HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

(1) REPORTABLE: Yes.
(2) OF INTEREST TO OTHER JUDGES: Yes.
(3) REVISED.

26-03-2019 ....

DATE SIGNATURE

Case No. 42887/2017

In the matter between:

COAL TRANSPORTERS FORUM Applicant

and

ESKOM HOLDINGS LIMITED 1st Respondent
NATIONAL ENERGY REGULATOR OF SOUTH AFRICA 2nd Respondent
MINISTER OF ENERGY 3rd Respondent
INDEPENDENT POWER PRODUCERS 4th – 38th Respondents

***Case Summary*: Electricity – Generation from renewable energy sources in line with government's policy decision to move towards a low-carbon economy and to incrementally introduce energy from private sector renewable energy technologies into the mix of energy sources - The Minister of Energy published Determinations relating to renewable energy under s 34(1) of the Electricity Regulation Act 4 of 2006 on 1 August 2011 and on 19 December 2012, in terms of which she determined, in consultation with the National Energy Regulator of South Africa, that 3 725 MW and a further 3 200 MW of new renewable energy capacity should be procured by Eskom from independent private producers (IPPs) through a procurement programme conducted by the Department of Energy - A bidding process followed and successful IPP bidders were announced - Eskom ultimately concluded power purchase agreements (PPAs) with all the successful IPP bidders, except with three of them.**

Contending that Eskom may not conclude PPAs with the IPPs until the Regulator has taken decisions on certain matters, the applicant seeks an order (a) interdicting Eskom from concluding PPAs with the IPPs until the Regulator has taken the decisions in question and (b) declaring invalid all the PPAs Eskom had already concluded. Application dismissed.

JUDGMENT

MEYER J

[1] On 1 August 2011 and on 19 December 2012, the Minister of Energy (the Minister), with the concurrence of the National Energy Regulator of South Africa (the Regulator), acting in terms of s 34(1) of the Electricity Regulation Act 4 of 2006 (ERA) and the Electricity Regulations on New Generation Capacity (published as GNR. 399 in *Government Gazette* No. 34262 dated 4 May 2011 (the New Generation Capacity Regulations)), determined that electricity generated from renewable energy sources – wind, concentrated solar power (CSP), solar photovoltaic (solar PV), biogas, biomass landfill gas, small hydro and other forms of energy (referred to as small projects) - should be procured through tender processes conducted by the Department of Energy (the DoE) for purchase by Eskom Holdings SOC Limited (Eskom) from independent power producers (IPPs). Pursuant to the procurement process that followed, successful IPP bidders were announced and power purchase agreements (PPAs) were ultimately concluded between Eskom and them, except with three of the successful IPP bidders.

[2] The applicant, the Coal Transporters Forum (CTP), which is a voluntary association with legal personality whose approximately fifty members are companies transporting coal for Eskom and engaged in the provision of logistical support and other services, seeks to interdict Eskom from entering into PPAs with the three IPPs until the Regulator has taken certain decisions and a declaration of invalidity of the PPAs that Eskom has already concluded with the other IPPs.

[3] The first respondent, Eskom, a state-owned company, is the largest generator, transmitter and distributor of electricity in Africa. Its 27 power stations produce approximately 95% of the electricity in South Africa. The vast majority of the electricity generated by Eskom emanates from coal-fired plants. The second respondent, the Regulator, which is a juristic person established in terms of s 3 of the National Energy Regulator Act 40 of 2004 (NERA), is, in terms of s 3 of ERA, the custodian and enforcer of the regulatory framework provided for in ERA. The third respondent, the Minister, issued the two Determinations in question pursuant to her powers in terms of s 34(1)

of ERA. The fourth to thirty-eighth respondents are IPPs in the renewable energy industry and they were successful bidders in the Renewable Energy Independent Power Production Procurement Programme (REIPPPP). They all oppose the application, except for the seventh, nineteenth, twenty-ninth, thirtieth, thirty-third to thirty-seventh respondents. The seventh respondent IPP, Ngodwana Energy (RF) (Pty) Ltd (Ngodwana), filed an answering affidavit but did not appear at the hearing. It, however, adopted the contentions of the other opposing IPPs.

