, it is necessary to point out that OUTA attempts to intertwine the *In Limine* Application and the later enrolment thereof on the unopposed roll as it requests this Honourable Court to '*consider the irregular application [the In Limine Application] and subsequent irregular set-down together for purposes of determining whether the Rule 30 Notice was out of time*'.
10. OUTA does so whilst OUTA itself alleges the *In Limine* Application is an irregular step (which I naturally deny), and that the later enrolment thereof on the unopposed roll on 29 August 2022, '*constitutes a further irregular step*' (See Paragraph 35 of the founding affidavit). In other words, OUTA, on its own version, contends that the *In Limine* Application and the subsequent enrolment thereof are two separate 'irregular steps'.
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11. Yet OUTA requests this Honourable Court to consider the *In Limine* Application and the enrolment thereof together for purposes of determining whether the Rule 30 Notice is out of time.
12. I submit the launching of the *In Limine* Application and the enrolment thereof are two distinct steps. More so given that the enrolment of the *In Limine* Application was done pursuant to Paragraph 13.10 of the Practice Manual following OUTA's failure to deliver an answering affidavit. I will expand on this further below. For present purposes however, I submit that the *In Limine* Application and enrolment are two separate steps, one distinct from the other, which cannot and should not be considered as one, as OUTA alleges (whilst OUTA itself concedes it constitutes two steps).
13. Consequently, and on this basis, it is common cause that the Rule 30 Notice filed for purposes of setting aside the *In Limine* Application is out of time. To this end –
 - 13.1 Bakwena delivered its *In Limine* Application on 1 July 2022;
 - 13.2 Prior thereto however, on 14 July 2022, Bakwena delivered a letter which referred to the *In Limine* Application and the basis for the relief sought therein; and moreover, afforded OUTA an opportunity to withdraw the Main Application. A copy of the letter is attached as "**AA1**".
 - 13.3 Rather than doing so, OUTA delivered a notice of intention to oppose on 15 July 2022.



- 13.4 OUTA delivered a letter dated 25 July 2022, attached as "FA2(a)" to the founding affidavit, which specifically referred to the *In Limine* Application.
- 13.5 In response, Bakwena, through its attorneys of record, Fasken (Incorporated in South Africa as Bell Dewar), addressed a letter to OUTA on 2 August 2022, wherein it set out Bakwena's position in respect of the *In Limine* Application, and moreover, that the "*continuation of the Main Application is dependent on the outcome of [Bakwena's] in limine Application.*" The letter went further and set out that "*it would not be appropriate or legally and procedurally correct that the time periods of 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.*" A copy of the letter is attached as "FA2(b)" to the founding affidavit.
- 13.6 On 5 August 2022, OUTA responded in a letter attached as "FA2(c)" to the founding affidavit, wherein it disagreed with Bakwena and set out that "*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....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....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”.

- 13.7 Bakwena in a letter in reply dated 17 August 2022, reiterated Bakwena’s position in respect of the *In Limine* Application and indicated Bakwena’s intention to approach the Honourable Deputy Judge President (“**the DJP**”) of this Division for case management. More importantly, Bakwena set out that it would take steps to apply for a hearing date in the absence of OUTA’s answering affidavit. A copy of the letter is attached as “FA2(d)” to the founding affidavit.
- 13.8 Indeed, Bakwena on 29 August 2022, applied for a hearing date on the unopposed roll.
- 13.9 Furthermore, Bakwena approached the DJP by addressing a letter dated 30 August 2022, attached as “FA2(e)” to the founding affidavit, wherein it sought case management of the matter given the dispute that had arisen between the parties.
- 13.10 It is only upon the steps undertaken by Bakwena that OUTA thereafter on 31 August 2022 delivered its Notice in terms of Rule 30 and 30A contending that the *In Limine* Application and the enrolment thereof constituted an irregular step.
14. The Rule 30 and 30A Notice however was delivered on 31 August 2022, almost two months post the delivery of the *In Limine* Application on 1 July 2022.



15. At most, the Rule 30 Notice had to be delivered on or before 15 July 2022, being ten days from the delivery of the *In Limine* Application on 1 July 2022, when OUTA became aware of the application. On OUTA's own version, the Rule 30 notice is filed out of time.
16. Consequently, on this basis alone I respectfully submit that it follows that OUTA's Rule 30 Application in respect of the relief sought in terms of *Prayer 1* cannot succeed and falls to be dismissed on a preliminary basis.
17. OUTA does however request this Honourable Court to condone the late filing of the Rule 30 Notice. OUTA proffers no substantive reason for the late delivery of the Notice, but simply avers that –
- 17.1 *"if the irregularity is allowed to stand, the deadlock between the parties will continue"* (Paragraph 36 of the Founding Affidavit); and
- 17.2 *"prior to the filing of OUTA's Rule 30 and 30A notice, my offices have made several attempts to resolve the matter without the need for such notice and this subsequent application"* (Paragraph 37 of the founding affidavit).
18. I am advised that it is trite that condonation for non-compliance with the Rules of Court are not there for the asking, but that one who seeks condonation must provide a full detailed and accurate account of the causes of the delay and the effects thereof in order to enable a court



to appreciate clearly the reasons for such delay. Such factors, I am advised, include –

18.1 the degree of non-compliance;

18.2 explanation of the delay;

18.3 importance of the case;

18.4 the interests of finality;

18.5 convenience of the court; and

18.6 the avoidance of unnecessary delay in the administration of justice.

19. OUTA falls far short of genuinely satisfying the requirements for condonation. In fact, there is no attempt by OUTA to provide an explanation. The purported 'deadlock' as contended by OUTA is a fundamentally flawed conclusion drawn by OUTA, which is entrenched in its position, in total disregard to the Rules, and moreover, apparently oblivious to the Practice Directives of this Honourable Court. To this end, I am advised that the enrolment of the *In Limine* Application on the unopposed roll in accordance with Paragraph 13.10 of the Practice Directives would have addressed any 'self-proclaimed deadlock' as contended for by OUTA, where it provides that –

"1. Where the respondent has failed to deliver an answering affidavit and has not given notice of an intention only to raise a question of law (rule 6(5)(d)(iii)) or a point in limine, the

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application must not be enrolled for hearing on the opposed roll.

2. Such an application must be enrolled on the unopposed roll. In the event of such an application thereafter becoming opposed (for whatever reason), the application will not be postponed as a matter of course. The judge hearing the matter will give the necessary directions for the future conduct of the matter."

20. Put simply, the matter would proceed on the unopposed roll regardless of whether or not the matter becomes opposed, where the judge hearing the matter will give the necessary directions. The Practice Directive envisages and precisely addresses instances of the present nature arising. The so-called deadlock as alleged by OUTA is accordingly not a basis for condonation to be granted, and certainly does not constitute a ground to support the granting of condonation.

21. To the extent that OUTA relies on the fact that it made '*several attempts to resolve the matter without the need for such notice and...subsequent application*' is further of no assistance. OUTA specifically avoids setting out a detailed explanation of the delay for the period between 1 July 2022 and 31 August 2022 when it eventually delivered its Rule 30 Notice. In fact, OUTA delivered its notice of intention to oppose the *In Limine* Application on 15 July 2022, whereupon, OUTA alleges that "*upon further perusal of the application and consultation with counsel, realised that the procedure followed by Bakwena is irregular to such an extent that any further steps taken*

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would only amplify the irregularity and cause further confusion" (See paragraph 22, page 9 of the founding affidavit).

22. OUTA however does not set out precisely when this alleged 'realisation' occurred, particularly whilst Bakwena and OUTA, through their attorneys of record, had exchanged correspondence on the very issue, commencing with OUTA's letter of 25 July 2022 (Annexure "FA2(a)").
23. As set out above, at the very least, this alleged 'realisation' would have, alternatively, should have come to the fore following Bakwena's letter dated 2 August 2022 wherein Bakwena had in no uncertain terms set out its position in respect of the *In Limine* Application (Annexure "FA2(c)").
24. This is indeed so given that OUTA's response on 5 August 2022 (Annexure "FA2(d)") specifically recorded that it disagreed with Bakwena's approach, and more critically, went further and set out that the *In Limine* Application *"was brought contrary to what the Rule envisages and amounts to an abuse of process"*.
25. at best for OUTA, it should have delivered its Rule 30 Notice shortly after Bakwena's letter dated 2 August 2022 or at the very least together with its response on 5 August 2022 (Annexure "FA2(d)").
26. OUTA did neither. OUTA only did so as an afterthought and in response to steps taken by Bakwena to advance the matter forward with the enrolment of the *In Limine* Application on 29 August 2022 and the request for a case management to the DJP on 30 August 2022.



27. It is noteworthy to point out the contents of OUTA's letter dated 5 August 2022 which is telling in its approach and in fact, demonstrates that OUTA's Rule 30 Notice was and is indeed reactive to the steps taken by OUTA and completely ignorant to the *In Limine* Application delivered on 1 July 2022. I say so on the basis that it is alleged in the letter (Annexure "FA2(c)") the following –

27.1 *"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;*

27.2 *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 file replying affidavit...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.*

27.3 *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.*

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Should condonation be required, our client will request same from the court hearing the matter.

27.4 *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."*

28. From the above response from OUTA, it is abundantly clear that –

28.1 Despite OUTA's contention that the *In Limine* Application was brought contrary to what Rule 6(5)(d)(iii) envisages, it was never OUTA's intention to deliver a Rule 30 Notice.

28.2 OUTA does not call upon the *In Limine* Application to be withdrawn, but in fact remains steadfast in its approach that SANRAL (as the only other respondent in the Main Application) deliver its answering affidavit as the time periods are not suspended.

28.3 Importantly, OUTA's position is summed up by its assertion that OUTA would only file its replying affidavit in the Main Application 'once all respondents have filed their answering affidavit'. OUTA goes further in alleging that it would seek condonation for the filing of its replying affidavit if necessary.

