

SOUTH AFRICA / JUDGMENT

Kusa Kokutsha (Pty) Ltd V South African National Roads Agency SOC Limited and Others (26213/20) [2020] ZAGPPHC 746 (8 December 2020)

[2020] ZAGPPHC 746

COURT

North Gauteng High Court, Pretoria

BEFORE

C J van der Westhuizen

CASE / FILE NUMBER

26213/20

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

REPORTABLE:

YES/NO

(2)

OF

INTEREST TO OTHER JUDGES: YES/NO

(3)

REVISED.

08/12/2020

CASE

NO.: 26213/20

In

the matter between: KUSA
KOKUTSHA (PTY) LTD
Applicant
and
SOUTH AFRICAN ROADS AGENCY SOC
LTD
GIJIMA HOLDINGS (PTY) LTD
GUMA
SUPPLY CHAIN MANAGEMENT (PTY) LTD
First Respondent
Second Respondent
Third
Respondent

JUDGMENT

VAN DER WESTHUIZEN, J

- [1] This application is an expedited Review Application. It relates to a tender for the “Procurement of the operations and maintenance of an open road tolling system in the Gauteng Province, South Africa, and a national clearing house and violations processing centre” (Tender Number NRA X.002-135-2019/1) that was called for by South African National Roads Agency (SANRAL), the first respondent. The tender call was issued during August 2019,[1] close to the date when the existing tender would have expired. It was an open tender. This application is specifically directed at the cancellation of the tender call during March 2020.
- [2] Three bidders participated in the tender call: the applicant, the second and third respondents, who participated as a Joint Venture (the JV), and a third party, who is not part of these proceedings.
- [3] The tender process was conducted in a two envelope process. The first process related to a so-called technical responsive inquiry. Only the applicant and the JV were found to be “technically responsive”.

The third bidder was disqualified. The norm set related to a points adjudication in respect of certain technical aspects that were

specified in the tender call and only those bidders who achieved a score higher than 70% would pass to the second stage of the tender process. The applicant scored the highest points and the JV passed the threshold. The third bidder did not pass the prescribed threshold and was disqualified. It took no further part in the tender process. The first stage is a closed consideration of the bidding process. None of the bidders have access to the considerations and/or any deliberations thereon.

- [4] In the second envelope of the tender process, the applicant's bid was found, price wise, to be the lower bidder. It out priced the JV and was considered the recommended bidder to be awarded the tender. The second stage of the bidding consideration is an open enquiry. All bidders have access thereto and to the respective adversary bids.
- [5] The glee of the applicant was short lived. During the evaluation of the applicant's bid, certain issues arose and queries were raised. Some appeared to be addressed and others remained contentious. When the recommendation was laid before the SANRAL Board of Directors (the Board), for consideration and possible awarding of the tender to the applicant, the Board called for the input of two independent internal bodies, SANRAL's Legal Advisors department and the Internal Audit department. On receipt of those reports, the Board, mindful of its Statutory obligations as accounting authority,[2] cancelled the tender call and did not consider the bidding for the tender any further. A new call for tender in respect of the same requirement was issued. The applicant did not participate in that new tender call, and instead launched the present proceedings.
- [6] In anticipation of the present proceedings, the applicant launched an urgent application for an interdict to stay the new tender process pending the determination of these proceedings. After the urgent application was heard, and prior to the delivery of the judgment in those proceedings, the first respondent gave an undertaking not to finalise the new process, pending the determination of this application. The court in that matter accepted the said undertaking and did not further opine upon the urgent application, but reserved the issue of costs for determination at a later stage.
- [7] From the applicant's document setting out the chronology of events relevant to this application, it is gleaned that the required authorisation was obtained from the appropriate authorities to extend the existing contract until December 2021, probably to enable SANRAL to attend to the appointment of a contractor for a further contract

period.