[4] The government's policy on energy, which has been developed over almost two decades after extensive public participation and stakeholder involvement, recognizes that South Africa is heavily dependent on coal as its primary source for power generation. This is so because the country has large coal reserves which can easily and cheaply be exploited. Government's policy accepts that coal will remain the primary source of energy generation for the foreseeable future. However, it also acknowledges that coal has significant detrimental impacts on the environment, resulting in measurable external costs, also known as 'negative externalities', as well as other costs that are more difficult to quantify. The most significant impact is the emission of greenhouse gasses which make the earth's surface warmer and in turn contributes to climate change. In view of the environmental and health impacts of coal and the need to diversify the sources of supply to maintain energy security, government's energy policy supports and promotes the development of renewable energy to achieve a more sustainable energy mix.

[5] Government has adopted an integrated resource planning (IRP) approach to long term electricity planning. It is undisputed that 'the primary objective of the IRP is to forecast the long-term electricity demand, to determine what energy sources should be used to meet this demand, how new generation capacity will be allocated between the different energy sources, and when new capacity generation will be needed'. Cabinet, in mid-2008, adopted a peak, plateau and decline trajectory (the PPD trajectory), meaning that our greenhouse gas emissions will grow for a while (as a result of investment in new coal-fired power plants), peak between 2020 and 2025, remain flat for a decade and decline in absolute terms from 2030-35 onwards. The use of coal as a power source will thus decline from 2030 onwards. (See *White Paper on Energy Policy* (1998); *White Paper on Renewable Energy* (2003); *Long Term Mitigation Scenarios Report* (2008).) A policy decision, therefore, was made to move

towards a low-carbon economy (i.e. an economy and energy industry that is less dependent on coal) and to incrementally introduce energy from private sector renewable energy generation technologies into the mix of energy sources. The project is premised on the need for diversifying Eskom's energy mix and implementing technologies that will contribute to clean energy production, such as wind, solar, biomass and small scale hydro.

[6] ERA regulates electricity supply in South Africa. Section 1 defines the 'integrated resource plan' (IRP) as 'a resource plan established by the national sphere of government to give effect to national policy'. It is 'a coordinated schedule for generation expansion and demand-side intervention programmes, taking into consideration multiple criteria to meet electricity demand'. Section 4(a) obliges the Regulator to 'issue rules designed to implement the national government's electricity policy framework, the integrated resource plan and this Act'. Section 34 regulates the establishment and procurement of new generation capacity. Section 34(1) provides that-

'[t]he Minister may, in consultation with the Regulator-

(a) determine that new generation capacity is needed to ensure the continued uninterrupted supply of electricity;

(b) determine the types of energy sources from which electricity must be generated, and the percentages of electricity that must be generated from such sources;

(c) determine that electricity thus produced may only be sold to the persons or in the manner set out in the notice;

(d) determine that electricity thus produced must be purchased by the persons set out in such notice;

(e) require that new generation capacity must-

  (i) be established through a tendering procedure which is fair, equitable, transparent, competitive and cost-effective;

  (ii) provide for private sector participation.

[7] The New Generation Capacity Regulations establish rules and guidelines that are applicable to the undertaking of an IPP bid programme for the procurement of new generation capacity. They also facilitate the fair treatment and non-discrimination between IPPs and the buyer of the energy. In terms of the New Generation Capacity Regulations, an IRP will be developed by the DoE and will set out the new generation capacity requirement per technology, taking energy efficiency and the demand-side

management projects into account. The required new generation capacity must be met through the technologies and projects listed in the IRP and all IPP procurement programmes would be executed in accordance with the specified capacities and technologies listed in the IRP. Regulation 6 elaborates on the content and the nature of Determinations made under s 34(1) of ERA, thus:

'(1) The Minister may, in consultation with the Regulator, make a determination in terms of section 34 of the Act.

