

SOUTH AFRICA / JUDGMENT

HT Pelatona Projects (Pty) Ltd v Tswelopele Local Municipality and Others (2214/2022) [2022] ZAFSHC 97 (23 May 2022) [2022] ZAFSHC 97

COURT

Free State High Court, Bloemfontein

BEFORE

JP Daffue

CASE / FILE NUMBER

2214/2022

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IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

Case No: 2214/2022

Reportable: NO

Of Interest to other Judges: NO

Circulate to Magistrates: NO

In the matter between:

HT PELATONA PROJECTS (PTY) LTD

Applicant

and

TSELOPELE LOCAL MUNICIPALITY

1st Respondent

NSM PROFESSIONAL SERVICES AND

GENERAL PROJECTS (PTY) LTD

2nd Respondent

[as joint venture partner of NSM Professional

Services and General Projects & Tamane Civils JV]

TAMANE CIVIL CONSTRUCTION (PTY) LTD

3rd Respondent

[as joint venture of NSM Professional Services

and General Projects & Tamane Civils JV]

CORAM: JP DAFFUE J

HEARD ON: 20 MAY 2022

DELIVERED ON: 23 MAY 2022

This judgment was handed down electronically by circulation to the parties' representatives by email, and release to SAFLII. The date and time for hand-down is deemed to be 17h00 on 23 MAY 2022.

I

INTRODUCTION

[1] Yet another application for interim relief was brought on an urgent basis by a disgruntled tenderer. The notice of motion was issued on 13 May 2022 and after filing of answering and replying affidavits the matter was allocated to me to be heard on Friday, 20 May 2022. I heard the application virtually on the Microsoft Teams platform. The parties agreed that this judgment could be forwarded to them electronically by email.

II THE PARTIES

[2] The applicant is HP Pelatona Projects (Pty) Ltd, a Welkom based company who was represented before me by Adv S Grobler SC on instructions of Peyper Attorneys.

[3] The Tswelopele Local Municipality, properly established in terms of the provisions of the Local Government: Municipal Structures Act,[1] is situated in the town of Bultfontein. Adv A Ayayee appeared before me on behalf of first respondent on instructions of Majavu Inc in Johannesburg, c/o Rampai Attorneys.

[4] The second respondent is NSM Professional Services and General Projects (Pty) Ltd, a private company based in Springs, Gauteng.

[5] The third respondent is Tamane Civil Construction (Pty) Ltd, a private company with main place of business situated in Bloemanda, Bloemfontein.

[6] The second and third respondents did not oppose the application.

III THE RELIEF CLAIMED

- [7] The applicant seeks an interim interdict with immediate effect in terms whereof the respondents are interdicted and restrained from implementing or acting upon the decision of first respondent to award a public tender in respect of the refurbishment of the sewer pump station in Bultfontein/Phahameng to the second and third respondents pending final adjudication of a review application to be instituted.

IV THE DEFENCES

- [8] The first respondent relies on the following defences:

8.1 The application is not urgent;

8.2 The applicant relies on an incorrect tender notice and invitation to tender which was published in a local newspaper. According to first respondent the notice of evaluation presented to prospective bidders should take precedence as is also the case with the draft tender notice and invitation to tender attached to the answering

affidavit;[2]

8.3 The unsigned document prepared by NEP Consulting Engineers[3] provided by first respondent to applicant as part and parcel of the bid evaluation report should not be considered by the court as the status of this document is uncertain;

8.4 The first respondent's Bid Evaluation Committee ("BEC")

was in any event not bound to accept the recommendations of the engineers;

8.5 As set out in annexure "AA1"[4] it was not a peremptory requirement that both members of the JV had to be in possession of both a CE and ME Construction Industry

Development Board ("CIDB") grading;[5]

8.6 Although it is conceded that there were certain administrative

slip-ups, it is denied that any such slip-ups are material;

8.7 It is denied that the applicant has proven any of the requirements of an interim interdict. Emphasis was placed on the balance of convenience and the fact that it is in the public interest that the project be finalised before the end of June 2022. Also, in the event of the applicant being successful with its review application, it would be fully entitled to claim from the JV the profit it has made from the project.