28.4 OUTA sought to continue with its passive approach and waited upon SANRAL to deliver its answering affidavit in order to respond to all affidavits (including the *In Limine* Application which it contended should be dealt with in the form of an




answering affidavit). Nowhere in its response was it suggested that it intended to set aside the *In Limine* Application. In fact, it was apparent, for whatever reason, that OUTA sought to deal with the *In Limine* Application in an 'affidavit' to be filed in answer to the *In Limine* Application. Whether or not such 'affidavit' is in terms of its replying affidavit in the Main Application or an affidavit filed in the *In Limine* Application itself is unclear. However, it was apparent that OUTA never intended to seek to set aside Bakwena's *In Limine* Application

29. Having regard to the aforesaid, any allegation that suggests that OUTA had attempted to resolve the matter without the need for the Rule 30 Notice and this subsequent application is misplaced and of no assistance. Even whilst OUTA was well aware of the stance adopted by Bakwena to the *In Limine* Application, OUTA did not deliver its Rule 30 Notice nor did it have any slight intention to do so. OUTA's conduct in delivering its Rule 30 Notice only on 31 August 2022 and thereafter the present application is clearly an afterthought.
30. The fact that OUTA has not set out candidly a *detailed* explanation of the delay in delivering its Rule 30 Notice is glaring. Indeed, OUTA cannot do so, given that it had adopted a specific approach to the *In Limine* Application which did not include the delivery of any Rule 30 Notice and/or setting it aside as an irregular step.

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31. Consequently, I respectfully submit that OUTA's request for condonation for the late filing of its Rule 30 Notice falls to be dismissed.
32. For the reasons set out above, I submit that the application, at least in terms of *Prayer 1*, falls to be dismissed on a preliminary basis alone, without the need to even consider the merits of the application.

RELEVANT FACTUAL BACKGROUND

33. Much of the relevant background has been set out by OUTA in its Founding Affidavit. Whilst I do not intend to overburden this affidavit, it is necessary that I set out all of the relevant factual background in order to give context to Bakwena's position. I do so without repeating the circumstances that had arisen following Bakwena's enrolment of the *In Limine* Application on the unopposed roll and its request to the DJP for case management that spurred OUTA to deliver its Rule 30 notice.
34. 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 2 of 2000 from SANRAL ("**the Main Application**"), following upon SANRAL's deemed refusal of OUTA's PAIA request.
35. The Main Application was only instituted as against SANRAL, SANRAL's then Information Officer, Skhumbuzo Macozoma N.O., and the Minister of Transport. No relief is sought against the Minister who was only cited in the Main Application by OUTA in the event that he may have an interest in the proceedings.
- 


36. 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.
37. Bakwena contended that the information sought by OUTA in terms of its PAIA request is information that belongs to Bakwena, and moreover that the documents and information sought contains confidential and proprietary information of Bakwena.
38. 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 Ladyship Madam Justice Potterill on 26 May 2022.
39. Having been joined as a respondent to the Main Application, Bakwena delivered its Notice to Oppose the Main Application on 6 June 2022.
40. On 1 July 2022, Bakwena delivered its *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. Bakwena does so on the basis (as set out in the *In Limine* Application) that OUTA's cause of action for the relief sought (in the Main



Application) is premised upon and revolves around the purported BRICS New Development Bank Loan.

41. In this regard, the *In Limine* Application seeks to deal with a very crisp issue upon which OUTA premises its entire basis for the relief sought. Consequently, Bakwena seeks the dismissal of the Main Application should such point of law succeed.
42. Following the exchange of correspondence between Bakwena, OUTA and SANRAL in terms of the *In Limine* Application as mentioned above, where Bakwena's position to its *In Limine* Application had been made abundantly clear, Bakwena carried through with its approach and sought the enrolment of the matter on the unopposed roll in terms of paragraph 13.10 of the Practice Manual, as amended, where an unopposed date had been allocated for hearing on 2 December 2022.
43. Bakwena furthermore addressed a letter to the DJP, requesting that the matter be case managed given the procedural dispute that had arisen between the parties.
44. As mentioned above, only upon such steps being taken by Bakwena to advance the matter in accordance with the Practice Directives and remedies available to it, had OUTA, in response, sought to deliver its Rule 30 and 30A Notice on 31 August 2022. As I have already set out, the Rule 30 Notice was delivered approximately two months after the delivery of the *In Limine* Application, well outside the prescribed time period under Rule 30.



45. In addition to the Rule 30 and 30A Notice, OUTA delivered an application to compel SANRAL (and Skhumbuzo Macozoma N.O.) to deliver its Answering Affidavit in the Main Application, notwithstanding Bakwena's *In Limine* Application having been instituted, but not yet heard.
46. I am advised and submit that the actions of OUTA demonstrated the precise need for Bakwena to approach the DJP for case management, or at the very least, seek the DJP's assistance to shed light on the matter moving forward, and more importantly, to enable the parties to come to an understanding on the most practical and expeditious course to bring the matter to a conclusion.
47. A case management meeting with the DJP was indeed granted, where the DJP invited the parties to a meeting following an email received from the DJP's Office dated 19 September 2022, attached as "**AA2**". At the request of the DJP, an agenda was prepared, wherein Bakwena set out *inter alia* the issues to be determined including whether –
- 47.1 *"the Main Application is stayed pending the determination of the In Limine Application;*
- 47.2 *the Application to Compel is stayed pending the determination of the In Limine Application;*
- 47.3 *the Rule 30 and 30A Applications proceed prior to the hearing of the In Limine Application with the agreement on time periods for the filing of affidavits;*
- 

47.4 *the In Limine Application be stayed with the filing of affidavits, pending the determination of the Rule 30 and 30A Applications."*

48. A copy of the Agenda is attached as "**AA3**".

49. The case management meeting was held on 12 October 2022. I am advised by Bakwena's legal representatives who participated in the meeting that after hearing the parties on the issues to be determined, the DJP indicated that whilst case management was not needed at this stage, it was clear that the present Rule 30 Application instituted by OUTA was required to be dealt with first, and would thereafter dictate the way forward in the litigation in respect of the *In Limine* Application and moreover, the Main Application.

50. I am advised that although the DJP did not issue any 'directive' in the true sense, it was indeed apparent that the parties were *ad idem* with the views and 'direction' of the DJP in respect of the present application between Bakwena and OUTA being dealt with first.

51. Moreover, I am advised, that whilst it was not explicitly expressed that the Main and *In Limine* Application be stayed pending the determination of the present application, naturally, the parties, and more specifically, OUTA implicitly agreed that such proceedings should be stayed following the DJP's 'direction' of the matter.

52. This position was made clear on 13 October 2022 in a letter by OUTA attached as "**AA4**", wherein it set out *inter alia* that OUTA would remove its Application to Compel against SANRAL from the unopposed

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roll, and would *'proceed first with the Rule 30 and 30A application against Bakwena as directed by the Honourable Ledwaba DJP.'*

53. Having regard to the aforesaid, I am advised and submit that the deponent's alleged views on Bakwena's request for case management and moreover, the purpose of same, is completely misdirected; where it is clear that, but for the case management or meeting with the DJP (and in turn the DJP's direction), the parties would not find themselves (as they presently are) in agreement with the stay of the Main and *In Limine* Application in order for the Rule 30 application to proceed as the most 'practical' way forward in resolving the alleged procedural dispute.

54. Nonetheless, following the Rule 30 and 30A notice, OUTA delivered the present application on 22 September 2022 with Bakwena having delivered its notice of intention to oppose on 5 October 2022.

OUTA'S GROUNDS FOR RELIEF FALL TO BE DISMISSED

Prayer 1

55. OUTA seeks the relief set out in *Prayer 1* on the basis that –

55.1 Rule 6(5)(d)(iii) does not provide for a 'self-standing' application ("**Self-standing Application**"); and

55.2 the enrolment by Bakwena on the unopposed roll is irregular given that, by implication under Rule 6(5)(d)(iii), the matter is opposed ("**the Unopposed Enrolment**").

56. In doing so, OUTA states the following –

56.1 as regards the Self-Standing Application, Rule 6(5)(d) "*does not allow for opposition to what is stated in a founding affidavit in one application through what is stated in a founding affidavit in another*";

56.2 in respect of the Unopposed Enrolment, OUTA contends that it gives rise to '*two insurmountable problems for both Bakwena and the presiding officer if the matter is allowed to proceed on the unopposed roll*' (Paragraph 26, page 20 of the founding affidavit), namely, *inter alia* that –


56.2.1 the matter is '*by implication*' opposed whereby Bakwena has enrolled the matter for hearing on the unopposed roll, which in turn, will '*cause a postponement to the opposed roll*' (See Paragraph 26(a) read together with 26(a)(ii), page 20 to 21 of the founding affidavit).

56.2.2 OUTA not filing an answering affidavit (as it is under no obligation to do so as alleged by OUTA) gives rise to the consequence of a judge being '*automatically*' called upon to consider the Founding Affidavit in the Main Application together with the founding affidavit in Bakwena's *In Limine*



Application, which is not permitted in terms of the Rules, and accordingly irregular.

The Self-Standing Application

57. Bakwena's *In Limine* Application is brought pursuant to Rule 6(5)(d)(iii) in order to raise a point of law or legal issue on an *in limine* basis which could be dispositive of the Main Application.
58. OUTA contends that Rule 6(5)(d)(iii) does not provide for a self-standing application to be instituted notwithstanding whether or not the point of law as envisaged in terms of Rule 6(5)(d)(iii) is a crisp legal issue that is far removed from any conflict of fact on the papers (in the Main Application) which, if heard first, may or may not be dispositive of the Main Application.
59. Apart from alleging that Rule 6(5)(d)(iii) does not provide for a self-standing application to be instituted, OUTA relies solely on the position set out in the matter of *Minister of Finance v Public Protector and Others* 2022 (1) SA 244(GP).
60. I am advised and submit that whilst Rule 6(5)(d)(iii) records that a party intending to raise a question of law need only give notice of its intention to do so, a party is not precluded from instituting a self-standing interlocutory application, particularly whilst the point of law in question is a point *in limine* that may be dispositive of the main proceedings.
- 

61. i have been advised that a litigant is not without remedy where it is clear that a founding affidavit to motion proceedings does not make out a *prima facie* case for the relief claimed. In such an instance, I am advised and submit that whilst the Rules do not specifically provide for an exception applicable to applications, the procedure can still be followed, and may be analogous to an application for absolution from the instance in a trial action.
62. Further legal argument will be advanced at the hearing of the matter in this regard.
63. More importantly, I am advised and submit that this Honourable Court, with its inherent jurisdiction and in the exercise of its discretion, may apply such procedures to motion proceedings, and moreover direct that preliminary issues in separate applications *in limine* be disposed of first.
64. I respectfully submit that Bakwena, in order to protect its rights, adopted this precise approach in terms of launching the *In Limine* Application, particularly whilst the legal issue – which effectively amounts to an exception or absolution from the instance – is a crisp legal issue, and one which is far removed from any conflict of fact.
65. Whilst Rule 6(5)(d)(iii) does not specifically make reference to applications *in limine*, I respectfully submit it does not preclude Bakwena from instituting an application *in limine* on a legal issue only.

