IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 7955/2021

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC	**Applicant**
and	
SOUTH AFRICAN NATIONAL ROAD AGENCY LTD	**First Respondent**
MINISTER OF TRANSPORT N.O.	**Second Respondent**
SKHUMBUZO MACOZOMA N.O.	
(In his capacity as the Information Officer)	**Third Respondent**
BAKWENA PLATINUM CORRIDOR	
CONCESSIONAIRE (PTY) LTD	**Fourth Respondent**

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

REGINALD LAVHELESANI DEMANA

do hereby make oath and state:

RL 9

1. 1.1 I am the Chief Executive Officer ("*CEO*") of the South African National Road Agency ("*SANRAL*"), the first respondent, under the executive authority of the second respondent, the Minister of Transport. I am stationed at Kuisis St, Val-De-Grace, Pretoria.

1.2 I am the information officer of SANRAL contemplated in section 17(3) of the Promotion of Access to Information Act 2 of 2000 ("*PAIA*") replacing the third respondent.

1.3 I took the position as the CEO of SANRAL on 3 January 2023.

1.4 The facts set out in this affidavit are within my knowledge or appear from documents to which I have access and control, unless the contrary appears from the context, and are true and correct.

1.5 Information prior to my time, relating to the request for information that forms the subject of debate in this application, was relayed to me by the head of SANRAL Legal Division, Advocate Sinomtha Linda, whose confirmatory affidavit is attached as "**RLD1**".

RL

1.4 Where I make legal submissions, I do so based on the advice of the SANRAL's legal representatives.

INTRODUCTION

2. I have read the notice of motion and founding affidavit filed by the applicant seeking access to information in terms of PAIA. Most of what is in that affidavit is common cause and therefore I do not intend dealing with each averment contained therein, save as set out below.

3. This application involves a request for access to information made by the applicant, the Organisation Undoing Tax Abuse NPC ("*OUTA*"), to SANRAL on 8 June 2020 in terms of section 18 of PAIA. SANRAL did not consider and decide on the request within the time limit provided in section 25 for such decision to be made and as a result, in terms of section 27, the request was deemed to be refused.

4. OUTA then launched the above application to set aside the deemed refusal and also seeks an order directing SANRAL to provide the requested records; alternatively, an order compelling SANRAL to notify affected third parties, if any, as contemplated in terms of section 47 of PAIA, within 10 days of the order.

9

RL

5. Quite plainly, the relief sought by OUTA is flawed because:

5.1. first, OUTA seeks to set aside the deemed refusal only on the basis that it is deemed; no other case is made in its papers justifying any of the other orders;

5.2. second, because the decision to refuse the information is deemed and not one made on the exercise of the discretion in section 33, a substitution of the court's decision for that of SANRAL in those circumstances, is impermissible; and

5.3. third, a relief to compel SANRAL to notify third parties, without a concomitant prayer for the remittal of the request, is incompetent.

6. SANRAL therefore opposes this application only on the basis that the only competent relief in the circumstances, is for OUTA's request for access to information to be remitted back to SANRAL for proper consideration and decision, on the grounds discussed below.

7. This affidavit is structured as follows:

7.1. first, I deal with the legal scheme governing requests for information in terms of PAIA;

RL

7.2. second, I turn to the applicant's request for information, SANRAL's discretion and its implications;

7.3. third, I address the competency of the relief sought;

7.4. fourth, I deal with the just and equitable remedy; and

7.5. lastly, *seriatim* response, to the extent necessary.

THE SCHEME REGULATING ACCESS TO INFORMATION

8. The introduction of PAIA in 2000 codified the constitutional right to access to information held by the State, including public bodies such as SANRAL, as enshrined in section 32 of the Constitution and has extended the scope for the disclosure of such information to any party who requests it. This right is subject to limitation as contemplated in terms of section 36 of the Constitution, but only on the bases as provided for in the PAIA.