(2) A determination under section 34(1) shall include a determination as to whether the new generation capacity shall be established by Eskom, another organ of state or an IPP.

(3) If the determination referred to in sub-regulation (2) requires that the new generation capacity be established by an IPP, the Minister shall also determine the identity of the buyer or, where applicable, the procurer and the buyer.

(4) . . .

(5) A determination contemplated in this Regulation is binding on the buyer and the procurer.'

'Buyer' is defined to mean 'in relation to a new generation capacity project, any organ of state designated by the Minister in terms of section 34(1)(c) and (d) of the Act' and 'procurer' means 'the person designated by the Minister in terms of section 34 as being responsible for the preparation, management and implementation of the activities related to procurement of new generation capacity under an IPP procurement programme including the negotiation of the applicable power purchase agreements, which person may or may not be the buyer'.

[8] The powers and duties of the Regulator include the powers and duties to 'regulate prices and tariffs' (s 4(a)(ii) of ERA), to 'consider applications for licenses' and to 'issue licenses for . . . the operation of generation, transmission or distribution facilities' (s 4(a)(i)(aa)). Section 7(1)(a) read with s 4(a)(i) is to the effect that nobody may operate an electricity generation, transmission or distribution facility without a licence issued by the Regulator. The Regulator may make any licence subject to conditions relating, *inter alia*, to 'the setting and approval of prices, charges, rates and charges charged by licensees' (s 14(1)(d)), 'the methodology to be used in the determination of rates and tariffs which must be imposed by licensees (s 14(1)(e)), 'the format and contents of agreements entered into by licensees' (s 14(1)(f)) and 'the regulation of the revenues of licensees' (s 14(1)(g)). Section 15 provides for tariff principles applicable to licence conditions determined in terms of s 14.

[9] Following extensive public participation, representations and comments by interested parties and independent international consultants and consultations with government departments (in which process, it is undisputed, neither CTF nor any of its members participated), the final version of the IRP 2010-2030 (the IRP 2010) was promulgated in the *Government Gazette* on 6 May 2011. It is undisputed that when deciding on the required mix of energy sources, the DoE sought to achieve a balance between the expectations of different stakeholders. It considered key constraints and risks, including: reducing carbon emissions; new technology uncertainties such as costs, operability and lead time to build; water usage; localisation and job creation; regional development and integration; and security of supply, The IRP 2010 was informed by the PPD trajectory and included a cap on carbon emissions. Ultimately, the IRP 2010 determined that, in order to secure the continued and uninterrupted supply of energy, the following mix of new generation technologies was required between 2010 and 2030: a nuclear fleet of 9.6 GW; 6.3 GW of coal; 17.8 GW of renewables; and 8.9 GW of other generation sources. The IRP 2010 was ultimately adopted by Cabinet, and presently represents the government's policy.

[10] The Minister of Energy published the first Determination relating to renewable energy under s 34 of ERA on 1 August 2011, in terms of which she determined, with the concurrence of the Regulator, that 3 725 MW of new renewable energy generation capacity (from wind, CSP, solar PV, biogas, biomass, landfill gas and small hydro) should be procured from IPPs by 2016 or as soon as reasonably possible (the 2011 Determination). On 19 December 2012, the Minister, with the concurrence of the Regulator, published a further Determination under s 34, determining, *inter alia*, that a further 3 200 MW of new renewable energy generation capacity should be procured from IPPs between 2017 and 2020 or as soon as reasonably possible (the 2012 Determination). Each Determination provides that: (a) the new generation capacity allocations are in accordance with the IRP 2010; (b) the DoE shall be the procurer; (c) the electricity produced from the new generation capacity shall be procured through one or more tendering processes; (d) DoE's role as procurer is to conceptualise and conduct the procurement programme and preparation of all associated documents, including the power purchase agreements (PPAs) and other project agreements; (e) Eskom shall be the buyer; (f) the electricity must be purchased from IPPs; (g) the electricity may only be sold to Eskom in accordance with the PPAs and other project

agreements prepared as part of the procurement programme; and (h) the procurement programme should target connection to the Grid for new generation capacity as soon as possible taking into account all relevant factors including the time for procurement.