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66. Further legal argument will be advanced at the hearing of the matter, if necessary.

67. OUTA's reliance on *Minister of Finance v Public Protector* is circumscribed in that OUTA appears to suggest that –

67.1 a point of law under Rule 6(5)(d)(iii) may only be instituted per a notice and answering affidavit filed in the main proceedings in total disregard to the fact that a party may, and moreover, is entitled, to institute separate applications *in limine* on separate papers;

67.2 in dealing with a point of law under Rule 6(5)(d)(iii), the court must consider the founding affidavit in the main application and accept such allegations as established facts. This premise has led OUTA to advance the contention that a court finds itself in a position where it considers two founding affidavits, should OUTA refuse to deliver an answering affidavit which it contends it is not obliged to do.

68. Firstly, I have already set out above that a respondent is entitled to separate issues in applications *in limine* – analogous to an exception and absolution from the instance in motion proceedings with the exercise of the court's discretion – where such issues deal with a crisp legal issue. It is on this very basis that Bakwena intended to raise such a crisp legal issue against the Main Application, and which has the

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consequence of disposing of the Main Application, that it delivered its application under Rule 6(5)(d)(iii).

69. Secondly, OUTA's contention that a court must consider the allegations in the founding affidavit as established facts is misplaced as OUTA avoids setting out that this only arises where a respondent relies solely on its Rule 6(5)(d)(iii) notice and in the absence of any affidavit, answering affidavit or otherwise. I am advised and respectfully submit that the position in *Minister of Finance v Public Protector* only arises in the absence of an affidavit being filed together with the notice.
70. In the present instance, Bakwena delivered an affidavit together with its Rule 6(5)(d)(iii) notice. However, as opposed to delivering an affidavit in answer to the entire founding papers in the Main Application, it did so only in respect of a crisp legal issue which goes to the very root of the Main Application in not disclosing a cause of action, and which in turn, has the consequence of disposing of the Main Application in its entirety without having to address the remainder of the issues set out therein. It would be entirely impractical to require of parties to file lengthy affidavits, prepare heads of argument, and deal with an entire application, when such application could be disposed of entirely, by way of determination of a crisp legal issue.
71. Having said that, I submit that it is axiomatic, in order for Bakwena to advance its challenge against OUTA's founding papers, it is required to

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plead material facts followed by conclusions of law as it has done, albeit on a limited crisp legal point.

72. I respectfully submit that it is trite that a respondent is entitled to make any legal contention open to it on the facts as it appears on the affidavits, provided that the raising of a legal contention is not unfair to the applicant.

73. I am advised and submit that Bakwena, having regard to the founding papers in the Main Application, is entitled to challenge and raise a legal contention – as it has done and on the basis set out in the *In Limine* Application – regardless of whether it is a limited aspect or not, alternatively, on a preliminary point of substance that may dispose of the main proceedings as a whole or at least a substantial portion thereof.

74. I submit that the only question that arises is whether or not it is unfair to the applicant.

75. In this regard, I respectfully submit that the procedure adopted by Bakwena to deal with a separate crisp legal point *in limine* is clearly fair through the launching of the *In Limine* Application, where OUTA is afforded an opportunity – whether or not OUTA believes it is not ‘obligated’ to file an answering affidavit or not – to answer to the crisp legal point *in limine*, which effectively amounts to an exception.

76. For the reasons set out above, I respectfully submit that *Prayer 1* falls to be dismissed. This Honourable Court, in its inherent jurisdiction,

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may deal with separate issues in applications *in limine*. This is particularly so when such issues are crisp legal issues which are dispositive of the main proceedings, and which are similar, if not amounts to, an exception, albeit in motion proceedings.

The Unopposed Enrolment

77. In respect of the Unopposed Enrolment, OUTA seeks to emphasize the enrolment of the *In Limine* Application on the unopposed roll, given that, for all intents and purposes, the *In Limine* Application is opposed, on the basis that Rule 6(5)(d)(iii) 'automatically' requires the presiding officer to consider the founding affidavit.
78. As I have set out above, Rule 6(5)(d)(iii) may be brought as a separate self-standing application which deals with a crisp *in limine* point. Bakwena delivered its Rule 6(5)(d)(iii) notice together with a supporting affidavit.
79. Having done so, Bakwena's *In Limine* or interlocutory application provided for the exchange of affidavits in terms of motion proceedings under Rule 6 in that it set out and afforded OUTA the opportunity to oppose the application and moreover, the filing of an answering affidavit.
80. As already mentioned, OUTA delivered its notice of intention to oppose the *In Limine* Application on 15 July 2022. It however, failed to deliver



its answering affidavit, where OUTA's position that it was not willing to do so was made clear through the exchange of correspondence.

81. Despite this OUTA completely disregards the fact that Bakwena's enrolment of the *In Limine* Application on the unopposed roll was undertaken in accordance with Paragraph 13.10 of the Practice Directives of this Division. As set out above, Paragraph 13.10 provides for circumstances where no answering affidavit is delivered (but only a notice of intention to oppose), the application must be enrolled on the unopposed roll. Bakwena would not have been permitted to enrol the application on the opposed roll.
82. Whether or not the matter becomes opposed for whatever reason, the matter will still proceed on the unopposed roll where the presiding officer would give directions for the future conduct of the matter. I am advised that such directions, if it were indeed to be heard before a Judge, would most likely entail the respondent being afforded an opportunity to deliver an answering affidavit with an appropriate order as to costs being made.
83. OUTA's challenge to the Unopposed Enrolment is not premised upon whether the enrolment was done in accordance with the Practice Directives, but on the basis of the operation of Rule 6(5)(d)(iii) itself and the alleged 'insurmountable problems'. OUTA is clearly unable to challenge the unopposed enrolment given that such enrolment was



undertaken in terms of, and in compliance with, Paragraph 13.10 of the Practice Directive.

84. However, OUTA's reliance on entangling the *In Limine* Application with the enrolment thereof on the unopposed roll is completely misplaced.

85. It must be stressed that Bakwena does not seek to have the *In Limine* Application heard on an unopposed basis. Bakwena has simply complied with the procedural requirements of the Practice Directives, necessitated by OUTA's failure to have filed an answering affidavit.

86. OUTA alleges that the enrollment on the unopposed roll is irregular as it would be postponed and delay the hearing of the matter ("**the First Insurmountable Problem**"). (See Paragraph 26(a)(i) – (iii), pages 20 to 21 of the founding affidavit).

87. OUTA's allegation falls to be dismissed on two bases. Firstly, I am advised and submit, that a postponement which leads to a delay or alleged 'pre-determined' delay to a matter is by no means a ground to substantiate a step taken as being irregular.

88. Notwithstanding this, I submit, secondly, that the enrolment on the unopposed roll is not irregular in itself. I say so, respectfully, because

–

88.1 it is not necessary to even consider, in terms of Rule 6(5)(d)(iii), whether or not the Judge hearing the application will automatically have to consider OUTA's founding affidavit and by '*implication the application is therefore opposed*'.

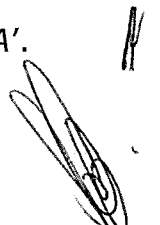


- 88.2 the *In Limine* Application is indeed opposed with OUTA having delivered its notice of intention to oppose.
- 88.3 it is ludicrous to suggest that Bakwena '*enrolling the matter on the unopposed roll will place the presiding Judge in [an] untenable position of having to consider affidavits filed by opposing parties and reaching a decision thereof.*'
- 88.4 indeed, Paragraph 13.10 of the Practice Directive provides for precisely the same circumstances to enrol a matter on the unopposed roll whilst no answering papers have been filed but only a notice of intention to oppose. The Directive specifically provides that '*the application must not be enrolled for hearing on the opposed roll*'.
- 88.5 a Judge hearing the matter on the unopposed roll is not called on to consider affidavits and reach a decision, but given OUTA's opposition, is called upon '*to give the necessary directions for the future conduct of the matter*'.
89. OUTA's contention in regard to the '*Judge hearing the matter will have to consider two founding affidavits in coming to a decision*' ("**the Second Insurmountable Problem**") is equally opportunistic and of without merit. A presiding Judge is not called upon to consider two founding affidavits where the *In Limine* Application is a self-standing application, dealing with a separate issue on an *in limine* basis.



90. A presiding Judge, in accordance with Paragraph 13.10 of the Practice Directive will give the necessary directions for the future conduct of the matter, including whether or not the respondent is afforded an opportunity to deliver any answering papers to such application, in this instance, the *In Limine* Application.
91. It is indeed difficult to fathom why OUTA seeks to intertwine an enrolment of an application on the unopposed roll in accordance with the Practice Directive (which it does not, and moreover, cannot challenge) with Rule 6(5)(d)(iii). This is despite the fact that this Honourable Court has the inherent jurisdiction to determine applications *in limine*, whether or not in terms of Rule 6(5)(d)(iii), as a self-standing application.
92. In the circumstances, OUTA's relief sought in terms of *Prayer 1* falls to be dismissed, whether it be in terms of the *In Limine* Application or the enrolment on the unopposed roll.

Prayer 2

93. OUTA contends that Bakwena has failed to comply with the order of her Madam Justice Potterill dated 26 May 2022 in that Bakwena has failed to deliver its answering affidavit when Bakwena "*was ordered to file an answering affidavit in the main application within 20 days of that order.*" On this basis, OUTA contends that Bakwena is '*accordingly also in non-compliance of a court order as contemplated by Rule 30A*'.
- 

94. I respectfully submit that OUTA's contention is misplaced, and an opportunistic reading of the 26 May Court Order. The Order of Her Madam Justice Potterill provided, *inter alia*, the following –

"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."* (my emphasis)

95. Having regard to the Order of Her Madam Justice Potterill, I respectfully submit that nowhere in the order does it order Bakwena to file its answering affidavit within 20 days. The Order specifically provides that Bakwena is 'granted leave' to file its answering affidavit within 20 days. It does not go so far as ordering, alternatively, compelling Bakwena to file an answering affidavit.

96. To demonstrate this, paragraph 2 of the Order is framed in the same wording and structure, granting leave to Bakwena to deliver its notice of intention to oppose the Main Application. Naturally, Bakwena is not compelled to file an opposition if, for whatever reason, it elects not to oppose.