- [8] In the present application for review, the applicant challenged the cancellation of the tender call on various bases. Primarily, it contended that the cancellation was unlawful. The major grounds for review are:
- (a) There was no material irregularity, allegedly the only premise upon which the first respondent could warrant a cancellation of the tender call prior to the awarding of the tender;[3]
 - (b) The manner in which the cancellation was undertaken, and the surrounding circumstances thereof, warrant an inference to be drawn that the cancellation was motivated by prejudice against the applicant; and was
 - (c) Undertaken male fide by the Board and for an ulterior purpose.
- [9] The relief sought by the applicant can be summarised as follows:

- (a) The cancellation of the tender call to be reviewed and set aside;
 - (b) The setting aside of the new call for tender;
 - (c) The awarding of the cancelled tender to the applicant;
 - (d) An award of costs in the applicant's favour, such costs to include the costs reserved in the urgent application.
- [10] The respondents opposed this application on various bases, some technical and other on factual grounds and/or legal contentions that were raised in respect of some of their contentions.
- [11] I do not intend to re-state the legal frame work in which the first respondent is to operate. That has been traversed in many precedent setting judgments and is common cause. It will suffice to state that the first respondent is a creature of statute and is bound by various statutory requirements, prescriptions and guidelines, the least of which is the Public Finance Management Act, 1 of 1999 (the PMFA). It may be prudent to record that SANRAL is obligated to include in any call for tender, provisions for subcontracting by local contractors. [4] However, the applicant contended that on its interpretation of the relevant provision, there is no obligation upon SANRAL in this

regard. It is to be recorded that the statutory grounds for cancellation of a tender call were included in the relevant tender

document calling for a tender.

- [12] In terms of the provisions of section 18 of the SANRAL Act and section 56 of the PMFA, SANRAL delegated some of its powers to various officials and committees of SANRAL. [5] However, in terms of its the Delegation of Authority, the Board of Directors of SANRAL retained the authority to award and/or cancel

tenders that are in excess of R1 billion. In such instances, the Board is the final approval authority. It does not matter whether

other of its committees or officials have recommended a successful bidder or not. The Board retains the right to final consideration of the bid documents lodged. It was conceded on behalf of the applicant that the function of the Board in such instances is not one of mere rubberstamping any recommendations by delegated subcommittees in respect of the awarding of a tender. That concession was well made.

- [13] The grounds for review relating to the alleged biasness on the part of SANRAL and the alleged male fide approach and/or ulterior purpose of SANRAL, can be dealt with summarily. In this regard, no positive allegations were made on either of those issues in the affidavits filed by the applicant, founding and supplementary. Furthermore, the applicant seeks that the court draws the inference, in the absence of any factual indication thereof, that SANRAL had acted in an untoward manner as suggested. It is trite that an inference

sought to be drawn, is to be a reasonable and a natural inference from the facts relied upon and which would necessarily be the only inference to be so drawn from the facts relied upon.

[6] At best for the applicant, the suggested circumstances surrounding the cancellation of the tender call do not provide any factual bases upon which any adverse inference against the Board can be drawn. Such suggested circumstances are nothing more than speculation. In my view, those do not even raise any possible suspicion. No inference can be drawn on mere speculation or possible suspicion of any untowardness. In my opinion, the applicant's view that, because subcommittees of SANRAL had recommended the applicant as the preferred bidder, it was entitled to be awarded the tender. Such approach would defy the Board's right to finally decide upon the bid. There is accordingly no merit in any of those two grounds for review and the application for review on that score stands to fail.

- [14] I have alluded to the ground for review premised upon unlawful cancellation based on a reliance of an alleged material irregularity in the tender process. SANRAL alleged that irregularities were identified during the tender process, in particular those raised by the Legal and Internal Audit reports on their respective investigations, and which SANRAL alleged were material in nature. The applicant contended that the supposed irregularities, if so found to be irregularities, which it denies, are non-material. Hence, the applicant's approach that the cancellation of the tender call was unlawful.
- [15] In this regard, SANRAL alleged that the separate, self-standing irregularities identified by the Legal and Internal Audit reports, include non-compliance with mandatory statutory requirements governing subcontracting and serious concerns raised regarding the Broad-Based Black Economic Empowerment (BBBEE) compliance requirement. It also identified irregularities relating to the amendment and/or clarification to the tender call by subcommittees not authorised in the particular instance to do so. SANRAL held the view that all and any of those irregularities are material and warrant the cancellation of the tender call. The applicant has joined issue therewith.
- [16] I interpose to record that the closing period had been extended, initially being 23 September 2019, for the submission of bids. The deadline was extended until 28 October 2019.[7] It is common cause that the applicant had been able to comply with certain requirements due to the extension having been granted. In particular, in respect of compliance with the BBBEE requirement.
- [17] It may well be that a particular "irregularity" in specific circumstances may be "excusable" and hence of no consequence to any further determination. However, in my opinion, where an "irregularity" leads to a particular result, that had it not been for that "irregularity", the said result would not have been achieved, it is material. A material irregularity goes to the root of the process and undermines the objective determination process. It impacts negatively upon fairness, equitability and due process in the tender process.