9. Section 11 provides for the right of access to records of public bodies, and in sub-section (1) it states that a requester must be given access to a record of a public body if (i) that requester complies with all the procedural requirements in PAIA relating to a request for access to that record and (ii) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of Part 2 of PAIA.

9

RL

10. In terms of sub-section (3) a requester's right in this regard, is not affected by any reasons the requester may give for requesting access or the information officer's belief as to what the requester's reasons are for requesting access.

11. Section 18 provides that a request for access must be made in the prescribed form to the information officer of the public body and the form must contain sufficient particulars of the information requested to enable an official of the public body concerned to identify the records requested.

12. In terms of section 25, the information officer must, as soon as reasonably possible within 30 days, after the request is received (i) decide whether to grant the request and (ii) notify the requester of the decision.

13. Section 27 provides that if the information officer fails to give the decision on a request for access to the requester within the period provided in section 25(1), the information officer is regarded as having refused the request. In other words, the failure to respond to a request for information within the given time period as set out in section 25, is regarded as a deemed refusal of the request.

RL 9

14. The requirement in section 25 that a decision must be made within 30 days of a request, does not apply if the information officer considers that the record requested might be of a third party whereby notification and intervention might be necessary. In those circumstances, the information officer must take all reasonable steps to inform the third party to whom the record relates of the request as contemplated in section 47, among others, in Chapter 5 of PAIA. The time periods for notification in the latter section have the effect of extending the time period in section 25.

15. Section 33 provides for the discretion of the information officer of a public body, such as SANRAL, when considering a request under PAIA.

16. In terms of section 33(1)(*a*), the information officer must refuse a request for access to information:

16.1. if the record contains financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would likely cause harm to the commercial or financial interests of that third party, as contemplated in terms of section 36(1)(*c*);

RL 9

16.2. if the disclosure of the record, as contemplated in terms of section 37(1)(*a*) and (*b*), would constitute an action for breach of a duty of confidence owed to a third party in terms of an agreement; or if the record consists of information that was supplied in confidence by a third party:

16.2.1. if the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and

16.2.2. if it is in the public interest that similar information, or information from the same source, should continue to be supplied.

17. In terms of section 33(1)(*b*), the information officer may not refuse a request for access to information if the information concerned consists of information already publicly available; or is about a third party that has consented in terms of section 48 or otherwise in writing to its disclosure to the requester concerned.

18. The exercise of the discretion in section 33(1) above may be overridden for public interest considerations as contemplated in section 46. That is where (i) the disclosure of the record would reveal evidence of a substantial contravention of, or failure to

RL 9

comply with, the law and (ii) the public interest in the disclosure clearly outweighs the harm contemplated in one of the mandatory or discretionary exclusion grounds listed in section 46, the information officer must disclose the information.

19. In those cases, the motivation for, and purpose of, the request would be relevant because such discretion may only be appropriately exercised on the basis of the applicable facts substantiating the public interest in the disclosure of the information.

20. In terms of section 78, a requester or third party may only apply to a Court for appropriate relief in terms of section 82, among other things, if the requester is aggrieved by a decision to refuse a request.

21. In terms of section 82, the court hearing an application may grant any order that is just and equitable, including orders:

21.1. confirming, amending or setting aside the decision which is the subject of the application concerned;

21.2. requiring from the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court

RL 9

considers necessary within a period mentioned in the order; or

21.3. granting an interdict, interim or specific relief, a declaratory order or compensation.

THE APPLICANT'S REQUEST

The request

22. On 8 June 2020, OUTA submitted a request in terms of section 11, read with section 18(7) of PAIA. The information requested relates to the upgrades of the N1N4 route running from Tshwane northwards towards Bela-Bela (N1) and the N4 route running from Tshwane westwards through Rustenberg and Zeerust to the Botswana border (N4).