97. Similarly, in regard to the filing of an answering affidavit, Bakwena cannot be ordered and/or compelled to file its answering affidavit if the Court Order only provides that Bakwena is granted leave to do so. Whether Bakwena ultimately chooses to file an answering affidavit, or



whether it elects to take a step in order to protect its rights, is an election and right granted to Bakwena.

98. OUTA's reading of the Court Order as compelling Bakwena to deliver an answering affidavit, failing which Bakwena is in contempt or non-compliant is accordingly misplaced, unfounded, and opportunistic.

99. On this basis alone, the relief sought in *Prayer 2* should be dismissed.

100. However, notwithstanding the reading of the Court Order itself, OUTA's reliance on Rule 30A is furthermore unfounded. OUTA seeks to rely on Rule 30A for non-compliance with a court order, where it is trite that non-compliance with an order of court, ordinarily, would attract allegations of contempt of court.

101. Nonetheless, OUTA seeks a generous reading of the provisions of Rule 30A(1), which was only recently amended with effect from 8 July 2022 in terms of Government Gazette GN 2133 of 3 June 2022, which included a provision for 'Court Orders' and/or orders or directions made 'by a court'.

102. I am advised and respectfully submit that Rule 30A(1) provides a general remedy for non-compliance with the rules, and in turn, directions and orders made by a court in the management of its processes in terms of directions and orders made pursuant to judicial case management under Rule 37A.

103. This was so, I am advised, from the rules very inception where such remedy was provided for under Rule 30(5), and moreover, whereupon

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Rule 30A(1) follows the same wording. I am advised that Rule 30A, and even the old Rule 30(5), provided for a general remedy for non-compliance with the rules.

104. This is more so illustrated, prior to the amendment published on 3 June 2022, which included the words "and Court Orders" in the heading and under subrule (1) "by a court" as follows -

*"Non-compliance with Rules **and Court Orders***

*(1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, or with an order or direction made **by a court or** in a judicial case management process referred to in Rule 37A...."*

105. A copy of the relevant pages of the Amendment as published in the Government Gazette on 3 June 2022 is attached as "AA5".

106. The Amendment introduced the wording "and Court Orders" and "by a court or" (as set out above). That said, it is clear that prior to the amendment, the subrule only applied to '*an order or direction made in a judicial case management process referred to in Rule 37A.*' In other words, I submit, Rule 30A only applied to directions and orders made under judicial case management.

107. Certainly, I respectfully submit, that it was never the intention to expand the ambit and scope of Rule 30A with any order made by a court, but rather clarify the position that an order or direction made by a court or the Judge President or Deputy Judge President in



proceedings under Rule 37A are to be addressed under Rule 30A non-compliance.

108. I respectfully submit that the only reasonable interpretation of Rule 30A in regard to non-compliance with court orders are only applicable to orders and directions made by a court under Rule 37A.

109. The Court Order of Her Madam Justice Potterill of 26 May 2022, I submit, is neither pursuant to an order by the Judge President, Deputy Judge President or any court acting in terms of any judicial case management under Rule 37A.

110. Further legal argument will be advanced at the hearing of the matter in this regard.

111. In these circumstances, OUTA's reading of Rule 30A is without merit.

I respectfully submit that OUTA's relief premised upon Rule 30A, whether it be in respect of the interpretation of the 26 May Court Order, alternatively, the reading of Rule 30A itself, should be dismissed.

***SERIATIM* RESPONSES**

112. I now turn to deal with the founding affidavit on an *ad seriatim* basis.

In doing so, I will seek to avoid repeating myself and ask that my responses be read together with the earlier portions of this affidavit.

Insofar as any specific allegation is not dealt with, it is to be taken as

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denied insofar as it is inconsistent with what I have set out above in this affidavit.

AD PARAGRAPHS 1 AND 2

113.The contents herein are admitted.

AD PARAGRAPH 3

114.I deny the allegations in the founding affidavit are all true and correct for reasons I have already traversed.

AD PARAGRAPH 4

115.The contents herein are noted.

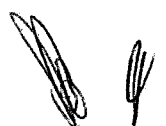
AD PARAGRAPH 5 – 7

116.Save to admit the contents in paragraph 6 hereof in relation to Bakwena, the contents contained in the remainder of the paragraphs are noted.

AD PARAGRAPH 8

117.Save to deny that the *In Limine* Application and the subsequent enrolment thereof on the unopposed roll constitutes an irregular step, the purpose of the application is noted.

118.For reasons which I have already set out above, the *In Limine* Application and the subsequent enrolment thereof, alternatively, the application for a unopposed hearing date on 29 August 2022 are, for



all intents and purposes, two separate and distinct steps which should not be entwined together as advanced by OUTA.

119. The justification for such proposition is fundamentally flawed.

AD PARAGRAPH 9

120. The contents herein are denied. I repeat what I have set out above, particularly in respect of OUTA's interpretation of the Order of her Madam Justice Potterill on 26 May 2022.

121. The 26 May Court Order does not specifically order Bakwena to deliver its answering affidavit, but in fact, provides that Bakwena is 'granted leave to file its Answering Affidavit in Main Application'. Bakwena is not compelled by the order to do so.

122. Similarly, prayer 2 of the 26 May Court Order grants leave to Bakwena to file its notice of intention to oppose the Main Application. Likewise, Bakwena is not ordered to deliver its opposition, where its failure to do so would be in contempt of the 26 May Court Order.

123. OUTA's alleged non-compliance by Bakwena of the 26 May Court Order are completely misconstrued and without basis.

124. Moreover, I repeat what I have set out in regard to the provisions of Rule 30A and OUTA's reading of the provision.

AD PARAGRAPH 10

125. I deny that any of the grounds as contended, or what OUTA intends to contend, are of any substance. I repeat what I have set out above

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in regard to the Uniform Rules under Rule 6(5)(d)(iii) and moreover, the contents of the order of Her Madam Justice Potterill.

126. The "deadlock" and delay in the matter is occasioned by OUTA's conduct. In fact the delay set in when OUTA delivered its Rule 30 Notice and Application to compel SANRAL to deliver its answering affidavit in the Main Application (a process I might have been advised does not exist in the Uniform Rule of Court).

127. Bakwena has no intention of delaying the matter. It is merely seeking to exercise its rights in terms of the Rules of Court to protect its interest. In doing so it cannot be accused of creating procedural deadlock and delay in the matter.

128. To the contrary, it is OUTA that is delaying the matter by launching this application, rather than dealing with the *In Limine* Application, which would have brought the matter to finality, or at least, closer to finality.

AD PARAGRAPHS 11 AND 12

129. I admit the contents of these paragraphs insofar as they correctly set out the provisions of Rule 30 and Rule 30A of the Uniform Rules of Court.

AD PARAGRAPH 13

130. The contents herein are noted.

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AD PARAGRAPH 14

131.The contents herein are admitted.

AD PARAGRAPH 15

132.The contents herein are denied.

133.It is denied that there is any 'failure' on the part of Bakwena to deliver an answering affidavit. I repeat what I have set out above in respect of Bakwena being granted leave to file an answering affidavit – Bakwena is not compelled to do so.

134.Bakwena is entitled to take any other steps in order to protect its rights as it had done in terms of the institution of its *In Limine* Application.

AD PARAGRAPH 16

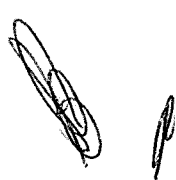
135.I admit the contents of this paragraph.

136.I repeat what I have set out above in respect of dealing with separate issues in applications *in limine*, and moreover, the court's inherent jurisdiction to hear matters *in limine*.

137.The *In Limine* Application, by its very nature, affords OUTA the opportunity to be heard and to address the crisp legal point *in limine* raised in the *In Limine* Application by Bakwena. It is clear that OUTA does not want to deal with such crisp legal issue.

AD PARAGRAPH 17

138.The contents herein are denied.



139. I repeat what I have already set out above. Bakwena's *In Limine* Application deals with a crisp legal issue that will be dispositive of the Main Application, if successful. It is analogous to an exception, alternatively, an application for absolution from the instance, in motion proceedings.

140. Moreover, I respectfully submit, it is not for the present application to determine whether it deals with the merits of the Main Application in detail as advanced by OUTA.

141. In addition, OUTA's contention of Bakwena 'inappropriately' being afforded an opportunity to file a replying affidavit is completely misconstrued and disingenuous in the context of *in limine* applications. Bakwena has instituted a separate application *in limine* as it is entitled to do. OUTA, as set out in the *In Limine* application is afforded an opportunity to respond and file answering papers to the crisp legal issue Bakwena raises in seeking the disposal of the Main Application.

142. On this basis, I respectfully submit, that there can be no prejudice to OUTA as OUTA is afforded an opportunity to respond. Indeed, OUTA takes its point on prejudice no further. In fact, it fails to set out what prejudice OUTA is likely to suffer.

AD PARAGRAPH 18

143. The contents of this paragraph are admitted insofar as it sets out the provisions of Rule 6(5)(d)(iii).



AD PARAGRAPHS 19 – 21

144.I deny the contents of these paragraphs.

145.I repeat what I have set out above in regard to Rule 6(5)(d)(iii) and applications brought *in limine*.

146.Rule 6(5)(d)(iii) does not preclude a party from instituting an application *in limine*.

147.Bakwena's *In Limine* Application deals with a single but fundamental legal flaw in the Main Application and it is accordingly entitled to proceed on the basis that it did in order to protect its rights, and curtail legal proceedings.


AD PARAGRAPH 22

148.Save to admit that OUTA delivered its notice of intention to oppose on 15 July 2022, I do not have knowledge of the remaining allegations.

149.I repeat what I have set out above in respect of OUTA's delays and moreover, that it was never OUTA's intention to deliver a Rule 30 or 30A notice as is evident from the contents of its letter dated 5 August 2022 (Annexure "FA2(c)") and consequently until steps had been undertaken by Bakwena.

AD PARAGRAPHS 23 – 24

150.The contents herein are admitted insofar as the parties exchanged correspondence.

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151. Again, I submit that even in respect of OUTA's Application to Compel as against SANRAL, such steps were an afterthought following Bakwena's steps it had undertaken to advance the matter forward.

152. There was no attempt by OUTA to resolve the deadlock and or prevent delays in the matter. In fact, OUTA's conduct resulted in exactly that. It therefore became necessary to approach the DJP for a directive on case management on the matter.