V THE REQUIREMENTS FOR INTERIM INTERDICTS

- [9] The four well-known requirements to be proven by an applicant for interim relief to be successful are the following:[6]

"a. a prima facie right, even if it is subject to some doubt;

- b. a reasonable apprehension of irreparable and imminent harm if an interdict is not granted and ultimate relief is eventually granted;
- c. the balance of convenience favours the granting of the interdict; and
- d. the absence of any other satisfactory remedy.”

[10] In *Simon NO v Air Operations of Europe AB and Others*[7] the Supreme Court of appeal confirmed the well-known test to be applied in adjudicating a prima facie right in the context of an application for an interim interdict in the following dictum:

“The accepted test for a prima facie right in the context of an interim interdict is to take the facts averred by the applicant, together with such facts set out by the respondent that are not or cannot be disputed and to consider whether, having regard to the inherent probabilities, the applicant should on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered and, if serious doubt is thrown upon the case of the applicant, he cannot succeed.”

[11] No doubt, the first requirement, to wit a prima facie right even open to some doubt, has been considered in a different light since *Setlogelo*. In *Gool v Minister of Justice and Another*[8] the full bench of the Cape Provincial Division held that in order to restrain a Minister pendente lite from exercising certain powers vested in him by a statute, relief should only be granted in exceptional circumstances and when a strong case is made out. The Constitutional Court stated recently in *National Treasury and Others v Opposition to Urban Tolling Alliance and Others (OUTA)* with reference to *Setlogelo* as follows:[9]

“The common law annotation to the Setlogelo test is that courts grant temporary restraining orders against the exercise of statutory power only in exceptional cases and when a strong case for that relief has been made out. Beyond the common law, separation of powers is an even more vital tenet of our constitutional democracy. This means that the Constitution requires courts to ensure that all branches of Government act within the law. However, courts in turn must refrain from entering the exclusive terrain of the Executive and the Legislative branches of Government unless the intrusion is mandated by the Constitution itself.”

[12] Although the Constitutional Court held that the *Setlogelo* test as adapted by case law still remains a handy and ready guide to the bench and practitioners in the magistrates and high courts, “the test must now be applied cognisant of the normative scheme and democratic principles that underpin our Constitution.” It continued: “When considering to grant an interim interdict a court must promote the objects, spirit and purport of the Constitution.” Consequently, the Constitutional Court stated the following:[10]

“If the right asserted in a claim for an interim interdict is sourced from the Constitution it would be redundant to enquire whether that right exists. Similarly, when a court weighs up where the balance of convenience rests, it may not fail to consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought.”

[13] Before I step off the topic, it is necessary to quote the following from OUTA:[11]

“65. It (the court) must assess carefully how and to what extent its interdict will disrupt executive or legislative functions conferred by the law and thus whether its restraining order will implicate the tenet of division of powers. Whilst a court has the power to grant a restraining order of that kind, it does not readily do so except when a proper and strong case has been made out for the relief and, even so, only in the clearest of cases.

66 What this means is that a court is obliged to ask itself not whether an interim interdict against an authorised state functionary is competent but rather whether it is constitutionally appropriate to grant the interdict.”

VI A BRIEF BACKGROUND OF THE FACTS LEADING TO THE PRESENT APPLICATION

[14] The following facts are mentioned briefly:

14.1 Although it is not certain when the first respondent’s water and sewerage problem has arisen for the first time, it is apparent from its papers that a Water Services Infrastructure Grant (“WSIG”) was applied for and in that regard a Project Business Plan Revision

(2018) was put on the table. The latest document in this regard is a document prepared on 23 March 2021, more than a year ago.[12]

14.2 The project motivation was captured verbatim in the following words:[13]

“The persistent failing of the pumps result in sewerage backing up to the residents and internal sewer manholes, and this poses a health risk to the community at large. And the capacity of the pumps maybe the only factor affecting the smoothing operation of the pumps in general. The Municipality executes routing maintenance on the pump station regularly however the breakages and blockages happen more often.”

14.3 It is not clear from the papers what happened since March 2021, but eventually prospective bidders were invited to tender during January 2022.[14] Insofar as the contents of this document is disputed by the first respondent, alleging it to be an incorrect version of the invitation to tender that appeared in a local newspaper, the first respondent decided to rely on a draft tender notice and invitation to tender.[15] I shall refer to these documents again during the evaluation of the evidence.