23. The specific information is listed in the request form attached as "**SF4**" to the founding affidavit, in two parts; Part A and B, as follows:

23.1. Part A - N1:

23.1.1. a copy of the Concession Contract, for a portion of the N1 running from Tshwane northwards to Bela-Bela (Warmbaths) and a portion of National Route

RL

N4 running from Tshwane westwards through Rustenberg and Zeerust to the Botswana border (N4) concluded between SANRAL and the fourth respondent, Bakwena Platinum Corridor Concessionaire (Pty) Ltd ("*Bakwena*") (the "*Bakwena Concession Agreement*");

23.1.2. annexures and addenda to the Bakwena Concession Agreement;

23.1.3. amendments and addenda if any, to the Bakwena Concession Agreement;

23.1.4. all Operation and Maintenance contracts entered into between Bakwena and the O&M Contractors, relating to the Bakwena Concession Agreement;

23.1.5. Operational and Maintenance Manual pertaining to the Bakwena Concession Agreement;

23.1.6. contracts entered into with the independent engineer(s), pertaining to the Bakwena Concession Agreement;

RL

23.1.7. Independent Engineer(s) Reports submitted to SANRAL, pertaining to the Bakwena Concession Agreement;

23.1.8. all Construction Work contracts entered into by the Concessionaire relating to the Bakwena Concession Agreement;

23.1.9. all "Performance Certificates" issued, relating to the Construction Works contracts entered into by Bakwena; and

23.1.10. all "Taking Over certificates" that have been issued in terms of the Bakwena Concession Agreement.

23.2. Part B - N4:

23.2.1. Bakwena's complete financial statements for each fiscal year, submitted to SANRAL in terms of Bakwena Concession Agreement (as from 1999/2000 financial year to present);

23.2.2. all reconciliations of Bakwena's Profit & Loss Accounts, together with their proposed budgets for each fiscal year, submitted to SANRAL, from

RL 9

1999/2000 financial to present in terms of the Bakwena Concession Agreement;

23.2.3. all Annual Reports submitted to SANRAL, pertaining to the Bakwena Concession Agreement (as from 1999/2000 financial year to present), issued by Bakwena's appointed auditors, certifying that the computation of the Highway Usage Fee for the previous year was correctly calculated;

23.2.4. the lists, submitted to SANRAL in terms of the Bakwena Concession Agreement (as from 1999 to present), of Bakwena's lenders and creditors to which Bakwena owes a sum in excess of the equivalent of R10 000.00 (ten million Rand), including the amounts due to each of them.

24. In terms of section 25(1), SANRAL was required to consider the request and decide on the request on or before 8 July 2020. SANRAL did not reply to OUTA's request until 29 July 2020 in the letter attached to the founding affidavit as "**SF8**" in which SANRAL "purportedly" refused the request, for reasons not relevant for purposes of this affidavit.

RL 9

25. I say "purportedly" because I am advised that if the thirty-day period within which SANRAL was required to consider and decide the request lapses, in terms of section 27 of PAIA, SANRAL is deemed to have refused the request.

26. The only instance where the 30-day limit does not apply, is if the requested information might contain information of a third party. In this regard, SANRAL is required in terms of section 47 to take all reasonable steps to inform the affected third party of the request within 21 days thereof, in order to allow the third party either to make representations as to why the request must be refused, or grant written consent for the disclosure of the record.

27. The information listed in the request form as set out in paragraph 23 above patently involves and/or relates to information of a third party, namely Bakwena. Although there are no other names mentioned in the listed information, there are entities, persons and/or institutions that may be affected, among others:

27.1. the auditors of Bakwena;

27.2. the accountants of Bakwena;

27.3. the Independent Engineer;

27.4. Contractors and sub-contractors; and

9

RL

27.5. lenders and creditors.

28. I am listing the above entities because they can easily be identified from the requested list, merely to illustrate the point, but not to state that SANRAL has identified the above as the affected third parties who might need to be notified. This third party notification process, can only be appropriately done in the context of section 47, if the court sets aside the deemed refusal and remits OUTA's request back for reconsideration.