153. Prior to that an agenda was prepared by Bakwena's lawyers (Annexure "AA3") and distributed for comments to OUTA and SANRAL's lawyers. A copy of the email is attached as "**AA6**". There were no comments forthcoming in the time period provided and as such the agenda was dispatched to the DJP, copying OUTA and SANRAL's lawyers.

154. As pointed out, whilst the DJP during the direction meeting indicated that the matter did not require case management, he did provide direction on the matter and the further process forward, by stating that OUTA's Rule 30 Application would proceed and depending on the outcome thereof the other proceedings would follow.

155. The Application to Compel SANRAL's answering affidavit has since been removed from the roll. A copy of the notice of removal is attached as "**AA7**".

AD PARAGRAPH 25

156. Save to deny the attack in respect of which OUTA, based on its own interpretation of the Rules, describes Bakwena's response as

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'unyielding attitude and unilateral and irregular decision to "suspend" the working of Rule 6(5)(d) as well as the 26 May Court Order', which I might add is not legally plausible, the contents herein are admitted insofar as it reflects the response of Bakwena in its letter dated 2 August 2022 by Fasken.

AD PARAGRAPHS 26 – 28

157. The contents of these paragraphs are denied, and I repeat what I have set out above.

AD PARAGRAPH 29

158. Save to admit that OUTA, through its attorneys of record, delivered a response on 5 August 2022 to Fasken's letter dated 2 August 2022, the contents, and moreover, the position as set out in OUTA's letter dated 5 August 2022 is denied and the premises contended for therein are untenable .

AD PARAGRAPH 9

159. OUTA's numbering in respect of this paragraph and those that follow further on in the founding affidavit are numbered in error. OUTA appears to have continued its numbering from the paragraphs quoted and extracted from Annexure FA2(c). This paragraph should presumably be paragraph 30 as opposed to 9. I will however respond according to the numbering of the paragraphs referenced in the founding affidavit to avoid any confusion.

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160.I deny the contents herein. I repeat what I have set out above in regard to OUTA's 'repeated' attempts to persuade Bakwena to reconsider.

161.Moreover, I repeat what I have already set out in respect of Rule 6(5)(d)(iii).

AD PARAGRAPHS 10 – 12

162.The contents of these paragraphs are admitted.

AD PARAGRAPH 13

163.I deny the contents herein.

164.I am advised and submit, that for all the deponent's regular involvement in litigation as a practitioner, to suggest that Bakwena's request to the DJP for case management was '*in effect [to] ask the Deputy Judge President to step into the shoes of the unopposed court and decide the matter*' is farcical. That was not intended and clear from the exchange of correspondence.

165.I have already set out above the background leading up the request to the DJP for case management, and the subsequent case management meeting or meeting with the DJP which gave rise – not surprisingly – to an agreement between the parties following the DJP's 'directions' on the way forward.

166.To suggest that the approach by Bakwena to the DJP's office did not bear any fruits, as OUTA appears to suggest; and moreover, that it

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would lead to 'utmost chaos and a mockery of the court system and the Rules' is demonstrably without substance.

167. As set out above, a Case Management meeting was indeed granted by the DJP, and moreover, the parties came to an agreement on the way forward following the DJP's intervention through a case management meeting.

AD PARAGRAPH 14

168. I deny the contents herein, and repeat what I have set out above.

169. The "irregularity of the *In Limine* Application as contended for by OUTA is an afterthought. This is clearly illustrated by the contents of annexure FA2(c).

170. Similarly, the so-called 'impasse' would likewise not have arisen had OUTA delivered its answering affidavit in the *In Limine* Application, and not belatedly, relied on an alleged irregularity which it now contends for in the present application.

AD PARAGRAPHS 15 – 16

171. The contents of these paragraphs are admitted.

172. I am advised that when an interlocutory application is launched, as in the present application, it would no doubt require the filing of papers (if opposed) and formal judgment to resolve the dispute. It is accordingly, on this basis that Bakwena, even in respect of its submission of the Agenda to the DJP for purposes of the case



management meeting provided for the Rule 30 and 30A application to be dealt with first.

AD PARAGRAPH 17

173. I admit the contents of this paragraph insofar as it reflects OUTA's letter to the DJP.

174. That said however, it is difficult to fathom how OUTA appears to hold the view that case management, particularly, as set out in Rule 37A would give rise to a resolution of a dispute other than in respect of procedural aspects of the matter (and not on merits).

AD PARAGRAPH 18

175. I admit the contents herein.

AD PARAGRAPH 19

176. The contents herein are denied. I repeat what I have set out above in regard to separate issues to be dealt with in applications *in limine*.

177. Moreover, should Bakwena succeed on the basis of its *In Limine* Application it will result in the curtailment of legal processes and costs.

AD PARAGRAPH 20

178. Save to admit the Honourable DJP having granted a case management meeting, I deny the remainder of the contents herein.

179. OUTA had failed to adhere to the time periods set out under Rule 30 after becoming aware of the step taken by Bakwena in regards to the *In Limine* Application.



AD PARAGRAPH 21

180. The contents herein are noted, to the extent that OUTA's views are at all relevant.

181. No supplementary affidavit was delivered as at the date of signing this affidavit.

AD PARAGRAPHS 22 – 25

182. The contents of these paragraphs are denied.

183. I repeat what I have already set out above in regard to Rule 6(5)(d)(iii), and moreover the 26 May Court Order.

184. For reasons I have already mentioned, the alleged irregularities contended for by OUTA following the *dictum* of the *Minister of Finance v Public Protector and Others* are misconstrued and without merit. It is simply not applicable under these circumstances.

185. Further legal argument will be presented at the hearing of the matter.

AD PARAGRAPH 26

186. The contents of these paragraphs, and more specifically, subparagraph (a)(i)-(ii) and (b)(i)-(ii) are denied.

187. I repeat what I set out above in regard to the so-called 'two insurmountable problems' as alleged by OUTA in regard to the enrolment on the unopposed roll.

188. The propositions relied on are legally unsustainable.

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AD PARAGRAPHS 27 – 28

189. The contents of these paragraphs are denied.

190. I respectfully submit that OUTA's proposed straightforward 'solution' is aimed at derailing the entire purpose of Bakwena's *In Limine* Application and disregarding the context and the actual terms of the 26 May Court Order.

191. In the context of what I have already set out above, it is absurd for OUTA to suggest that Bakwena is setting 'the rules and procedure as it sees fit'. I submit that OUTA advances its contentions based on a limited reading and interpretation of the Rules of Court and moreover, the applicable authorities.

192. Bakwena has correctly exercised its rights as provided for within the framework of the Rules of Court.

AD PARAGRAPH 29

193. I deny the contents herein.

194. I deny that OUTA's Main Application remains 'unopposed by Bakwena' on the mere basis that it has not yet filed an answering affidavit.

195. OUTA's contention that Rule 6 only provides for a respondent to either deliver an answering affidavit or Rule 6(5)(d)(iii) notice *in lieu* thereof is completely ridiculous to say the least. Moreover to even suggest, and in fact emphasise that on such basis OUTA's Main Application is

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thus unopposed takes it far beyond absurdity, particularly having regard to the purpose of Bakwena's *In Limine* Application.

196. I repeat what I have set out in respect of *in limine* applications that deal with issues of substance that may dispose of the matter as a whole or a substantial portion thereof.

197. On OUTA's approach, Bakwena's *In Limine* Application is likewise unopposed with OUTA failing to deliver its answering affidavit. Whilst Bakwena had indeed applied for an unopposed hearing date based precisely on the basis that no answering affidavit had been delivered, Paragraph 13.10 of the Practice Directive enables and accounts for such circumstances arising.

AD PARAGRAPH 30

198. Save to admit that SANRAL has not delivered its answering affidavit in the Main Application, the remainder of the contents herein are denied.

199. I respectfully submit that it is difficult to fathom OUTA's position in taking issue with the suspension of time periods in the main application pending the determination of an interlocutory matter which may or may not dispose of the underlying cause of action.

200. On OUTA's approach, this would suggest that regardless of whether or not the present Rule 30 and 30A application is pending (and not yet heard), the time periods to Bakwena's *In Limine* Application, and the filing of papers thereto, are not suspended. This is despite the fact that OUTA, in the present application seeks to set aside the *In Limine*

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Application, and in turn, dispose of the *In Limine* Application in its entirety.

201. OUTA's position, procedurally and practically, is, I am advised, mistaken and not legally sustainable.

AD PARAGRAPH 31

202. The contents herein are denied.

203. For all the allegations of OUTA being entitled to set the matter down on the unopposed roll, following the case management meeting with the DJP on 12 October 2022, it is common cause between the parties – and the direction as provided by the DJP – that the present Rule 30 and 30A Application must be disposed of first, whereafter the outcome of the present application will dictate the outcome and/or steps to be followed.

204. It was also on this basis that it was agreed that the Application to Compel, and moreover, the filing of SANRAL's answering affidavit in the Main Application was to be held in abeyance pending the outcome of the hearing of the interlocutory applications. Indeed, given that – in SANRAL's view (which I submit is the correct approach) – the Rule 30 and 30A application as well as Bakwena's *In Limine* Application 'will have an impact upon SANRAL's answering affidavit' and moreover, inasmuch as SANRAL '*will no longer [be] needed to file any answering affidavit*'. In this regard, I attach a letter from SANRAL, through its attorneys of record, Werksmans, dated 18 October 2022 as "**AA8**".



205. OUTA, for all their contentions that Bakwena's *In Limine* Application cannot 'shield' SANRAL or moreover, cannot suspend the time periods for the filing of affidavits pertaining to other parties, agreed – and rightly so from a practical perspective – that its Application to Compel against SANRAL will not proceed, where OUTA will proceed first with the present application.

AD PARAGRAPHS 32 – 33

206. The contents of these paragraphs are denied.

207. I would point out that on 19 October 2022, OUTA, through its attorneys of record addressed a letter to correct a typographical error from "hearing on the unopposed roll" to "hearing on the opposed roll". A copy of the letter is attached as "**AA9**".

208. Whilst I am advised that amendments to affidavits are not simply amended by a letter, regardless of how immaterial the amendment is, I respectfully submit, nothing turns on the contents set out herein.