14.4 The closing date for tenders was 26 January 2022. Several entities submitted tenders, including the applicant and a joint venture (“JV”) consisting of the second and third respondents.

14.5 The tender was awarded to the JV of the second and third respondents. On 24 February 2022 the applicant became aware hereof. On that day correspondence ensued between the parties. The first respondent acted by way of a letter dated 1 March 2022 to which it attached the recommendation of its consulting engineers, the minutes of the BEC and the Bid Adjudication Committee (“BAC”) as well as the letter of award to the JV.

14.6 On 4 March 2022, Peyper Attorneys responded on behalf of the applicant, whereupon it was agreed that the contents of this letter would be considered as an internal appeal in accordance with the provisions s 62(3) of the Municipal Systems Act.[16] The Municipality, through its previous attorneys, also agreed to stay any further steps pertaining to the tender awarded pending the appeal procedure.[17]

14.7 On 30 March 2022 the first respondent's present attorneys came on board and on 12 April 2022, two weeks later, the internal appeal was dismissed.[18] Three weeks later, on 5 May 2022, the applicant's attorneys were informed about the dismissal of the appeal.[19] A request for a stay of the implementation of the works in accordance with the tender was rejected on 10 May 2022. [20] Three days later the applicant filed its application for the relief claimed herein.

VII EVALUATION OF THE EVIDENCE AND SUBMISSIONS BY THE PARTIES

Urgency

- [15] In order to consider urgency, it is important to note that the rules require absence of substantial redress, which is not equivalent to irreparable harm which is required before interim relief is granted. It is less than that.[21]
- [16] It is apparent that the first respondent is of the view that the contract works must be concluded in haste. If the applicant was forced to rely on a review application in the normal sense of the word and based on the normal time periods prescribed by rule 53, it would no doubt not be afforded substantial redress, even if successful on review.
- [17] The prejudiced party is entitled to seek appropriate relief by way of an interim interdict in order to mitigate losses that may be suffered as a result of unlawful administrative action. This has been clearly

recorded in *Olitzki Property Holdings v State Tender Board and Another*. [22]

- [18] The Constitutional Court acknowledged in *National Gambling Board v Premier, Kwazulu-Natal and Others* [23] that an interim interdict is a court order preserving or restoring the status quo pending the determination of rights of the parties, that it does not involve a final determination of these rights and does not affect the final determination, but the purpose is to preserve or restore the status quo pending the decision of the main dispute.
- [19] The applicant reacted immediately on receipt of the notice that the tender was awarded to the JV as mentioned above. Correspondence ensued and an internal appeal was lodged. I mentioned above the delays that occurred and that these can also be attributed to the first respondent and its previous and present attorneys. In any event, a full set of affidavits was filed and counsel dealt with the merits in their written and oral arguments. A sufficient case had been made out for urgency and there was no reason to strike the matter from the roll.

The first requirement for interim interdicts: prima facie right

[20] Section 217(1) of the Constitution[24] provides that an organ of state contracting for goods of services must do so in accordance with a system which is fair, equitable,

transparent, competitive and cost-effective. Section 2(1)(f) of Preferential Procurement Policy Framework Act[25] (“PPPFA”) provides that:

“The contract must be awarded to the tenderer who scores the highest points, unless objective criteria... justify the award to another tenderer.”

[21] The JV’s tender did not comply with the tender requirements as is evident from the acceptable evidence. In this regard there was non-compliance with s 1 of the PPPFA. Regulation 4(1) of the PPPFA regulations reads as follows:

“4.(1) If an organ of state decides to apply pre-qualifying criteria to advance certain designated groups, that organ of state must advertise the tender with a specific tendering condition that only or more of the following tenderers may respond-

- (a) ...;
- (b) ...;
- (c) ...”

Regulation 4(2) then stipulates that:

“(2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.”

According to the evidence presented by the applicant which is not presently in dispute, the JV did not submit an acceptable tender for the reasons advanced herein.

