

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 7954/2021

In the matter between:

TRANS AFRICAN CONCESSIONS (PTY) LTD **APPLICANT**

And

ORGANISATION UNDOING TAX ABUSE NPC **FIRST RESPONDENT**

SOUTH AFRICAN NATIONAL ROADS AGENCY LTD **SECOND RESPONDENT**

SKHUMBUZO MACOZOMA N.O **THIRD RESPONDENT**

In re the Main Application between:

ORGANISATION UNDOING TAX ABUSE NPC **APPLICANT**

And

SOUTH AFRICAN NATIONAL ROADS AGENCY LTD **FIRST RESPONDENT**

SKHUMBUZO MACOZOMA N.O **SECOND RESPONDENT**

TRANS AFRICAN CONCESSIONS (PTY) LTD **THIRD RESPONDENT**

NOTICE IN TERMS OF RULE 30 AND 30A

TAKE NOTICE THAT the first respondent (applicant in the main application and also hereinafter referred to as "OUTA") contends that the application brought by the applicant (third respondent in the main application and also hereinafter referred to as "TRAC") in terms of Rule 6(5)(d)(iii) constitute an irregular step as contemplated by

Rule 30, *alternatively* amounts to non-compliance with the court order granted by the Honourable Tolmay on 13 March 2023 and/or the provisions of Rule 6(5)(d)(iii) as contemplated by Rule 30A on the grounds as set out below.

TAKE NOTICE FURTHER THAT the first respondent contends that the application to have the applicant's Rule 6(5)(d)(iii) application enrolled under the case number 7955/21 constitutes an irregular step as contemplated by Rule 30 on the grounds set out below.

1. The main application was launched by OUTA on or about 5 November 2021 out of the above Honourable Court under the above and correct case number being 7954/2021.
2. On 13 March 2023 the Honourable Tolmay J, by agreement between the parties granted TRAC leave to intervene as third respondent in the main application. A copy of the order is attached to TRAC's founding affidavit and is marked "AN5". Prayer 5 of the order granted by the Honourable Tolmay J directs:

"Trans African Concessions (Pty) Limited shall file a response in terms of Rule 6 (5) (d) on or before 13 April 2023.
3. TRAC has went further than merely raising a point of law but extracted one aspect from the main application, in respect of the BRICS loan and wishes to have only that point adjudicated before this Court. TRAC then prays that the main application be dismissed on the premise that one of the many aspects

raised constitutes no cause of action without the remainder of the contentions raised in the main application addressed.

4. TRAC has only addressed the merits of the main application in part which stands as an answering affidavit in the disguise of raising a point of law, which is procedurally incorrect and constitutes an irregular step.
5. It is impermissible for TRAC to plead facts or produce evidence in support of the legal points raised, it ought to be placed before the court in an answering affidavit.

TRAC's Notice in terms of Rule 6(5)(d)(iii) dated 17 April 2023:

6. On or about 17 April 2023 TRAC filed a "*Notice in terms of Rule 6(5)(d)(iii)*" in the form of an application together with a founding affidavit wherein dismissal of the main application brought by OUTA is sought with costs. TRAC's "*Notice in terms of Rule 6(5)(d)(iii)*" required OUTA to file a notice of intention to oppose and an answering affidavit within the time periods prescribed in Rule 6. OUTA has not filed a notice of intention to oppose and intends on taking no further steps, in light of the application in terms of Rule 6(5)(d)(iii) constituting an irregularity.
7. The Uniform Rules of Court do not make provision for a notice in terms of Rule 6(5)(d)(iii) to be filed by way of a new and separate interlocutory application wherein a respondent in an application that wishes to raise a point of law only

is provided with an opportunity to file both a founding- and a replying affidavit. Further in which the merits of the main application are addressed.

8. The Uniform Rules further do not make provision for the main application brought by OUTA to be dismissed by way of an interlocutory application in circumstances where answering- and replying affidavits are yet to be filed in the main application.
9. The manner in which TRAC has elected to address a portion of the merits of the main application, prevents OUTA the opportunity to properly ventilate all the issues in the main application. By continuing in the manner set out by TRAC, it will be able to rely on a defence which it seeks to raise on the merits as opposed to arguing only a question of law. Such procedure is prejudicial to OUTA.
10. Where TRAC wishes to rely on the merits as well, or in the alternative, on a point of law it ought to file an answering affidavit on the merits in totality and argue the legal point *in limine*. It will result in the merits being heard in a piecemeal fashion.
11. The basis of TRAC's "point of law" is taking issue with one of the reasons provided by OUTA in requesting the records. It is not the justification of the reasons that entitles OUTA to the requested documentation but whether OUTA complied with all procedural requirements relating to a request for access to

that record, that entitles OUTA to the requested records. The basis of TRAC's "point of law" is then irregular.

12. TRAC places into contention matters that have already been settled between the parties and an order granted in respect of such contentions, to place them before this Court again, within a point of law, is irregular. OUTA cannot be expected to address the same matters again.
13. In the premises TRAC's "*Notice in terms of Rule 6(5)(d)(iii)*" brought as a separate application instead of filing such a notice *in lieu* of an answering affidavit or as part thereof, constitutes an irregular step, *alternatively* fails to comply with the order granted by the Honourable Tolmay J on 13 March 2023 and/or the provisions of Rule 6(5)(d)(iii).

TRAC's Rule 6(5)(d)(iii) application is out of time

14. The order granted by the Honourable Tolmay J on 13 March 2023, directs that TRAC file its response in terms of Rule 6 (5) (d) on or before 13 April 2023, such response was only filed on the evening of 17 April 2023 which is late and fails to comply with the order. There is no condonation requested in respect of the late filing, which constitutes an irregularity.

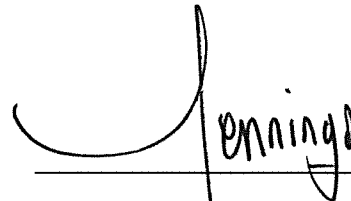
TRAC's Rule 6(5)(d)(iii) application is filed under an incorrect case number

15. TRAC states in its founding affidavit that it is called upon to meet a similar case to the record of proceedings filed in this Court under case number 7955/21 by OUTA as against SANRAL and Bakwena Platinum Corridor Concessionaire (PTY) Ltd ("Bakwena"), the legal point raised is then similar. Further TRAC has adopted and aligned itself with the legal approach taken by Bakwena since they are advised by the same lawyers.

16. To bring TRAC's Rule 6(5)(d)(iii) application under Bakwena's case number constitutes a consolidation of the matters, on the basis of TRAC's alignment with Bakwena, no such consolidation has been consented to nor granted by the Court. Bringing this matter under the case number of the Bakwena matter constitutes an irregular step.

TAKE NOTICE FURTHER THAT the first respondent hereby affords the applicant ten (10) days from service to remove the causes of complaint and file an answering affidavit raising its point of law in limine and addressing the merits in totality, failing which the first respondent intends to apply to the above Honourable Court to set aside the applicant's application brought in terms of Rule 6(5)(d)(iii).

SIGNED AT PRETORIA ON THIS 4th DAY OF MAY 2023.



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(Applicant in main application)

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AND TO: **FASKEN** *Per electronic service*

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