SANRAL's discretion

29. The third-party notification exercise was simply not done, at least not within the 30-days which SANRAL was required to decide on the request in terms of section 25. In law therefore, SANRAL refused OUTA's request for access to information on 8 July 2020 and thus became *functus officio*. Anything done by SANRAL thereafter, in relation to OUTA's request has no legal force. The parties agree in this regard.

30. Because the decision to refuse access to the information was deemed and not in fact made by SANRAL, the provisions of section 33, which provide for the discretion of the information officer when refusing a request, were not applied at all. In other words, SANRAL has not considered whether the information

requested by OUTA is protected from disclosure in terms of section 36(1), subject to the public interest override contained in section 46.

Public Interest

31. In the founding affidavit OUTA alleges, as the reason for the request, that:

31.1. SANRAL received a loan of R7 billion from the BRICS National Development Bank (FA: para 17);

31.2. the purpose of the loan was reported to be for both the maintenance and construction of roads, the details of which SANRAL refused to disclose (paragraphs 18 to 19);

31.3. OUTA is concerned that SANRAL has taken another R7 billion loan, entrenching itself into more debt (paragraph 20);

31.4. SANRAL as a state organ is obliged to be transparent with public finances (paragraph 21); and

31.5. therefore, it is important for OUTA and it will be in the best interest of the public for SANRAL to be transparent on the purpose of the loan.

RL 9

32. The above information was not part of OUTA's request for information. This being an appeal in a wider sense, I accept that the court may take it into account as the required motivation to establish the compelling public interest considerations to override protection from disclosure. However, I submit that it will not be appropriate for the Court to take these factors into consideration, in circumstances where there is no decision by SANRAL in the first place, to refuse the request on the basis that the information sought is protected from disclosure.

33. This is because section 46, must as a matter of course, follow a decision in terms of section 36(1). Not the other way around.

OUTA's REMEDIES

34. In this application OUTA seeks orders, in terms of section 82 of PAIA:

34.1. setting aside the deemed refusal of its request for access to records of SANRAL in its request for information in terms of the PAIA dated 8 June 2020;

34.2. directing SANRAL to provide the requested records within 15 days of the granting of the order;

RL 9

34.3. alternatively, directing SANRAL to notify any third party of the request concerning records relating to them in accordance with section 47 of PAIA within 10 (ten) calendar days after service of the order on them, and thereafter to comply with the time periods and provisions in chapter 5 of PAIA.

35. Given the importance of the request, its scope and the "public interest" arguments set out above by the applicant, it would be just and equitable that the request is remitted back to SANRAL so that the request can be properly considered and decided on. It will therefore not be permissible for the court to direct that the records be provided forthwith as part of its order. This relief simply cannot be granted at this stage.

36. Even as a wide appeal, there are no sufficient facts for the court to assess whether the request must or may be refused in terms of section 33, read with the applicable referred sections in PAIA. If this discretion cannot be exercised on the facts, the public interest considerations in terms of section 46 do not find application. Therefore, the court cannot grant prayer 3 on the basis that the public interests applicable override its protection from disclosure.

RL 9

37. As to third parties that may be affected by the request, Bakwena, which is mentioned by name in the request, is a party to these proceedings. However, as stated in paragraph 27 above, there are several other third parties that may be affected by the request just on the face of it. The listed entities are identified only by the discipline by which they are mentioned. The exact number of entities in each category cannot be determined from the request by the court, at least for purposes of the alterative remedy in prayer 4. On this basis alone the remedy cannot be granted.

JUST AND EQUITABLE REMEDY

38. Two provisions of the Constitution are particularly significant when it comes to remedies:

38.1. section 38: a court hearing a case involving an alleged infringement of, or threat to, a right in the Bill of Rights *may* grant "*appropriate relief, including a declaration of rights*";

38.2. section 172(1): when deciding a constitutional matter, a court:

38.2.1. *must* declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of the inconsistency; and

RL 9

38.2.2. *may* make *any* order that is just and equitable.