[22] In *Minister of Social Development and Others v Phoenix Cash and Carry PMB CC*, [26] the court held that:

“... a tender process which depends on uncertain criteria lends itself to exclusion of meritorious tenders and is opposed to fairness among tenderers, and between tenderers and the public body which supposedly promotes the public weal; ...” and “... a public tender process should be so interpreted and applied as to avoid both uncertainty and undue reliance on form, bearing in mind that the public interest is, after giving due weight to preferential points, best served by the selection of the tenderer who is best qualified by price. This is particularly relevant to the activities of a ‘technical evaluation committee’ which examines the tenders for formal compliance but does not evaluate the merits of the bids.”

[23] The JV did not oppose the application and the applicant’s version pertaining to the CIDB grading of second and third respondents is not in dispute. The first respondent relies on extracts from the CIDB website, but this clearly shows that neither of these two respondents were eligible to be awarded the relevant tender. The second respondent possesses a Grade 6 CE PE and a 1 ME PE. The CE class denotes Civil Engineering and the ME class denotes

Mechanical Engineering. At best for the first respondent, the second respondent as lead partner in the JV must possess a Grade 4 CE/ME PE or higher, ie both a 4 CE and ME PE grade or higher.[27] The applicant's version pertaining to the CIDB qualifications of second and third respondents are not in dispute and must be accepted for purposes of adjudication of this application.

- [24] The first respondent tried to cast doubt on the report of the NEP Consulting Engineers attached as Annexure "HT5", but nowhere was the content of this report rejected as false or misleading. It is clear that this firm of Consulting Engineers is and was at all relevant times the agent of the first respondent. It is therefore an eye opener to take note that this firm's technical report dated 3 March 2022 pertaining to the same construction works is relied upon in the answering affidavit.[28] This report is attached to the answering affidavit. NEP Consulting Engineers (Pty) Ltd are the very same engineers whose report was provided to the applicant and attached as annexure "HT5" to the founding affidavit,[29] which report is now referred to by the first respondent as "work in progress". The March 2022 report deals with the refurbishment of the Bultfontein/Phahameng sewer pump station.[30] In the introduction the scribe of the report made it clear that the purpose thereof was to present technical information with regards to the sewer pipe station and to identify shortcomings. I quote[31]:

"The work will ensure that the pump station is operational and to minimise the breakdown periods. The estimated construction costs for the refurbishment is R9 959 447.24 Incl VAT and the Professional fees with disbursements is estimated at R1 593 511.56

incl VAT which means the entire project estimate is R11 552 958.79 Incl VAT."

- [25] I accept the finding of NEP Consulting Engineers that the JV did not comply with the bid requirements and

specifications and that its bid was rendered non-responsive for the following reasons:[32]

"JV CSD – Bank name incomplete not verified

Leading Party CIDB – No 4ME PE grading

JV CIDB – No 1ME PE grading

No company Profile submitted for both Leadings Party and JV."

The BEC seemed to have ignored these findings notwithstanding the fact that the engineers' report is part and parcel of the BEC report ex facie the first page thereof. The JV's failure to submit company profiles was simply overlooked. The first respondent had no inherent power to condone non-compliance with peremptory requirements.

[26] The applicant explained in my view authoritatively why the work tendered for required qualification in both civil and mechanical engineering and this explanation appears to be inherently probable. The tender notices referred to herein make it abundantly clear that registration with the CIDB in both CE and ME Class of construction works are required to be eligible. I quote verbatim from annexure “AA1”, the document so heavily relied upon by the first respondent:

“Only tenderers who are registered with CIDB in both CE and ME Class of Construction Works (5 CE/5 ME or higher. 4 CE / ME PE (Potentially Emerging Contractors) or higher.) are eligible to submit tenders.”[33] (Emphasis added)

[27] It was argued on behalf of the first respondent that even if the award of the tender to the JV could be set aside, the applicant would in any event not qualify to be appointed bearing in mind the value of the contract, being for a maximum of R10 million while the applicant’s tender was in excess of R15 million. This aspect needs not to be debated at this stage as it is evident that even the JV tendered in excess of R11 million, but after negotiations the parties came to an agreement in respect of a much lower amount.