- [18] On 18 March 2020, SANRAL advised the applicant that the cancellation of the tender was “motivated” by findings in reports received from the Legal and Internal Audit structures of SANRAL. The applicant was apparently further advised that the bid requirements were unclear and that those requirements had been clarified in the clarification process which had changed the tender requirements. These apparently related to the local subcontracting requirement and “local ownership” by shareholders of bidding entities. On its own version, by 18 March 2020, the applicant was acutely aware what the reasons for the cancellation of the tender call were, at least in respect of the said two crucial aspects.
- [19] Regulation 9 of the Preferential Procurement Regulations provide as follows:
- “9. Subcontracting as a condition of tender:*
- (1) If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups.
 - (2) If an organ of state applies subcontracting as contemplated in subregulation (1), the organ of state must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to-
 - (a) ...
 - (3) ...”
- [20] A list of categories of local subcontractors are stipulated in sub-regulation (2). In my view, it is gleaned from the designated list of categories that the intended local subcontracting requirement is not necessarily aimed at highly skilled businesses, but is directed more at semi- and unskilled businesses, although such businesses may operate within a specific niche in the market.
- [21] Applying the trite canons of construction when interpreting a statutory enactment, the context of a particular stipulation must be considered within the context of the whole enactment.
- [22] It follows that, when determining whether the condition precedent in respect of local subcontracting applies, the stipulated categories in sub-regulation (2) would determine whether that condition should apply, having regard to the intended services required. It is for the particular organ of state to make that value judgment call prior to publishing the call for tender. That value judgment call cannot be left for the intending bidder to make. That much is clear from the provisions of sub-regulation (2) when read in context.
- [23] Furthermore, from the context of regulation 9, it is clear that a condition precedent in a tender is set relating to local subcontracting. It is further clear that the condition precedent is required in all contracts above R30 million when the organ of state had made the value judgment call as stipulated. It is obligatory to include the condition precedent in the published tender call in such event.[8]

- [24] The intended bidder is then obliged to provide for local subcontracting in its bid. The percentage value of the local subcontracting inclusion is stipulated to be 30% of the value of the contract. That is the threshold for local subcontracting. An organ of state may stipulate a higher percentage of local subcontracting to be included. The 30% stipulated is the bottom line, i.e. not less than 30%. It is not a “target” to aspire to. That is the content of the concept “minimum”.
- [25] In the present instance, the tender call was for a continuation of an existing tolling operation. The call was for the continuation thereof for a further specified period. No “new” tolling operation was called for to be introduced or created. The title of the tender call unequivocally states that. Experience, logic and common sense dictate that the contract value would be in excess of R30 million and that local subcontracting will be required, i.e. feasible.[9] It is unequivocally gleaned from the tender call title that not only highly skilled business may be required, but that semi- and unskilled labour is in the offing. It follows that the condition precedent of regulation 9 is applicable to the tender call. That much would be clear to any potential bidder. That is further apparent from the two price values placed by the respective bids. It is to be recorded that the applicant’s sister entity is the present incumbent service provider. It was well aware of the content of the services to be rendered as required in the tender call.
- [26] In my view, the crux of this matter is to determine whether there has been compliance with the condition precedent in the published tender call and in any clarifications that were provided during the tender process. If not, whether an irregularity that is material had occurred in the tender process.[10]
- [27] The organ of state, in this instance SANRAL, had determined that it is “feasible” for the condition precedent of regulation 9 to apply. Hence the inclusion thereof in the published tender call. The context of the wording in the tender call, in Section D1003.f of Part C3.21 of the tender documents, makes it clear that it is a requirement of this Project that the successful Tenderer subcontract a minimum of thirty percent (30%) of the works to Targeted Enterprise(s), The mere verbatim recordal in the tender call of some of the provisions of regulation 9 is of no assistance to the applicant to suggest that such inclusion places the determination of “feasibility” upon the potential bidder. The clear provisions of regulation 9 militate against such interpretation. The inclusion of such verbatim wording points to slovenly drafted tender conditions, hence a “need” to call for “clarification”. It is to be recorded that the applicant did not contend that local subcontracting in the present instance was “not feasible”.