209. I repeat what I have set out in respect of Rule 6(5)(d)(iii) and applications brought *in limine*.

210. OUTA's incorporation as a non-profit organisation and the alleged incurring of 'unnecessary expenses' is misleading. OUTA's conduct has resulted in a further interlocutory application, which is clearly not warranted, but will result in unnecessary delay and increase in legal costs.

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211. Bakwena's employment of the rules of court, and moreover, its entitlement to raise issues in order to protect its rights cannot be regarded as 'unnecessary expenses'. In fact, the purpose of the *In Limine* Application is aimed at disposing of the Main Application prior to dealing with the merits of the entire application, and in turn, avoid the unnecessary determination of issues that need not be heard which likewise avoids the unnecessary wasting of the Court's time and burdening its already exhaustive court roll.

AD PARAGRAPHS 34 – 37 (RULE 30 AND 30A TIME PERIODS)

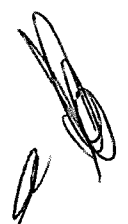
212. The contents of these paragraphs are denied.

213. I repeat what I have set out in regard OUTA's failure to comply with the time periods as set out under Rule 30, and moreover, its passive approach on condonation of such time period.

214. I submit that OUTA's relief as sought based on Rule 30 falls to be dismissed on this preliminary basis alone.

AD PARAGRAPHS 38 and 39

215. I deny the contents contained in these paragraphs and repeat what I have already set out in respect of Rule 30A and OUTA's relief sought in terms of *Prayer 2* in the alternative or otherwise, which on either basis, falls to be dismissed.

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AD PARAGRAPHS 40 – 42 (CONCLUSION)

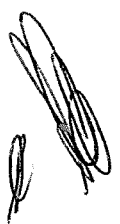
216. The contents contained in these paragraphs are denied, in particular, OUTA's contentions of Bakwena's 'intransigent attitude', 'unreasonable expectation' where OUTA seeks this court to show 'its displeasure', warranting a costs order on an attorney and client scale.

217. For reasons which I set out above, the basis for OUTA's relief sought whether in terms of *Prayer 1* under Rule 30 or *Prayer 2* Under Rule 30A have no merit, and moreover, falls to be dismissed even on a preliminary basis in respect of the relief sought under Rule 30.

218. OUTA's opportunistic and generous reading of the 26 May Court Order, and moreover, the Rules of Court is a desperate attempt by OUTA to salvage grounds of relief which it clearly does not have, and to avoid dealing with the legal issue as raised in the *In Limine* Application.

219. OUTA has failed to establish any basis under Rule 30 or 30A for the relief it seeks in its notice of motion. Consequently, I respectfully submit it is hard pressed to appreciate the basis upon which OUTA seeks an order against Bakwena for payment of costs on the scale as between attorney and client.

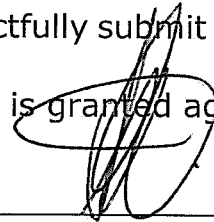
220. On the other hand, for reasons which I have dealt with extensively above, OUTA's desperate attempts under Rule 30 and 30A, and moreover, opportunistic attempts bordering on absurdity warrants a costs order granted against OUTA on an attorney and client scale.



CONCLUSION

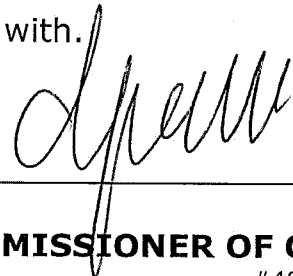
221. For the reasons set out above, I submit that the relief sought in terms of *Prayer 1* falls to be dismissed on a preliminary basis. Moreover, even on the merits whether in respect of the relief sought in terms of *Prayer 1* or in the alternative *Prayer 2* on Rule 30A, both fall to be dismissed for the reasons set out above.

222. OUTA's opportunistic contentions in an attempt to conjure up grounds of irregularity are without substance, I respectfully submit warrant that a costs order on an attorney and client scale is granted against OUTA.



DEPONENT

I hereby certify 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 Centurion on this the 8th day of **NOVEMBER 2022**, and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

#4877539v1

ANNERIE DELPORT
COMMISSIONER OF OATHS
EX OFFICIO PRACTISING ATTORNEY
SUITE 1, GROUND FLOOR,
SOUTHDOWNS RIDGE OFFICE PARK
CNR NELLMAPIUS AND JOHN VORSTER AVE
IRENE EXT 54, 0157

FASKEN

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

PHYSICAL Inanda Greens
54 Wierda Road West
Sandton
2196
South Africa

POSTAL PO Box 652057
Benmore, 2010
South Africa
T +27 11 586 6000
F +27 11 586 6104

"AA1"

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

Copy To: Sarah Moerane
Werksmans Attorneys

E-mail: smoerane@werksmans.co.za

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

Date: 14 July 2022

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

Dear Madam

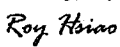
1. We refer to the application instituted by your client, the Organisation Undoing Tax Abuse NPC ("OUTA"), on 16 February 2021.
2. As you are aware, our client is the Fourth Respondent, having been granted leave to intervene pursuant to the Order of Her Madam Justice Potterill on 26 May 2022.
3. You would by now have received our client's Notice in terms of Rule 6(5)(d)(iii) of the Uniform Rules (together with its founding affidavit and annexures thereto) on Friday, 1 July 2022 ("the Notice"). The Notice as you would have seen by now raises a legal point of law which is premised on the basis that no cause of action has been set out in your client's application that would justify your client's entitlement to the documents sought in your client's Request for Information dated 8 June 2020, and in turn, the relief as sought by your client.



4. The basis upon which your client relies to obtain the information sought – that is, *inter alia*, the Concession Contract and its Annexures – does not set out a cause of action giving rise to the relief as sought by your client. This is particularly so given that your client's application is premised upon the alleged New Development Bank Loan or BRICS Loan ("the Loan") which firstly has no relevance to the Concession Contract between our client and SANRAL, and secondly, and more importantly, the Loan was never granted to SANRAL, and therefore could never have benefitted the concessionaires.
5. This is a material fact that your client was aware of, specifically as such fact was contained in media releases and other publicly available documents. Despite such knowledge, your client has persisted with an application that was patently defective.
6. In paragraph 99 of our client's founding affidavit the following is stated:

"OUTA will be provided with an opportunity to withdraw the Main Application, and if it fails to do so, a punitive costs order will be sought against OUTA at the hearing of this in limine application."
7. In the circumstances, our client hereby provides your client with the opportunity to withdraw its application and tender the costs associated therewith **by no later than close of business on Tuesday, 19 July 2022**, failing which our client will proceed with the *In Limine* Application, and will seek a punitive costs order against your client.
8. We wait to hear from you.

Yours faithfully

DocuSigned by:

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#4709727v1

Roy Hsiao

From: Lutendo Muneri <LuMuneri@judiciary.org.za>
Sent: September 19, 2022 3:19 PM
To: Roy Hsiao; Andri Jennings; Delia Turner; Irene Pienaar; Sarah Moerane; Smagadlela@werksmans.com; Rakhee Bhoora; Jessica Rajpal; krapoo@werksmans.com
Cc: Sidesha.sidesha@gmail.com; Siviwe Sidesha; Avela Mbelani; Anna-Marie A. Nieuwoudt
Subject: [EXT] RE: CASE NO; 7955/2021 - ORGANISATION UNDOING TAX ABUSE NPC // SOUTH AFRICAN NATIONAL ROAD AGENCY LTD & 3 OTHERS

Good day,

The above matter and your letter dated 30 August 2022 bears reference.

Kindly take note that the DJP has granted Judicial Case Management meeting with the parties.

The meeting will take place on **Wednesday, 12 October 2022 at 09:00**

This meeting is to take its form virtually by Microsoft teams.

Mr Sidesha(secretary) will send the link to the meeting.

Kindly send Mr Sidesha all the parties' email addresses that you wish to be present at the said meeting.

His e-mail address is as follows : SSidesha@judiciary.org.za and Sidesha.sidesha@gmail.com

NB.... AGENDA FOR THE MEETING TO BE SENT PRIOR TO THE MEETING.

NB: LEGAL REPRESENTATIVES NEED NOT ROBE FOR VIRTUAL MEETINGS, BUT SHOULD BE FORMALLY DRESSED .



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

Kind Regards
Ms Muneri Lutendo
Office Of The Deputy Judge President Ledwaba
Gauteng Division of the High Court: Pretoria
c/o Madiba & Paul Kruger Streets
Tel: 012 315 7576
Email: LuMuneri@judiciary.org.za

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"AA3"

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 7955/21

In the matter between:

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

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.

Fourth Respondent

(in his capacity as Information Officer)

In Re:

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.

Third Respondent

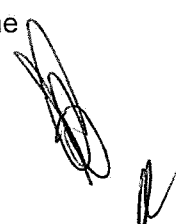
(in his capacity as Information Officer)

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

Fourth Respondent

CASE MANAGEMENT MEETING - AGENDA
WITH DEPUTY JUDGE PRESIDENT FOR 12 OCTOBER 2022

1. A Judicial Case Management meeting with the Deputy Judge President has been scheduled to take place virtually on 12 October 2022 at 09h00, by way of Microsoft Teams.
2. The purpose of the meeting is to seek the allocation of a Judge as Case Manager for the Main Application and the related interlocutory applications; including the



determination of time periods for filing of, *inter alia*, affidavits and the allocation of hearing date(s) for the various interlocutory applications instituted by the parties respectively, and in particular, a Rule 30 and 30A Application and an *In Limine* Application on a point of law instituted in terms of Rule 6(5)(d)(iii) which will have a determining factor on whether or not all consequential interlocutory applications (and even the Main Application) are required to proceed.

PARTIES

3. On behalf of the Applicant, Bakwena Platinum Corridor Concessionaire (Pty) Limited ("**Bakwena**");

- 3.1 Advocate Gerry Nel S.C: 082 496 9206 / gerrynel@law.co.za
- 3.2 Advocate Aasifa Saldulker: 072 461 7147 / saldulker@counsel.co.za
- 3.3 Rakhee Bhoora: 082 614 5719 / rbhoora@fasken.com;
- 3.4 Jessica Rajpal: 082 614 5723 / jrajpal@fasken.com; and
- 3.5 Roy Hsiao: 082 614 5710 / hsiaor@fasken.com.

4. On behalf of the First Respondent, Organisation Undoing Tax Abuse NPC ("**OUTA**");

- 4.1 Advocate Sonika Mentz: mentz@gkchambers.co.za
- 4.2 Andri Jennings: 012 110 4442 / andri@jinc.co.za; and
- 4.3 Delia Turner: 012 110 4442 / delia@jinc.co.za.