[28] Prima facie the applicant proved:

28.1 That a material and mandatory condition of the tender requirements had not been complied with and that the first respondent was not empowered to condone that;

28.2 Relevant considerations have not been considered and the decision to award the tender to the JV was influenced by an error of law;

28.3 No reasonable person could have come to the conclusion arrived at.

[29] I am satisfied that the applicant has proven a prima facie right, bearing in mind the facts averred by the applicant which were not disputed by the respondent. Furthermore, the facts set up by the first respondent did not throw any serious doubt upon the applicant’s case. Having come to this conclusion, I seriously considered the requirements referred to above in light of the OUTA judgment of the Constitutional Court.

Irreparable harm

[30] I am satisfied that if interim relief is not granted the applicant stands to suffer irreparable harm. If the applicant is eventually successful with its review application, the contract works might have been concluded by then and in such a case, the applicant will be saddled with a hollow

judgment.

Balance of convenience

- [31] I take into consideration that the contract which has been entered into with the JV was concluded in essence on behalf of the public. It is the public of Bultfontein/Phahameng who will suffer as a result of an improper sewerage system which will remain unresolved pending finalisation of the review application.
- [32] The first respondent makes an issue of the fact that the construction works must be finalised by the end of June
2022. However, it is the first respondent that delayed issues for a long time. I pointed out above that the business plan for the works is dated 23 March 2021. I have no doubt that a real need for the refurbishment of the system was established long ago and consequently, the first respondent shall not be heard to say that the balance of convenience does not favour the applicant. I say this without being insincere towards the local public, but it is all too often experienced that organs of state drag their feet and when a disgruntled bidder seeks relief, that party is accused of delaying finalisation of important infrastructure.
- [33] Mr Ayayee relied on my judgment in *HT Pelatona Projects (Pty) Ltd v Dihlabeng Local Municipality and Others*[34] in which case I dismissed an application for interim relief pending finalisation of a review application. As in this case, I also considered the OUTA judgment carefully in order to establish to which extent an interim order will intrude on the exclusive terrain of another branch of government. The facts in that case are not on all fours with the facts in casu. I mention just two differences, to wit firstly, the fact that there was an urgent need to provide water to the drought-stricken community of several Free State towns and secondly, the enormous costs to import materials from overseas in the future, bearing in mind the foreseeable decline of the Rand and the consequent negative effect on the public purse if a new tender process had to be ordered.
- [34] In considering the balance of convenience I weighed the prejudice to the applicant if the interim order is not granted, against the prejudice to the respondents if it is granted. I am satisfied that a strong prima facie case has been made out and that this is one of the “clearest of cases”. The first respondent has made payment of millions of rands to suppliers without being contractually or otherwise bound to do so. These materials will not become wasted if the review application eventually succeeds. The JV members are not properly qualified and experienced. If they fail to carry out the works effectively the public and first respondent will suffer as the defective works will have to be remedied at great costs.

No satisfactory alternative remedy

- [35] There is no alternative satisfactory remedy. A claim for damages is in my view not a suitable alternative remedy. The applicant requested an undertaking from the first respondent to suspend the implementation of the tender, but it refused.

VIII

CONCLUSION

[36] I conclude therefore that the applicant has proven the four requisites of an interim interdict and consequently, relief shall be granted as requested.

[37] During oral argument I requested counsel to provide me with suitable dates for the hearing of the review

application in the event of a finding that an interim interdict should be granted. I considered three dates which were provided to my secretary by the reviews clerk and both counsel

indicated that the one date, to wit 1 August 2022, suited both of them. I took it upon myself to act as a case management judge in the circumstances in the hope that the dispute can be finalised as soon as possible and in order to inconvenience the public as least as possible; consequently, truncated time periods shall be provided for finalisation of the intended review application.

IX COSTS

[38] Although costs are generally granted to the successful party, I decided to let costs stand over to be adjudicated during the review application. There is always a possibility that facts may be presented to the review court which, if averred in this application, might have influenced the award of costs or even the outcome of the application.