39. I submit that while a court has no discretion in relation to making declarations of invalidity, courts have a wide discretion to otherwise grant "*appropriate*" or "*just and equitable*" relief in constitutional matters. It therefore comes as no surprise that our courts have adopted a flexible approach to constitutional remedies.

40. It is, however, important to emphasise that this is not a closed list of remedies. The lodestar on the remedy in any particular case will always be what is just and equitable in the circumstances of that case.

41. Another mechanism that our courts employ to reduce the impact of a declaration of invalidity, at least in the context of administrative law, is to decline to set aside the relevant (unlawful) administrative act in certain circumstances.

42. While the principle of legality generally requires that invalid administrative acts should be set aside, the court has a discretion to refuse this remedy in the interests of certainty. This normally arises in the context of "*third parties having altered their position on*

RL 9

the basis that the administrative action was valid and would suffer prejudice if the administrative action is set aside".

43. The remedy of setting aside means that the court quashes or nullifies the administrative decision taken and remits the matter for reconsideration by the administrator, with or without directions. Thus, instead of making a new decision, as would usually be the case in appeal proceedings, the court orders the relevant body to reconsider the administrative action and, in a way, to reverse the process.

44. Our courts have held that the setting aside of an administrative action in an attempt to reverse the process may give rise to difficulties, particularly if work has already started. In this regard, the courts are therefore guided by one factor, in particular, whether or not setting aside the award will be overly disruptive or practically impossible to implement.

45. Our courts have always held that in those instances where progress in the implementation of a particular construction and/or project is at an advanced stage and/or almost at the end, the court would regard a prayer of reviewing and setting aside as being meaningless and having no practical effect.

RL 9

46. In addition, our courts have refused to decide abstract academic or hypothetical questions as a result of the time which has lapsed from the time when the administrative decision was taken to the stage when the applicants brought the review application.

47. Even in those instances where our courts have arrived at a conclusion that an administrative action was invalid, for lack of proper process and/or for any other reason, our courts considered it impractical to set aside such administrative conduct having regard to the stage of the implementation of such an administrative action.

48. In the premises, in the event this honourable court review and set aside SANRAL's decision, this honourable court, ought to remit the matter to SANRAL to consider same and apply its mind properly while taking into account all relevant information and considerations.

JUDICIAL DEFERENCE

49. I am advised that the courts are sensitive to the functional independence of the other branches of government and that courts only intrude into those branches' functional independence in

RL 9

exceptional circumstances. The facts and circumstances pleaded by the applicant do not justify such an intrusion.

50. I have been further advised that as long as the purpose sought to be achieved by the exercise of public power is within the authority of the functionary, and as long as the functionary's decision, viewed objectively, is rational, a court cannot interfere with the decision simply because it disagrees.

51. The applicant seeks an order to set aside SANRAL's decision. It seeks in addition that the court substitutes the impugned decision. I have been advised that substitution is an extraordinary remedy and it is not the first remedy of choice to which a court must rush to unless the facts of the case justify such a remedy. Substitution involves encroachment into the functions of another sphere of government and a court must always take very slow steps to grant such remedy.

52. By design, the Constitution implicitly entrenches the doctrine of the separation of powers. The power to substitute must therefore be exercised judicially and in accordance with the requisite degree of deference or respect, called for by the facts of a given case. Deference requires an honest assessment by a court of its institutional competence in a particular case.

RL 9

53. In effect, even where there are exceptional circumstances, a court must be satisfied that it would be just and equitable to grant an order of substitution.

54. It is trite that there is judicial willingness to appreciate the legitimate and constitutionally-ordained province of administrative agencies; to admit the expertise of those agencies in policy-laden or polycentric issues; to accord their interpretation of fact and law due respect; and to be sensitive in general to the interests legitimately pursued by administrative bodies and the practical and financial constraints under which they operate.