[11] The DoE is accordingly the procurer for purposes of the REIPPPP. The process has been run by the IPP office, an office established under the auspices of the DoE, together with significant input and support from National Treasury and the Development Bank of Southern Africa. The bidding process comprised the following stages: (a) bid notification; (b) bid registration; (c) bid submission; (d) bid evaluation; (e) announcement of preferred bidders; and (f) signing of project documents, including the PPAs. The REIPPPP bid evaluation involved a two stage process: Bidders had to satisfy certain minimum threshold requirements or qualification criteria in six areas. Bids that satisfied the threshold requirements then proceeded to the second stage of evaluation, where bidders were evaluated on price and economic development commitments. The bidder with the best (lowest) price received 70 points and all other bidders received a proportionate score based on the difference between the lowest price and their own price. The bid price is the electricity tariff offered by the bidder in rand per megawatt-hour. The economic development requirements were broken down into sub-categories covering job creation, local content, ownership by black people, management control, preferential procurement from sub-contractors, enterprise development and socio-economic development for local communities. Price counted for 70 out of 100 points and economic development requirements for 30 out of 100 points. To date there have been six procurement rounds in the REIPPPP, referred to as Bid Window 1, Bid Window 2, Bid Window 3, Bid Window 3.5, Bid Window 4, a Small Projects IPP Programme for projects of under 5 MW and what is referred to as the Expedited round.

[12] The present case only concerns the successful bidders in Bid Windows 4 and the Small Projects Programme. CTF seeks that Eskom be interdicted to sign the PPAs with the successful IPPs until the Regulator has taken certain decisions and that all PPAs that have already been concluded be declared null and void. A PPA is a standard purchase agreement that is signed between a successful bidder and Eskom; it governs the rights and duties of the parties regarding the generation and sale of electricity. The PPA has a lifespan of 20 years from the commercial operation date of the power plant concerned. The PPA, it is undisputed, is non-negotiable in that bidders

must accept the terms thereof as they are when submitting their bids. It was developed after an extensive review of global best practice and consultations with numerous public and private sector entities, including the Regulator. On 26 February 2018, Minister Jeff Radebe was appointed as the new Minister of Energy. He arranged for Eskom to sign the PPAs at a signing ceremony in Johannesburg on 4 April 2018. All the PPAs in respect of Bid Window 4 have been signed. It is only the 27th respondent, Adams Solar PV Project (RF) (Pty) Ltd (Adams), the 28th respondent, Bellatrix Solar PV Project (Pty) Ltd (Bellatrix), and the 31st respondent, Du Plessis Solar PV4 (Pty) Ltd (Du Plessis), who have not yet signed PPAs in respect of the Small Projects IPP Programme for projects of under 5 MW. The claim to interdict Eskom from concluding the PPAs, therefore, is moot as far as all the IPPs are concerned, except in respect of Adams, Bellatrix and Du Plessis.