5. On behalf of the Second Respondent, South African National Road Agency Limited ("SANRAL"):

- 5.1 Advocate Phillip Mokoena SC: pmokoena@thulamelachambers.co.za / pmokoena@mweb.co.za;
- 5.2 Advocate Dikeledi Chabedi: chabedi@lawcircle.co.za;
- 5.3 Sarah Moerane: 011 535 8128 / smoerane@werksmans.com; and
- 5.4 Sinazo Magadlela: 011 535 8128 / smagadlela@werksmans.com.

THE RELEVANT FACTUAL CHRONOLOGY

6. 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 2 of 2000 from SANRAL ("the Main Application"), following upon SANRAL's deemed refusal of OUTA's PAIA request.
7. The Main Application was only instituted as against SANRAL, SANRAL's then Information Officer, Skhumbuzo Macozoma N.O., and the Minister of Transport. No relief is sought against the Minister who is only cited in the Main Application by OUTA in the event that he may have an interest in the proceedings.
8. 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.



9. Bakwena contends that the information sought by OUTA in terms of its PAIA request is information that belongs to Bakwena, and moreover the documents and information sought contains confidential and proprietary information of Bakwena.
10. 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 Ladyship Madam Justice Potterill on 26 May 2022.
11. Having been joined as a respondent to the Main Application, Bakwena delivered its Notice to Oppose the Main Application on 6 June 2022.
12. 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. To this end, Bakwena seeks the dismissal of the Main Application should the point of law succeed.
13. 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.
14. In light of OUTA's failure to deliver its Answering Affidavit in the *In Limine* Application, Bakwena sought the enrolment of the matter on the unopposed roll in



terms of paragraph 13.10 of the Practice Manual, as amended, where an unopposed date has been allocated for hearing on 2 December 2022.

15. OUTA, in response, has delivered the following interlocutory applications:

15.1 **The Application to Compel** – An application to compel SANRAL (and Skhumbuzo Macozoma N.O.) to deliver its Answering Affidavit in the Main Application, notwithstanding Bakwena's *In Limine* Application having been instituted, but not yet heard;

15.2 **The Rule 30 and 30A Application** – An application instituted by OUTA, wherein OUTA seeks an order setting aside Bakwena's *In Limine* Application and the enrolment thereof on the unopposed roll. OUTA contends that the *In Limine* Application instituted by Bakwena constitutes an irregular step, alternatively, amounts to non-compliance with the court order by Her Ladyship Madam Justice Potterill on 26 May 2022 requiring Bakwena to deliver an Answering Affidavit in the Main Application.

16. OUTA, having instituted the Application to Compel and the Rule 30 and 30A Application has sought the enrolment thereof, where the Application to Compel has similarly been allocated for hearing on the same unopposed date of the *In Limine* Application on 2 December 2022.

ISSUES TO BE DETERMINED

17. Having set out the above, the matter involves 4 (four) applications which may be summarized as follows:

17.1 **The Main Application;**

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

- 17.2 The ***In Limine* Application** instituted by Bakwena;
- 17.3 The **Application to Compel** instituted by OUTA; and
- 17.4 The **Rule 30 and 30A Application** instituted by OUTA.
18. Bakwena's position is that its *In Limine* Application in terms of Rule 6(5)(d)(iii) deals with a crisp *In Limine* legal issue, which essentially constitutes an Exception, and if Bakwena were to succeed with such *In Limine* Application it would be dispositive of not only the Application to Compel, but the Main Application.
19. That being said, Bakwena contends that the *In Limine* Application should be dealt with prior to the merits of the Main Application even being considered, where it is only practical that the Main Application be stayed until a final determination on the *In Limine* Application. In this regard, given that OUTA's Application to Compel seeks to compel SANRAL to deliver its Answering Affidavit in the Main Application, the Application to Compel need only be dealt with after the *In Limine* Application and in the event that the *In Limine* Application is dismissed.
20. As OUTA's Rule 30 and 30A Application seeks to *inter alia* set aside Bakwena's *In Limine* Application, it would be practical (but dilatory) that the Rule 30 and 30A Application be dealt with first, prior to the hearing of the *In Limine* Application.
21. Bakwena contends that OUTA's Rule 30 and 30A Application is not only irregular and out of time but more importantly it is not applicable to the issues raised by OUTA.
22. In the circumstances, the parties seek an agreement through Case Management of the matter that –
- 22.1 the Main Application is stayed pending the determination of the *In Limine* Application;




- 22.2 the Application to Compel is stayed pending the determination of the *In Limine* Application;
- 22.3 a determination as to whether the Rule 30 and 30A Applications proceed prior to the hearing of the *In Limine* Application with the agreement on time periods for the filing of affidavits;
- 22.4 a determination as to whether the *In Limine* Application be stayed with the filing of affidavits, pending the determination of the Rule 30 and 30A Applications.

STATUS OF PAPERS

23. Subject to agreement between the parties in regard to which interlocutory applications are stayed, and which interlocutory application is to proceed first (which may be dispositive of the remaining interlocutory applications or Main Application), answering and replying papers must still be delivered in each of the respective interlocutory applications.
24. Only the founding papers of each application have been uploaded onto CaseLines.

EXCHANGE OF HEADS OF ARGUMENT, CHRONOLOGY AND PRACTICE NOTES

25. No Practice Notes and Heads of Argument have been filed in either of the 4 (four) applications.
26. Subject to agreement between the parties in regard to which interlocutory application is to proceed first, agreement must be reached for the filing of answering and replying papers, and thereafter Practice Notes and Heads of Argument.
- 

ESTIMATE DURATION OF THE HEARING

27. It is anticipated that a day hearing would be required for each of the respective 4 (four) applications, thus a special allocation of 4 days in total will be requested.


ALLOCATION OF CASE MANAGER

28. Bakwena requests the Honourable Deputy Judge President to allocate a Case Manager for the Judicial Case Management of the matter in order to case manage the filing of papers for each respective interlocutory application, and in turn, the allocation of hearing date(s).
29. The events described above demonstrates and justifies the need for the appointment of a case manager. Bakwena's representatives will make further submissions on Case Management at the Case Management meeting scheduled for 09h00 on Wednesday, 12 October 2022.

Signed at Sandton on 11th October 2022.

DocuSigned by:
Roy Hsiao
64D9E3825BD24F7...

Fasken
(incorporated in South Africa as Bell
Dewar Inc.)
Applicant's Attorneys
Building 2
Inanda Greens
54 Wierda Road West
Sandton
Ref: Rakhee Bhoora/Jesicca
Rajpal/Roy
Hsiao/151486.00004
Tel: (011) 586 6076
Fax: (011) 586 6176
e-mail: rbhoora@fasken.com
irajpal@fasken.com



hsiaor@fasken.com

c/o Savage Jooste & Adams

5 10th Street

Menlo Park

Pretoria

0081

Tel: (012) 452 8200

Fax: (012) 452 8240

To: **The Registrar of the above
Honourable Court**
Pretoria

And to: **JENNINGS INCORPORATED**
First Respondent's Attorneys
149 Anderson Street
Brooklyn
Pretoria
Tel: (012) 110 4442
Email: andri@jinc.co.za
Ref: A JENNINGS/OUT006

PER ELECTRONIC SERVICE

And to: **WERKSMANS ATTORNEYS**
Second and Fourth Respondents'
Attorneys
The Central
96 Rivonia Road
Sandton, Johannesburg
Tel: (011) 535 8000
Fax: (011) 535 8600
Email: kradoo@werksmans.com /
smoerane@werksmans.com
Ref: MS S MOERANE/MS K
RAPOO/SOUT3114.192
c/o MABUELA ATTORNEYS
4th Floor Charter House
179 Bosman Street, Pretoria
Tel: 012 325 3966/7

PER ELECTRONIC SERVICE

And to: **THE OFFICE OF THE STATE
ATTORNEY**
Attorneys for the Second
Respondent in Main Application
SALU Building
316 Thabo Sehume Street
26th Floor, Pretoria, 0001
Ref: 00439/2021/Z13t
StateAttorneyPretoria@justice.gov.za

PER ELECTRONIC SERVICE

#4826882v1





JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT006

YOUR REFERENCE:

DATE: 13 October 2022

TO: WERKSMANS ATTORNEYS

BY EMAIL: SMoerane@werksmans.com
Smagadlela@werksmans.com

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

COPIED: FASKEN (INCORPORATED AS BELL DEWAR INC.

BY EMAIL: Hsiao@fasken.com
rbhoora@fasken.com
Jrajpal@fasken.com

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

Sirs,

IN RE: ORGANISATION UNDOING TAX ABUSE // SOUTH AFRICAN NATIONAL ROADS AGENCY & 3

OTHERS

CASE NUMBER: 7955/2021

1. We refer to the Case Management meeting held before the Honourable Ledwaba DJP on 12 October 2022 as well as your subsequent letter on the same date.

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

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

Cindy Pestano (LLB - UMISA) Conveyancer | Solene van Rensburg (BA - LLB) Associate Attorney, Notary and Conveyancer

Malissa van der Linde - Candidate Legal Practitioner | Ian Jennings - Candidate Legal Practitioner



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, 21st Floor, Broomfontein, Johannesburg | O: 010 005 4572

21 Woodlands Drive, Country Club Estate, Building 2, Woodmead, Johannesburg | O: 011 256 8770

2. It remains our client's view that your clients' answering affidavit is due and that our client is entitled to have the application to compel heard. The interlocutory applications between OUTA and Bakwena were instituted long after your clients' answering affidavit became due in terms of the Rules of Court and do not impact on your clients' obligation to adhere to the Rules of Court and file an answering affidavit.
3. Our client's main application was served on your clients on 22 February 2021 and your clients' notice of intention to oppose was filed on 5 May 2021. Your clients have had almost 20 months since service of the main application on them to file their answering affidavit, which they have failed to do to date.
4. We record that in your letter of 18 July 2022, which was written after Bakwena filed its *in limine* application, you requested an indulgence until Friday 19 August 2022 to file your clients' answering affidavit. Your clients are independently represented from Bakwena and at no point was Bakwena's *in limine* application raised as a reason for your clients not to file their answering affidavit. Your clients have also not opposed the application to compel that was instituted against them.
5. Our client will therefore not withdraw its application to compel, but for practical purposes and in an attempt to move the matter forward without causing unnecessary further disputes, our client is willing to have the matter removed from the unopposed roll of 2 December 2022 with the costs to be reserved.