- [28] Further in this regard, the clear wording of regulation 9 clearly and amply stipulate a minimum requirement of 30% local subcontracting. No “target” is set. Any stipulation in the tender call, or subsequent “clarification” to the contrary would be irregular. In the present instance, the warped wording in the tender call and the attempted clarification in respect thereof at a clarification meeting, are contrary to the clear and unambiguous provisions of regulation 9 of the Preferential Procurement Regulations.
- [29] It follows from the foregoing that there has been non-compliance with the stipulated and obligatory requirements of regulation 9 of the Preferential Procurement Regulations. Consequently, a material irregularity in the tender process has occurred.[11] It calls for the stipulated sanction thereof. In this instance, the cancellation of the published tender call. The application for review in this regard stands to fail.
- [30] Part of the applicant’s review on the basis of lack of material irregularity, is premised upon a relaxation of bid criteria due to addenda/clarifications of the requirement of the tender call. In this regard, the applicant contends that valid and authorised “clarifications” in respect of the bid criteria were issued and authorised by the relevant committee allegedly holding the required delegation.[12] In this instance, the PG3 committee. Thus, so contends the applicant, no material irregularity had occurred that warranted a cancellation of the tender call.
- [31] In particular, the applicant bemoans SANRAL’s approach to the issue of local ownership of a potential bidder. It is common cause that the applicant is a single-tender vehicle. It was established for the specific purpose of submitting a bid for the tender call and for no other purpose. It has, on its own version, no prior existence or provenance. But for the said amendments/clarifications, the applicant would not have qualified as a potential bidder. That much is common cause. All the addenda/clarifications were issued prior to the closing date for tender submission.
- [32] It is common cause that the PG3 committee authorised the extension of the closing date for submissions in respect of the tender call. In terms of SANRAL’s Delegation of Authority, the power to extend the closing date for a tender call lies with SANRAL’s Procurement Manager, not the PG3 committee. The applicant conceded this. It states that the “authorisations” by the PG3 committee were done “in the erroneous belief” that it, the PG3 committee, had approved the tender call, when in fact it had not. The PG3 committee had no power to issue or authorise any addenda/clarification in respect of the tender call. Consequently, those addenda/clarifications were irregular. These irregularities were material.
- [33] It follows from the foregoing that irregularities occurred during the tender process in respect of the amendments/clarifications relating to the tender call that were in fact material and crucial to the proper determination of the tender award. The application for review on that ground stands to fail.

- [34] A further ground upon which the review is sought relates to the requirement of BBBEE compliancy. It is common cause that the applicant received its BBBEE certification on the morning of 28 October 2019 when the bid called closed. In that sense, it was received timeously. It is further common cause that the applicant was not in a position to be BBBEE compliant at the first deadline, that of 23 August 2019. But for the extension of the deadline, the applicant would not have complied with the appropriate certification requirement.
- [35] The applicant contended that at the time of the closing of the tender call on the extended deadline date, it complied with the BBBEE compliancy requirement and in fact scored the higher score. It out qualified the second respondent by far.
- [36] However, during the second envelope process, queries were raised in respect of the applicant's BBBEE certification. The applicant further contends that its certification is valid and in particular when regard is had to the addenda/clarifications referred to earlier. To an extent those queries were address, but questions thereon remained as pointed out on behalf of SANRAL. Those questions raised eyebrows. For example, SANRAL raised the issue in respect of the bases of certification scoring applied on the issued certification. Apparently there are two distinct ways in which the scoring can be approached. SANRAL contended that when regard is had to the issued certificate, the approach by the certification authority appears to be a hybrid application of the said two distinct approaches. In response, the applicant contended that in view of the addenda/clarifications issued, it was permissible to follow the approach by the certification authority and that nothing untoward had occurred. The applicant was simply BBBEE compliant as required. The reports by the two independent bodies referred to earlier, were not decided either way, and raised concerns in respect of the applicant's BBBEE certification. In view of those reports, the Board opted in support of its decision to follow the cancellation route.
- [37] In view of my findings that material irregularities had occurred on the issues addressed earlier, it is not necessary to decide the issue relating to the applicant's BBBEE certification. SANRAL only needs to prove a single material irregularity to vilify its decision to cancel the tender call.
- [38] The applicant further alleged that inadequate reasons were advanced by SANRAL in support of its decision to cancel the tender call. As early as March 2020 the applicant was advised that the bid requirements were unclear and that the addenda/clarifications had changed the tender requirements, in particular with reference to the condition precedent of local subcontracting and local "ownership". Either and/or both were sufficient for the decision to cancel the tender call as dealt with earlier in this judgment. In my view, the reasons that were advanced were adequate and there is no merit in this ground for a review. Furthermore, the reasons for the decision to cancel the tender call are contained in the Board's minutes that were subsequently provided to the applicant.