[13] Despite CTP's protestation to the contrary, the evidence is simply overwhelming that the Regulator issued to each successful IPP bidder an electricity generation licence after following a public participation process for each project, including public hearings, and it issued a written decision. This is the evidence presented by all in the know; the Regulator and the IPPs, including Ngodwana. The Regulator, in issuing the licences, is guided by whether the application for a license is in compliance with the IRP 2010 and, in doing so, is bound by the Determinations. CTF criticises the veracity of the evidence of the Regulator and the IPPs regarding the issuing of the electricity generation licences on the basis that the licences are not annexed to their answering affidavits. Such criticism, in my view, is without merit. The IPPs explain that the decisions and generation licenses are voluminous and for that reason they were not attached to their answering affidavit. CTF, therefore, was at liberty, in terms of r 35(12) of the Uniform Rules of Court, to have required the IPPs to produce the electricity generation licenses, the decisions and the reasons for the decisions referred to in the answering affidavit of the IPPs but has failed to do so. Ngoldwana indeed attached the licence that the Regulator issued to it for the purpose of the operation of its generation facility, dated 29 October 2015, as well as the Regulator's decision and the reasons for the decision. Furthermore, in its replying affidavit, CTF did not take issue with the evidence that the Regulator issued to each IPP an electricity generation licence after following a public participation process for each project, including public hearings, and by issuing a written decision. Instead, it

avers that only the generation licences issued to the IPPs are available on the Regulator's website, but not the decisions and the reasons for the decisions.

[14] CTF's core contention is that Eskom may not conclude PPAs with the IPPs until the Regulator has taken decisions on the ten matters listed in prayers 1.1 to 1.10 of the notice of motion. However, at the commencement of the hearing, it conceded that the Regulator indeed has taken decisions on the matters listed in prayers 1.1 to 1.5 and 1.7, and what remains in dispute, therefore, is whether the Regulator has taken decisions on the four matters listed in prayers 1.6, 1.8 to 1.10. They are:

'1.6 the tariffs and provisions that would be contained in agreements between the IPPs and the buyer;

. . .

1.8 the prices and tariffs at which the electricity that is produced by an IPP should be sold and purchased;

1.9 the terms and conditions of the agreements that would be entered into between an IPP and the buyer; and

1.10 whether the intended power purchase agreement between the seller and the buyer meet all the regulatory requirements.'

[15] CTF concedes in its replying affidavit that, if the Regulator has in fact taken the decisions in question, then its application must fail. Furthermore, it concedes that it does not matter whether the Regulator lawfully took the decisions because even unlawful administrative action stands until reviewed and set aside and it has not sought to review any of the Regulator's decisions. It bears quoting what CTF says in this regard:

'If it can be shown that NERSA did in fact make the decisions relating to the said agreements as alleged, with or without a procedurally fair process, then obviously this application will be ill-founded because the said decisions should have been taken on review many years ago.'

[16] CTF's concession accords with the *Oudekraal* principle that until administrative action (and the consequences thereof) is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simply be overlooked. (*Per* Howie P and Nugent JA in *Oudekraal Estates (Pty) LTD v City of Cape Town and others* 2004 (6) SA 222 (SCA) ([2004] 3 All SA 1 (SCA)) para 26. Also see *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute* 2014 (3) SA 481 (CC) paras 101-103; *Corruption Watch v President of the RSA* [2018]

ZACC 23 (13 August 2018) para 31.) Both the Minister's Determinations in terms of s 34(1) of ERA and the Regulator's concurrence in the determinations constitute administrative actions as contemplated in the Promotion of Administrative Justice Act 3 of 2000 PAJA). (*Earthlife Africa and another v Minister of Energy and others* 2017 (5) SA 227 (WCC) paras 32 and 37.)

[17] All the parties in the know – the Regulator, ESKOM and the IPPs – testify that the Regulator has taken the decisions in question. CTF offers no evidence to the contrary. What it does, instead, is to turn its burden of proof on its head. It contends that the respondents bear the burden of proving that the Regulator has already taken the decisions. It says for instance-

'[i]f the respondents are unable to prove that NERSA has indeed taken the said decisions, then the application must succeed.'

But that, of course, is not so. CTF bears the burden of establishing that it is entitled to the relief it seeks. It claims to be entitled to the interdict and declaratory order it seeks only because the Regulator has not yet taken the decisions on the matters in question. CTF thus bears the burden of proving that ingredient of its case.