55. This type of deference is perfectly consistent with a concern for individual rights and a refusal to tolerate corruption and maladministration. It ought to be shaped not by an unwillingness to scrutinise administrative action, but by a careful weighing up of the need for – and the consequences of – judicial intervention. Above all, it ought to be shaped by a conscious determination not to usurp the functions of administrative agencies; not to cross over from review to appeal.

56. It was enunciated in many decisions of our courts that in treating the decisions of administrative agencies with the appropriate respect, a court is recognising the proper role of the executive

RL 9

within the Constitution. In doing so, a court should be careful not to arrogate to itself superior wisdom in relation to matters entrusted to other branches of government. A court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field.

57. The extent to which a court should give weight to these considerations will depend upon the character of the decision itself, as well as on the identity of the decision-maker. A decision that requires an equilibrium to be struck between a range of competing interests or considerations and which is to be taken by a person or institution with specific expertise in that area must be shown respect by the courts.

58. Often a power will identify a goal to be achieved, but will not dictate which route should be followed to achieve that goal. In such circumstances a court should pay due respect to the route selected by the decision-maker.

59. The court will depart from a normal review remedy only in those exceptional circumstances where the following considerations were considered:

RL 9

59.1. whether the administrator in question is left with any discretion in the matter or whether the end result is a foregone conclusion;

59.2. the importance of time considerations in the present context;

59.3. the willingness of the administrator to re-apply his or her mind to the issues at stake;

59.4. indications of bias or incompetence on the side of the administrator;

59.5. the circumstances as they exist now as opposed to when the matter was decided by the administrator;

59.6. the competence of the court vis-á-vis that of the administrator in deciding the matter.

60. None of the above factors exist in these proceedings thus justifying the departure prayed for by OUTA in its papers. OUTA in its papers has failed to justify why this honourable court should depart from the ordinary approach of setting aside the decision in question and to remit same to SANRAL.

RL. 9

61. The courts' reluctance to substitute their own decision for that of the administrative authority (but rather to remit it to the authority concerned) is in accordance with the courts' understanding of the principle of separation of powers and the distinction between appeal and review.

62. In the premises, the relief sought by OUTA in prayers 3 and 4 of the notice of motion is unsubstantiated and must be dismissed with costs, including costs of two counsel.

63. I now turn to the specific allegations contained in the founding affidavit.

64. My responses are to be read with and against the background of what is contained hereinabove. Insofar as I do not deal expressly with each and every allegation contained in the founding affidavit, such allegations should be taken as denied, unless they accord with what is stated in the preceding paragraphs.

Ad paragraphs 1-5

65. Save to deny that the entire affidavit of Ms Stefanie Fick is true and correct, the remainder of the content of these paragraphs is noted.

RL 9

Ad paragraphs 6-9

66. The content of these paragraphs is admitted.

Ad paragraph 10

67. Save to state that Mr Macozoma is no longer the Chief Executive Officer, nor in the employ of SANRAL, the remainder of the content of this paragraph is noted.

Ad paragraphs 11 and 12

68. The CEO is the Information Officer of SANRAL.

69. At the time of OUTA's request, SANRAL's Chief Information Officer was the CEO, Mr Skhumbuzo Macozoma. SANRAL's website had not been updated to include this information.

70. Save as aforesaid, the content of these paragraphs is noted.

Ad paragraph 13

71. On the facts as advanced by OUTA, the only order it is entitled to is for the court to remit the decision back to SANRAL for reconsideration.

RL 9

72. The remainder of the relief in this paragraph and in the notice of motion is, for reasons discussed above, incompetent.

Ad paragraphs 14-16

73. The content of these paragraphs is noted.

Ad paragraphs 17-28

74. I admit the content of these paragraphs in so far as it accords with OUTA's request for information as contained in "**SF3**", "**SF4**" and "**SF5**", respectively.

75. I also admit the content of these paragraphs in so far as it accords with "**SF6**" to "**SF8**".

76. The remainder of the averments in these paragraphs relate to OUTA's alleged reasons for requesting access to the information. These reasons do not appear from "**SF4**" and did not serve before SANRAL's information officer for consideration.