- [39] In so far as the applicant sought to rely on alleged irregular internal decision-making as a ground for review, there is no merit in that contention. A determination on the premise of material irregularity has no bearing on any recommendation or support in an internal evaluation process report. It is in my view totally irrelevant to a determination of whether to cancel a tender call or not, due to a material irregularity that is found to have existed.
- [40] In my opinion, the issue of procedurally unfairness to cancel a tender call premised on a material irregularity, and in particular as in the present instance of non-compliance with a mandatory statutory requirement, does not arise. It simply has no bearing.[13]
- [41] There is a further ground relied upon for a review. The applicant's contention surprisingly relies on the ground of alleged ultra vires in that according to SANRAL's DoA only Parliament has the authority or capacity to cancel this tender call. The fallacy of this contention lies in the fact that if only Parliament could cancel the tender call, it would of necessity also imply that only Parliament could award the tender and not the Board. The Board of SANRAL is the accounting authority. That is common cause. Clause 2.4.1.1(c) of SANRAL's DoA expressly empowers the Board to award projects exceeding R1 billion. The tender clearly falls under that category. The general legal principle that whatever authority SANRAL has to delegated, it is not divested of any power, nor is it relieved of any function or duty it may have delegated.[14] The categories of people to whom it may delegate any authority are specifically stipulated. No such category includes Parliament.[15] There is no merit in this contention and the application for review stands to fail.
- [42] On behalf of the JV it is submitted that the cancellation of the tender is not an administrative action that is reviewable in terms of PAJA. It is submitted that the cancellation of the tender call amounted to the exercise of executive authority. In this regard, the JV relied upon a number of decisions by the Supreme Court of Appeal.[16] In view of my findings on material irregularities and SANRAL's obligation in that regard to cancel the tender call, it is not required at this point in time to consider or to decide this issue.
- [43] It was further contended on behalf of the applicant that the Supreme Court of Appeal[17] has recently considered the provisions of Regulation 9 and has opted to strike them down for want of constitutionality. It suspended the order of striking down for a period of 12 months. On behalf of SANRAL it was submitted that the order did not apply retrospectively and hence the "suspension" has no bearing on the present matter. Accordingly, the contention raised by the applicant does not require any further consideration.
- [44] SANRAL has brought a conditional counter application to the application for review. In terms thereof, SANRAL sought to have the apparent delegation of its powers to cancel a tender call to Parliament declared unconstitutional, should it be found that the applicant's ground for review premised upon ultra vires action is upheld. In view of the finding that the Board of SANRAL retained the power to award/cancel tenders in excess of R1 billion in terms of the provisions of section 18 of the SANRAL Act, it is not required to consider this issue, nor is it the appropriate time to do so. In any event, the counter application is

conditional on a finding in favour of the applicant on the ground of ultra vires.