[18] CTF has offered no evidence in support of that element of its case and can in any event not overcome the evidence of the Regulator, the IPPs and Eskom to the contrary, which evidence must prevail under the *Plascon-Evans* rule. (*Plascon-Evans Paints Limited v Van Riebeeck Paints (Pty) Limited* 1984 (3) SA 623 (A) at 634E-635C.) Motion proceedings in which final relief is sought 'cannot be used to resolve factual issues because they are not designed to determine probabilities': *Per* Harms JA in *National Director of Public prosecutions v Zuma* 2009 (2) SA 277 (SCA) at 290D-E. I, therefore, have to accept the facts alleged by the Regulator, the IPPs and Eskom, unless they constitute bald or uncreditworthy denials or are palpably implausible, far-fetched or so clearly untenable that they could safely be rejected on the papers. Such finding, it is trite, 'occurs infrequently because courts are always alive to the potential for evidence and cross-examination to alter its view of the facts and the plausibility of the evidence. (*Media 24 Books (Pty) Ltd v Oxford University Press Southern Africa (Pty) Ltd* 2017 (2) SA 1 (SCA) at 18A-B). That test was not satisfied *in casu*.

[19] Decisions 6 and 8 to 10 relate to the prices and terms upon which the IPPs will sell their electricity to Eskom. There is simply no merit in CTF's argument that the Regulator must first determine these matters before Eskom may enter into PPAs with

the IPPs. The Regulator may regulate these matters by imposing licence conditions on the IPPs in terms of sections 14(1)(d) to (g) read with s 15 of the ERA; it is not obliged to do so. There is nothing in s 14 to suggest that license conditions of the kind contemplated by questions 6 and 8 to 10 are a precondition for the conclusion of a valid PPA. The matters contemplated in those questions have been determined by the 2011 Determination and the 2012 Determination, in which Determinations the Regulator concurred. The Regulator, when issuing a generation license, is in terms of s 34(3) of ERA bound by any Determination made by the Minister in terms of s 34(1) in which the Regulator concurred. In terms of reg 6(5) of the New Generation Capacity Regulations the Determinations are also binding on the DoE, as the procurer, and on Eskom, as the buyer of the electricity generated by the IPPs. There is, therefore, nothing left for the Regulator's discretionary determination.

[20] Furthermore, when regard is had to the licence issued to Ngodwana (and I think it is safe to assume that similar licenses were issued to the other IPPs), it is clear that the Regulator adhered to the Determinations by the Minister in which it concurred. Therein, the Regulator endorsed the terms of the PPAs, *inter alia* by providing that '[t]he Licensee must at all times comply with its obligations under the Commercial Agreements, subject to and in accordance with the terms and conditions of those Commercial Agreements' (clause 7.1). 'Commercial Agreements', in terms of clause 1 of the license, 'means Power Purchase Agreement (PPA), Implementation Agreement (IA), Direct Agreement (DA), and Connection Agreement'. The license further provides that '[a]mendment, variations and/or ratification of Power Purchase and Connection Agreements must not be made without the prior written approval of the Energy Regulator'. As to tariffs and the payment of licence levies, the licence provides as follows:

'8. **Tariff**

8.1 The Licensee must sell electricity from the Contracted Capacity to the Buyer, at the tariff stipulated in the PPA.

8.2 Any variations to the tariff in the PPA, other than escalation of such tariff in accordance with the PPA, will be subject to approval by the Energy Regulator.

9. **Payment of licence levies**

The Licensee must pay to the National Energy Regulator such levies in respect of this Licence as determined by the Minister of Energy under the prevailing legislation.'