77. Even if these reasons were advanced to SANRAL one way or another, they were not considered by SANRAL and no decision based on these reasons or grounds exists.

RL 9

78. The refusal was deemed and it is for that reason that SANRAL is requesting the Court to remit the decision back to it for reconsideration.

79. For the above reasons and in order not to appear to pre-judge OUTA's request, I do not deal with the allegations in these paragraphs. SANRAL's rights in this regard are fully reserved.

Ad paragraphs 29-35

80. I have dealt with the request information in paragraphs 29 to 37 above.

81. I have also explained the position of the information officer in paragraphs 68 to 70 above.

82. The remainder of the content of these paragraphs is denied in so far as it does not accord with my averments above.

Ad paragraphs 36-43

83. The content of these paragraphs is admitted.

Ad paragraphs 44-77

84. SANRAL does not oppose OUTA's application for condonation.

RL. 9

85. The content of these paragraphs is noted, save where it is contrary to my averments in this affidavit, in which event, it is denied.

CONCLUSION

WHEREFORE the first respondent prays that this application be dismissed with costs, including costs consequent upon the employment of two counsel.

DEPONENT

I certify that the Deponent acknowledged that he knows and understands the contents of this affidavit, that he has no objection to the making of the prescribed oath and that he considers this oath to be binding on his conscience. I also certify that this affidavit was signed in my presence at MIDSTREAM, PRETORIA **on this** 22 nd **day of** JUNE **2023 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.**

GERTRUIDA ANNÉ VAN STRAATEN
Commissioner of Oaths
Practising Attorney RSA
Suite 1 Selati Park
36 Selati Street Alphen Park Pretoria

COMMISSIONER OF OATHS

FULL NAMES:

STATUS:

STREET ADDRESS:

"RLD1"

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 7955/2021

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC	**Applicant**
and	
SOUTH AFRICAN NATIONAL ROAD AGENCY LTD	**First Respondent**
MINISTER OF TRANSPORT N.O.	**Second Respondent**
SKHUMBUZO MACOZOMA N.O.	
(In his capacity as the Information Officer)	**Third Respondent**
BAKWENA PLATINUM CORRIDOR	
CONCESSIONAIRE (PTY) LTD	**Fourth Respondent**

CONFIRMATORY AFFIDAVIT

I, the undersigned

SINOMTHA LINDA

do hereby make an oath and state that:

g

SOM

1. I am the Head: Legal Division of the South African National Road Agency ("*SANRAL*"), the first respondent, under the executive authority of the second respondent, the Minister of Transport. I am stationed at Kuisis St, Val-De-Grace, Pretoria.

2. The facts set out in this affidavit are within my knowledge or appear from documents to which I have access and control, unless the contrary appears from the context, and are true and correct.

3. I have read the answering affidavit of the applicant deposed to by **REGINALD LAVHELESANI DEMANA** and confirm the averments made therein insofar as they relate to me.

4. I confirm in particular that OUTA's request for information to SANRAL of 8 June 2020 was referred to the Legal Division and was handled by me, in liaison with the relevant officials of SANRAL.

SINOMTHA LINDA

I certify that the Deponent acknowledged that she knows and understands the contents of this affidavit, that she has no objection to the making of the prescribed oath and that she considers this oath to be binding on her conscience. I also certify that this affidavit was signed in my presence at Groenkloof **on this** 22 **day of** June **2023 and that the Regulations contained in Government Notice R1258 of 21 July 1972, as amended**

by Government Notice R1648 of 19 August 1977, have been complied with.

COMMISSIONER OF OATHS

FULL NAMES:

STATUS:

STREET ADDRESS:

GERTRUIDA ANNÉ VAN STRAATEN
Commissioner of Oaths
Practising Attorney RSA
Suite 1 Selati Park
36 Selati Street Alphen Park Pretoria