

"FA12"

**MINUTES OF THE FIRST E-TOLL ENFORCEMENT CASE MANAGEMENT
MEETING
BEFORE JUDGE TOLMAY**

Date: 16 August 2018
Time: 09h15
Venue: Room 148, First Floor
Palace of Justice, Pretoria High Court

Attorneys for the Plaintiff: Werksmans Attorneys

Present:

Counsel: Adv Jonathan Blou SC ("Advocate Blou SC")
Attorneys: Mr Chris Moraitis ("Mr Moraitis")
Mr Trevor Boswell
Ms Simone Gast

Attorneys for the Defendants: Alet Uys Attorneys

Present:

Counsel: Adv Gilbert Marcus SC ("Advocate Marcus SC")
Adv Isabel Goodman ("Advocate Goodman")
Attorneys: Mr Brendan Slade
Ms Andrea Korff ("Ms Korff")

Also present: Ms K Erlank, Registrar to Judge Tolmay

1 Separation of proposed "test case"

1.1 The parties are in agreement in principle that –

1.1.1 there ought to be a separation in order to deal with the various
"legality challenges" raised in the defendants' special pleas; and

1.1.2 the subject matter of the separation has been agreed with
reference to specified paragraph numbers of the pleadings as
contained in the letters exchanged between Werksmans and Alet



Uys dated 15 February 2018, 22 March 2018, 16 April 2016 and
21 May 2018 respectively.

2 Consolidation of matters

2.1 High Court Matters

2.1.1 The parties are agreed on the consolidation of the four identified
High Court matters, namely –

- 2.1.1.1 SANRAL // [REDACTED]
[REDACTED]
- 2.1.1.2 SANRAL // [REDACTED]
- 2.1.1.3 SANRAL // [REDACTED]
- 2.1.1.4 SANRAL // [REDACTED]
[REDACTED]

2.1.2 Judge Tolmay noted the consolidation of the above four matters
and requested that a draft order in this regard be prepared and
submitted to her jointly by the parties for that draft order to be
made an order of Court by her in chambers.

2.1.3 Advocate Goodman will prepare a draft order for consideration by
the parties.



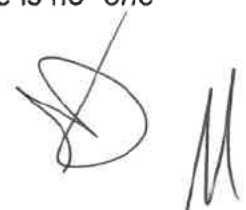
2.2 Magistrates Court matters

2.2.1 Advocate Marcus SC recorded that the defendants do not accept that SANRAL can dictate which parties will participate in the test case. He further recorded that Alet Uys attorneys seek the transfer to the High Court, or the withdrawal and re-commencement, of six identified matters currently instituted in the Magistrates' Court and that these be consolidated with the High Court matters referred to above, for the following three reasons –

2.2.1.1 one of the legality challenges is founded on an alleged lack of alternative routes. A number of defendants are required in order to be representative of the various places to demonstrate this;

2.2.1.2 a variety of defendants are required to address the alleged unreasonable delay on the part of the defendants in raising the legality challenges, and each defendant's position is different. The amounts claimed from each also vary substantially, ranging from just over a thousand Rand to as much as R7 million; and

2.2.1.3 a representative spread of defendants is required to evidence the effect of the remedial discretion sought by SANRAL in its Replication. In this regard, there is no "one

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size fits all" for defendants, as there is, inter alia, a difference between the individual defendants and corporate entity defendants.

2.2.2 Advocate Blou SC noted that, based on these reasons, and rather than having to formally transfer matters from the Magistrates Court or reinstitute these matters in the High Court, it may be possible to deal with these matters by agreement into evidence and broadening the scope of the High Court issues or at least narrowing the ambit of evidence that may be required.

2.2.3 The parties are to attempt to agree the facts that could be stipulated in relation to the Magistrate Court matters proposed for consolidation. In this regard, it was agreed that Alet Uys would, by **6 September 2018**, submit statements of facts relating to the Magistrate Court matters, which they propose be included in the separated case in the High Court by agreement. SANRAL will answer to those statements of fact, and admit or deny the allegations contained therein, by **4 October 2018**.