A handwritten signature in black ink, consisting of a large, stylized 'B' followed by a smaller, less distinct mark.

6. Our client will then proceed first with the Rule 30 and 30A application against Bakwena as directed by the Honourable Ledwaba DJP. Should it at a later stage become necessary to compel your client to file its answering affidavit, our client will re-enrol its application to compel with the papers amplified as necessary.
7. We trust you will consider the above proposal favourably and request your confirmation thereof in writing at your earliest convenience.
8. We look forward to your response.

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,
Andri Jennings
Director



GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 2133

3 June 2022

RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)

**AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF
THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF SOUTH
AFRICA**

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), and with the approval of the Minister for Justice and Correctional Services, made the rules in the Schedule.




Amendment of rule 30A of the Rules

3. Rule 30A of the Rules, is hereby amended—
- (a) by the substitution for the heading of the rule of the following heading:
"30A. Non-compliance with Rules and Court Orders."; and
- (b) by the substitution for subrule (1) of the following subrule:
"(1) Where a party fails to comply with these rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order—
(a) that such rule, notice, request, order or direction be complied with; or
(b) that the claim or defence be struck out."

Proposed Rule 37B of the Rules

4. The Rules are hereby amended by the insertion of rule 37B after rule 37A:

"Administrative archiving

- 37B. (1) Subject to the further provisions of this rule—
- (a) if an application in writing has not been made to the registrar by any party to a case within 24 months of the date of issue of the summons for the setdown of the matter for trial; or
- (b) if after the expiry of the period of 24 months referred to in paragraph (a) the matter is not ready for referral by the registrar to judicial case management in terms of rule 37A—
- the registrar shall, after giving the parties (thirty) 30 days' written notice, and subject to subrule (2), remove the file from the administrative record of pending matters and archive the court file.
- (2) Any party in a case to whom notice has been given by the registrar in terms of sub-rule (1) and who has not taken any steps referred to in subrule (1) may apply to a judge in chambers for an extension of time within which to render the matter ready for an application to be made for the set down of the matter for trial.

"AA6"

Roy Hsiao

From: Roy Hsiao
Sent: October 11, 2022 2:13 PM
To: Andri Jennings; Delia Turner; Irene Pienaar; Sarah Moerane; Smagadlela@werksmans.com; krapoo@werksmans.com
Cc: Rakhee Bhoora; Jesicca Rajpal
Subject: Organisation Undoing Tax Abuse NPC / SANRAL and Three Others - Case Management Meeting Agenda [FMD-BDOCS.FID361776]
Attachments: 4826882_v(1)_Agenda - Case Management Meeting with DJP for Special Allocation - 11 October 2022.docx

Importance: High

Tracking:	Recipient	Delivery
	Andri Jennings	
	Delia Turner	
	Irene Pienaar	
	Sarah Moerane	
	Smagadlela@werksmans.com	
	krapoo@werksmans.com	
	Rakhee Bhoora	Delivered: 2022-10-11 2:13 PM
	Jessicca Rajpal	Delivered: 2022-10-11 2:13 PM
	{F361776}.BDOCS@FMDACOM1.ad.fasken.fmd	

Dear All,

The above matter and the Case Management meeting tomorrow at 09h00 with the DJP refers.

We attach the draft Agenda which we will be circulating to the DJP at 16h00 today. Should you wish to add anything to the Agenda, please let us have your inclusions prior to then.

Regards

 Roy Hsiao
SENIOR ASSOCIATE

FASKEN

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

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

CASE NUMBER: 7955/2021

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC

APPLICANT

and

SOUTH AFRICAN NATIONAL ROAD AGENCY LTD

1ST RESPONDENT

THE MINISTER OF TRANSPORT N. O

2ND RESPONDENT

SKHUMBUZO MACOZOMA N.O

3RD RESPONDENT

(in his capacity as Information Officer)

BAKWENA PLATINUM CORRIDOR

4TH RESPONDENT

CONCESSIONAIRE (PTY) LIMITED

In re the Main Application between:

ORGANISATION UNDOING TAX ABUSE NPC

APPLICANT

and

SOUTH AFRICAN NATIONAL ROAD AGENCY LTD

1ST RESPONDENT

THE MINISTER OF TRANSPORT N. O

2ND RESPONDENT

SKHUMBUZO MACOZOMA N.O

3RD RESPONDENT

(in his capacity as Information Officer)

BAKWENA PLATINUM CORRIDOR

4TH RESPONDENT

CONCESSIONAIRE (PTY) LIMITED


NOTICE OF REMOVAL – UNOPPOSED ROLL – APPLICATION TO COMPEL



BE PLEASED TO TAKE NOTICE that the abovementioned matter as enrolled for hearing on **2 DECEMBER 2022 at 10h00** is hereby removed from the roll.

PLEASE TAKE FURTHER NOTICE that the parties have agreed, in writing, on 25 October 2022, that cost be reserved.


DATED AT PRETORIA ON THIS THE 26TH DAY OF OCTOBER 2022


JENNINGS INCORPORATED
APPLICANT'S ATTORNEYS
149 ANDERSON STREET
BROOKLYN
PRETORIA

TEL: 012 110 4442
EMAIL: andri@jinc.co.za ; delia@jinc.co.za
REF: A JENNINGS/OUT006
(APPLICATION TO COMPEL)

**TO: THE REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA,
GAUTENG DIVISION, PRETORIA**

AND TO: WERKSMANS ATTORNEYS *Per electronic service*
Attorneys for First 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
krapoo@werksmans.com
Ref: MS S MOERANE/MS K RAPOO/SOUT3114.192
c/o MABUELA ATTORNEYS
4th 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 Second Respondent
(Second Respondent in main application)
SALU Building, 26th Floor
316 Thabo Sehume Street
Pretoria
0001
Email: StateAttorneyPretoria@justice.gov.za
Ref: 00439/2021/Z13t

AND TO: **FASKEN** *Per electronic service*
(INCORPORATED IN SOUTH AFRICA AS BELL DEWAR INC)
Attorneys for the Fourth Respondent
(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
irajpal@fasken.com
rscott@fasken.com
Ref: Rakhee Bhoora/Jessica Rajpal/R Scott
c/o **SAVAGE JOOSTE & ADAMS**
Kings Gate 5, 10th Street
Cnr Brooklyn Road & Justice Mahomed Street
Menlo Park
Pretoria
Tel: 012 452 8200
Fax: 012 452 8201



DELIVERED BY EMAIL

Jennings Incorporated
Attention: Andri Jennings
Email: andri@jinc.co.za

Copy to:
Fasken
Attention: Rakhee Bhoora / Jessica Rajpal
Email: Jrajpal@fasken.com
rbhoora@fasken.com
Hsiaor@fasken.com

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE: A JENNINGS / OUT006
OUR REFERENCE: Ms S Moerane / Ms S Magadlela/SOUT3114.192/#9005866v1
DIRECT PHONE: +27 11 535 8128 / +27 11 535 8495
DIRECT FAX: +27 11 535 8628 / +27 11 535 8573
EMAIL ADDRESS: SMoerane@werksmans.com / smagadlela@werksmans.com

18 October 2022

Dear Sirs

ORGANISATION UNDOING TAX ABUSE // SOUTH AFRICAN NATIONAL ROADS AGENCY AND THREE OTHERS - CASE NUMBER: 7955/2021

- 1 The abovementioned matter and letters exchanged between the parties on 12 October and 13 October 2022 respectively refer.
- 2 SANRAL does not wish to litigate via correspondence, however it is necessary for SANRAL to place its position in relation to the filing of its answering affidavit in the main application on record.
- 3 As you are aware, there are currently two pending interlocutory applications:
 - 3.1 The Rule 6(5)(d)(iii) application launched by Bakwena; and
 - 3.2 The Rule 30 and Rule 30A application launched by your client in response to Bakwena's Rule 6(5)(d)(iii) application.

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 MNM Bhebe
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 Gosh
GF Griessel N Harduth J Hollesen MGH Honiball BB Hotz AE Human T Inno HC Jacobs TL Janse van Rensburg AV Jara G Johannes S July J Kallmeyer A Kenny R Killoran N K
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 Mard
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 Ramdhan 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



- 4 SANRAL remains of the view that any decision made in relation to the abovementioned applications will have an impact upon SANRAL's answering affidavit, and, furthermore, in the event that a decision is made in the interlocutory applications that proves to be dispositive of the main application, SANRAL will no longer need to file any answering affidavit.
- 5 In light of the directive given by the Honourable Deputy Judge President and the pending interlocutory applications, it stands to reason that SANRAL can only be in a position to deliver its answering affidavit in the main application once the interlocutory applications have been finalised.
- 6 We do however note your undertaking to remove the application to compel from the unopposed motion roll set down for hearing on 2 December 2022 and look forward to receipt of the notice of removal from the roll.
- 7 We trust the above is in order.
- 8 Our client's rights remain reserved.

Yours faithfully

Werksmans Attorneys

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

A handwritten signature in black ink, appearing to be a stylized 'W' or similar, located at the bottom right of the page.



JENNINGS

INCORPORATED

ATTORNEYS, NOTARIES, CONVEYANCERS & COST CONSULTANTS

OUR REFERENCE: A JENNINGS/OUT006

YOUR REFERENCE:

DATE: 19 October 2022

TO: FASKEN (INCORPORATED AS BELL DEWAR INC.)

BY EMAIL: Hsiaor@fasken.com

rbhoora@fasken.com

Jrajpal@fasken.com

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

COPIED: WERKSMANS ATTORNEYS

BY EMAIL: SMoerane@werksmans.com

Smagadlela@werksmans.com

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

Sirs,

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

1. We refer to the abovementioned matter.
2. Upon re-perusal of the Application in terms of Rule 30 and Rule 30A, writer noted a bona fide typographical error on page 23 and at paragraph 32 wherein it states as follows:

"...by now and it could have been enrolled for hearing on the unopposed roll."

The sentence is clearly supposed to read as follows:

"...by now and it could have been enrolled for hearing on the opposed roll."

3. We trust that the above is in order and apologise for any inconvenience caused.

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

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

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

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



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, 21st Floor, Braamfontein, Johannesburg | O: 010 005 4572

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

TRANSMITTED ELECTRONICALLY AND UNSIGNED

Kind regards,

Andri Jennings

Director