X ORDER

[39] The following order is issued:

1. The applicant's non-compliance with the rules of court is condoned and the application is heard as a matter of urgency in terms of the provisions of Rule 6(12);
2. Pending the final adjudication of a review application to be instituted on/or before 27 May 2022, the respondents are interdicted and restrained from in any way further implementing or acting upon the decision of the first respondent to award the public tender number: SCM/TSW/11/2021-2022:Bultfontein/Phahameng Refurbishment of Sewer Pumpstation to the joint venture of second and third respondents.
3. The order in paragraph 2 above shall serve as an interim interdict with immediate effect.
4. Should the applicant fail to institute review proceedings as contemplated in 2 above, paragraphs 2 and 3 of this order shall lapse.
5. The following truncated time table shall be applicable to the applicant's intended review application referred to in paragraph 2 above:
 - 5.1 The respondents' notice of opposition shall be filed on/or before 3 June 2022;
 - 5.2 The first respondent's Record of Decision ("ROD") shall be filed on/or before 3 June 2022;

5.3 The applicant shall file its amended notice of motion and supplementary founding affidavit, if applicable, on/or before 10 June 2022;

5.4 The respondents shall file their answering affidavits, if any, on/or before 24 June 2022;

5.5 The applicant shall file its replying affidavit, if so advised, on/or before 1 July 2022;

5.6 The applicant shall file its heads of argument on/or before 6 July 2022;

5.7 The respondents shall file their heads of argument on/or before 8 July 2022;

5.8 The review application shall be heard on 1 August 2022.

6. The costs of this application are reserved for adjudication during the review application.

JP DAFFUE J

On behalf of the Applicant: Adv S Grobler SC

Instructed by:

Peyper Attorneys

BLOEMFONTEIN

On behalf of the Respondents: Adv A Ayayee

Instructed by:

Majavu Inc

c/a Rampai Attorneys

[1] Act 117 of 1998

[2] Annexure “HT2”, Annexure “HT18” and Annexure “HT19” attached to the Founding Affidavit, pp 30, 82 & 83 respectively, read with Annexure “AA1” to the Answering Affidavit, p 137

[3] Annexure “HT5”, pp 35 - 43

[4] p 137

[5] Para 137 of the Answering Affidavit, p 129

[6] Setlogelo v Setlogelo 1914 AD 221 at 227

[7]

[1998] ZASCA 79; 1999

(1) SA 217 at 228 G – H

[8] 1955

(2) SA 682 C at 688 F – 689 C

[9] 2012

(6) SA 223 (CC) para 44

[10] Ibid, para 46

[11] Ibid, paras 65 & 66

[12] Answering Affidavit: Annexure “AA3”, pp 149 & further

[13] Ibid, p 156

[14] Tender notice and invitation to tender: Annexure “HT2”, p 30

[15] Answering Affidavit: Annexure “AA1”, pp 137 & 138

[16] 32 of 2002

[17] Annexures “HT8” & “HT9”, pp 64 - 66

[18] Annexures “HT10” & “HT11”, pp 67 - 71

[19] Annexure “HT13”, pp 74 & 75

[20] Annexure “HT15”, PP 77 & 78

[21] East Rock Trading 7 (Pty) Ltd and Anther v Eagle Valley Granite (Pty) Ltd and Others [2012] JOL 28244 (GSJ) at paras 6 – 8, GPCM v Minister of Home Affairs and Others 2020

(3) SA 434 (GP) paras 7 – 9 and Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and Others (2014) JOL 32103 (GP) paras 63 & 64

[22] 2001

(3) SA 1247 (SCA) paras 37 et seq, see also Darson Construction (Pty) Ltd v City of Cape Town and Another 2007 (4) SA 488 (C) at 506 E – H & 509 G – 510 G

[23]

[2001] ZACC 8; 2002

(2) SA 715 (CC) at para 49

[24] Act 108 of 1996; and see Metro Project CC and Another v Klerksdorp Local Municipality and Others 2004 (1) SA 16 (SCA) at paras 11 – 13 and numerous judgments thereafter, inter alia Millennium Waste Management (Pty) v Chairperson Tender Board: Limpopo Province and Others 2008 (2) SA 481 (SCA) at paras 17 - 21

[25] 5 of 2005

[26]

[2007] 3 All SA 115 (SCA) at para 2

[27] Founding Affidavit: para 38 read with Annexure “HT2”, p 30 and Annexures “HT18” & HT19”, pp 82 & 83 and Annexure “AA1”, p 137

[28] Annexure “AA4”, pp 191 and further

[29] pp 35 and further

[30] Annexure “AA4”, pp 194 and further

[31] para 1.1.1

[32] Para 3 of the report, p 41

[33] p 137

[34] (5606/2015) [2016] ZAFSHC 34 (4 February 2016)

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