2.2.4 If the parties are unable to reach agreement on the basis set out in paragraph 2.2.3 above, then the issue of the consolidation of the Magistrate Court matters with the High Court matters, referred to in 2.1 above, will be reconsidered by the parties and if necessary referred back to Judge Tolmay.

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- 2.3 Judge Tolmay indicated that SANRAL's attorneys in the Magistrates' Court should be invited to attend future case management meetings.

3 Further Conduct of Matters

- 3.1 Both parties agreed that although a trial for the separated case may eventuate, it is currently the parties' preference to conduct the separated case either as a stated case or on affidavit, depending on whether it is possible to reach agreement in this regard. This was not however an issue which needed to be addressed at this time and could be addressed in a further case management meeting, in due course.

- 3.2 Judge Tolmay advised that it was premature to consider a hearing date, for the separated case, at this stage, but that she would be amenable to approaching the DJP / JP for a preferential hearing date once the issues relating to the Magistrate Court matters (as addressed above) and joinder (as addressed below) have been addressed and the matter was sufficiently advanced so as to warrant such an approach

4 Joinder

- 4.1 The parties have agreed that the Minister of Transport, the Minister of Finance, the Commissioner of the South African Revenue Service and

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possibly the Minister of Environmental Affairs ("the relevant parties") should be joined.

4.2 Advocate Blou SC noted Alet Uys' undertaking (in their letter of 22 March 2018) to take steps to join the relevant parties.

4.3 In this regard, the parties agreed that the relevant Joinder Application should be instituted by Alet Uys by **13 September 2018**.

4.4 Advocate Blou SC undertook to collaborate with Advocate Marcus SC to prepare the Joinder Application, and further advised that Alet Uys could make the averment that the Joinder is supported by SANRAL.

4.5 It was agreed that further timelines for the conduct of proceedings would be agreed once the relevant parties had been joined.

5 Discovery

5.1 It was agreed that discovery would be made after the statement of facts had been exchanged in respect of the Magistrates' Court matters.

5.2 Accordingly, discovery notices are to be exchanged immediately, and discovery affidavits are to be exchanged 20 court days after 4 October 2018.

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5.3 Once the relevant parties have been joined and further pleadings exchanged, further discovery may be called upon from these parties, as appropriate.

5.4 The parties agreed that any interlocutory hearings required in relation to discovery could be heard before Judge Tolmay in chambers, without the need to set the matter down in the ordinary course.

6 Stay of Enforcement of Other Matters Pending the Outcome of the Separated Case

6.1 Advocate Marcus SC sought SANRAL's undertaking to stay the enforcement of other matters (and not just matters in which Alet Uys represent the relevant defendants) pending the outcome of the separated case. He also raised the fact that SANRAL has applied for summary judgment in respect of one of Alet Uys' clients, Vincemus, and that the matter was set down for hearing on 23 September 2018.

6.2 Advocate Blou SC advised that Werksmans do not represent SANRAL in the Magistrates' Court matters instituted by SANRAL, and Werksmans does not have a mandate to agree such a stay in either those or the various other High Court claims. However, he recorded that Werkmans was engaging with SANRAL in respect of the Vincemus matter and would revert formally in that regard as soon as possible.

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6.3 Mr Moraitis stated that road users were being encouraged not to pay toll and recorded that SANRAL would not agree to a general stay until a hearing date had been determined for the separated case. and he recorded further that it is necessary both because people are not paying tolls and for prescription purposes, to continue issuing significant numbers of summonses and SANRAL intends to continue to do so. In the interim, it is preferable for all parties that a hearing date for the separated case be obtained as soon as possible.

7 Judge Tolmay advised that, in her view, it is not appropriate for her to make any ruling in this regard at this point, however the issue may be re-visited at a later stage.

8 Advocate Marcus SC further noted the averments in the Press as regards the ANC's decision to scrap e-tolling. Advocate Blou SC noted that his instructions are that SANRAL are proceeding with claims.

MEETING CONCLUDED AT 10H10