[21] Under the *Oudekraal* principle, the licences stand and are deemed valid for better or for worse. The Regulator, therefore, is *functus officio* and there is nothing left for it to determine. (See *FSB and Another v De Wet N.O. and Others* 2002 (3) SA 525 (C) para 147.) CTF is neither entitled to have Eskom interdicted from concluding the PPAs with Adams, Bellatrix and Du Plessis, nor is it entitled to have all the other PPAs in question declared unlawful, and therefore null and void. They too, under the *Oudekraal* principle, are deemed to be valid until reviewed and set aside. CTF seeks to escape the conclusion by arguing that 'the conclusion of an agreement . . . is not an administrative action' and accordingly not subject to PAJA. But this is manifestly not so. The decision to enter into each PPA in question constitutes administrative action and is subject to the *Oudekraal* principle. (See *Steenkamp NO v Provincial Tender Board, Eastern Cape* 2007 (3) SA 121 (CC) para 90; *Kwa Sani Municipality v Underberg/Himeville Community Watch Association and Another* [2015] 2 All SA 657 (SCA) para 12; *Bowman Gilfillan Inc v Minister of Transport, In Re: Minister of Transport v Mahlalela and Others* [2018] 3 All SA 484 (GP) paras 62 and 72-80.)

[22] Finally, it bears mentioning that the process and procedure in challenging and setting aside administrative action is by means of legality review proceedings or review proceedings under PAJA, and not proceedings wherein a party merely seeks that the contract concluded be set aside by a court of law or declared null and void. Section 172(1)(a) of the Constitution makes it mandatory for a court to declare conduct that is inconsistent with the Constitution invalid and s 172(1)(b) gives the court the further power to make any order that is 'just and equitable'. Section 8 of PAJA empowers a court, in proceedings for judicial review under PAJA, to 'grant any order that is just and equitable'.

[23] My findings and conclusions thus far are dispositive of the relief claimed by CTF and renders it unnecessary to consider the other issues raised in the application.

[24] In the result, the following order is made:

(a) The application is dismissed.

(b) The applicant is to pay the costs of opposition of:

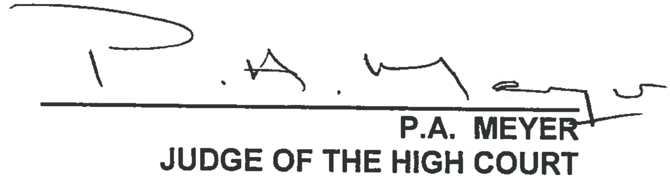
  (i) the first respondent, including those of two counsel;

  (ii) the second respondent, including those of two counsel;

  (iii) the third respondent, including those of two counsel;

(iv) the fourth, fifth, sixth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, thirty-first, thirty-second and thirty eighth respondents, including those of two counsel; and

(v) the seventh respondent.



P.A. MEYER
JUDGE OF THE HIGH COURT

Date of hearing:	18 March 2019
Date of judgment:	26 March 2019
Counsel for the applicant:	Adv AB Rossouw SC (assisted by Adv M Riley)
Instructed by:	Sebueng Attorneys, Montana Park, Pretoria
Counsel for the 1st respondent:	Adv B Roux SC (assisted by Adv KD Ramolefe)
Instructed by:	Cliffe Dekker Hofmeyr Inc, Sandton C/o Asgar Gani Attorneys, Pretoria
Counsel for the 2nd respondent:	Adv K Tsatsawane SC (assisted by Adv N Ferreira)
Instructed by:	Bowman Gilfillan Inc, Sandton C/o Boshoff Inc., Hazelwood, Pretoria
Counsel for the 3rd respondent:	Adv WR Mokhare SC (assisted by Adv J Maisela)
Instructed by:	State Attorney, Pretoria
Counsel for the 4th, 5th, 6th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 31st, 32nd and 38th respondents:	Adv W Trengove SC (assisted by Adv L Sisilana)
Instructed by:	Webber Wentzel, Cape Town C/o Hills Inc., Brooklyn, Pretoria
Counsel for the 7th respondent:	No appearance
Attorneys for the 7th respondent:	Shepstone & Wylie, Umhlanga Rocks C/o Stegmanns Inc., Menlo Park, Pretoria