- [45] The applicant and SANRAL have both applied for the striking out of allegations in affidavits of the parties to this application for review. In my view, nothing turns on any of the premises relied upon for striking out in considering the particular grounds relied upon for a review and accordingly do not require consideration. No prejudice has been shown by the applicant should the allegations contained in its application not be struck out. Likewise, nothing of substance has been shown in respect of the allegations that are the subject of SANRAL's application for striking out. In both instances no prejudice has been shown that would impact negatively on the relief that is sought.[18]
- [46] In view of my findings on the grounds for review, and in particular that it stands to fail on any or all the bases relied upon, it is not required to consider, nor to determine the further relief sought by the applicant that the issuing of the new tender call (2020) be set aside.
- [47] There remains the issue of costs. Counsel for the applicant contended that should the review application not be successful, the applicant nevertheless had appropriately challenged the decision to cancel the tender call and should therefor not be mulct with a costs order. Furthermore, it was sought on behalf of the applicant that the reserved costs of the urgent application be awarded to it. Counsel for the respondents submitted that should the application for review be unsuccessful, the normal principle of costs following the event should apply. Counsel for SANRAL contended that the reserved costs in the urgent application should be awarded to SANRAL, the JV not being a party to that application.
- [48] In view of my findings on the grounds raised for a review of the decision to cancel the tender call, it cannot be said that the applicant had appropriately challenged the decision to cancel. This is specifically borne out by the applicant's approach to the issue of Regulation 9 and its mandatory statutory requirement of application. It follows that the principle of costs to follow the event should apply.
- [49] The judgment in the urgent application, when dealing with the issue of costs, indicated that it would have made no costs order in those particular circumstance that obviated a decision on the merits, an undertaking be supplied. Yet the costs were reserved. In the present instance, I am not privy to all the detail in the urgent application, it was not incorporated in the present application, but for a side reference thereto. I am not in a position to consider the granting of the costs reserved in that application. I would endorse that court's indication to make no cost order on the reserved costs.
- [50] It follows that the application for review stands to be dismissed.

I grant the following order:

1. The application for review is dismissed;
2. The applicant is to pay the costs of the first, second and third defendants, including the costs of two counsel where applicable;

3. No order is made on the reserved costs order in the urgent application.

C J VAN DER WESTHUIZEN

JUDGE OF THE HIGH COURT

On behalf of Applicant: AD Stein SC

B Lekokota

Instructed by:

Bowman Gilfillan Inc.

On behalf of First Respondent: JJ Gauntlett SC

FB Pelser

S Tshikila

Instructed by:

Cliffe Dekker Hofmeyr Inc

On behalf of Second and Third Respondents: A Friedman

Instructed by:

Nicqui Galaktiou Inc.

Date Heard:

11 and 12 November 2020

Judgment

handed down: 8 December 2020

[1] By the Bid Specification Committee (BSC)

[2] Section 51 of the Public Finance Management Act, 1 of 1999; Regulation 16A of the Treasury Regulations for departments, trading entities, constitutional institutions and public entities.

[3] Regulation 13(1)(d) of the Preferential Procurement Regulations promulgated.

[4] Procurement of services by SANRAL are to be compliant with various procurement scripts in terms of inter alia section 217 of the Constitution of the Republic of South Africa and other statutory procurement scripts. This is common cause between the parties.

[5] See also the Standard for Infrastructure Procurement and Delivery Management (SIPDM). Where, as in the present instance, the BSC

approved and issued the tender call, the SIPDM did not apply. Thus the PG3 had no authority in respect of the issued tender call.

[6] Govan v Skidmore 1952(1) SA 732 (N)

[7] By the subcommittee known as PG3

[8] G4S Cash Solutions (SA) (Pty) Ltd v South African Post Office SOC Ltd

[2020] ZAGPPHC 510 (15 September 2020) par [28]

[9] Both bids submitted were in excess of R1 billion.

[10] See in this regard Minister of Environmental Affairs and Tourism 2004(1) SA 308 (SCA) at par [31]

[11] G4S Cash Solutions (SA) (Pty) Ltd, supra, and the authorities cited therein

[12] Addenda and/or clarifications to the tender call, eighteen in total, were authored by a subcommittee known as PG3. It is subordinate to the Bid Specification Committee (BSC). The combined result of these addenda/clarifications resulted in relaxing the bid criteria set by the BSC in the tender call.

[13] Thabo Mogudi Security Services CC v Randfontein Local Municipality

[2010] 4 All SA 314 (GSJ)

[14] Section 18(1) of the SANRAL Act

[15] Ibid.

[16] SAAB Grintek Defence (Pty) Ltd v South African Police Services [2016]3 All SA 669 (SCA); Tshwane City v Nambiti Technologies (Pty) Ltd 2016(2) SA 494 (SCA); Head of Department, Department of Education v Valozone 268 CC 2017 JDR 0586 (SCA) and Madibeng Local Municipality v DPP Valuers (Pty) Ltd 2020 JDR 1211 (SCA) par [27]

[17] Afribusiness NPC v The Minister of Finance (Case no. 1050/2019) [2020] ZASCA 140 (2 November 2020)

[18] Helen Suzman Foundation v President of the Republic of South Africa 2015(2) SA 1 (CC)

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