IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE CIRCUIT COURT, EAST LONDON)

REPORTABLE
CASE NO. EL881/15
ECD 1681/15

In the matter between:

BLUE NIGHTINGALE TRADING 397
(PTY) LTD t/a SIYENZA GROUP **Applicant**

and

AMATHOLE DISTRICT MUNICIPALITY **Respondent**

JUDGMENT

ALKEMA J

The issues:

[1] This case concerns the interpretation of Regulation 32 (1) of the Municipal Supply Chain Management Regulations (the Regulations) promulgated by the Minister of Finance under section 168 of the Local Government Municipal Finance Management Act 56 of 2003 (the LGMFMA), which in turn will determine the validity of an agreement for

the procurement of services concluded on 12 September 2014 between the parties to these proceedings (the Amathole Agreement). The validity of the Amathole Agreement in turn, is determinative of the outcome of both the main and the counter applications in these proceedings.

The Facts:

[2] The chronology of events culminating in these proceedings may be summarized as follows.

[3] The applicant conducts business as, *inter alia*, a contractor and service provider to local authorities under the name of the **Siyenza Group**. The Respondent is the **Amathole District Municipality**, a municipality established in terms of the Municipal Structures Act, 117 of 1998 for the district of East London, Eastern Cape.

[4] The Municipal Infrastructure Support Agent (MISA) is a government component of the Department of Cooperative Governance and Traditional Affairs, and as such an organ of State. On 19 March 2014 the applicant and MISA concluded a service level agreement (SLA) in terms of which the applicant undertook the supply of all materials and the installation of pre-fabricated toilet structures for the utilization in both dry and water borne systems in various areas within the Northern Cape Province. The SLA was concluded pursuant to a lengthy tender process and there is no suggestion that any irregularities occurred in such tender process. The estimated contract value of the SLA was R119. 228. 500,00. The duration of the SLA was extended from time to time.

[5] On 8 April 2014 the respondent addressed correspondence to MISA advising it that *"… Amathole District Municipality (ADM) is in the process of implementing a district wide sanitation backlog eradication programme to selected local municipalities within the district."*

[6] The letter proceeds to say that *"It has come to our attention that MISA is also implementing a similar programme and has through a competitive bidding process appointed contractors to implement its programme."* This is obviously a reference to the SLA.

[7] The letter then concludes with a request formulated as follows, and I quote *verbatim:*

> *"In line with the provisions of the Local Government Municipal Finance Management Regulations (Regulation 32 read with Regulation 16 A6.6 of the Public Finance Management Act Supply Chain Regulation 'which allows for an accounting officer of a municipality to can* (sic) *procure goods or services using any contract arranged by means of a competitive bidding process by any other organ of state, subject to the written approval of such organ of state and the relevant contractor…"*
>
> (a) *ADM would therefore like to request MISA's permission to participate in the current contract between MISA and any of the Contractors implementing MISA sanitation programme;*

(b) *ADM would also request MISA to confirm in writing whether the recommended contract was procured through a competitive bidding process.*

The ADM would on receipt of MISA's response engage directly with the recommended contractor to negotiate the terms and conditions including discounts to the municipality.

Your responses and or approval in writing on the matter will be greatly appreciated."

[8] On 11 April 2014 MISA advised the respondent that it has no objection to its request.

[9] The above correspondence resulted in the conclusion of the Amathole Agreement of 12 September 2014 between the applicant and respondent, and which bears the heading: "*Confirmation of Contractual Terms.*" The front page of the agreement records that the agreement is "*… in respect of the construction of Ventilated Improved Pit (VIP) latrines as per to (sic) the DBSA/ADM Front Loading On Site Sanitation Programme."*

[10] Clause 1 of the agreement records that:

(a) MISA has given its approval for respondent "*… to participate in its contract with the contractor in respect of a sanitation programme in the Northern Cape, as contemplated in*

Regulation 32 of the Municipal Supply Chain Management Regulations;"

(b) The respondent wishes to procure the applicant's services under the SLA *"… in order to implement its On Site (VIP) Sanitation Programme;*

(c) The parties confirm the terms and conditions of the supply of such services as set out in the Amathole Agreement, *"… subject to the amendments and additions documented below …"*

[11] I will later in this judgment return in more detail to the above correspondence, the conclusion of the Amathole Agreement, and the amendments and additions recorded in the Amathole Agreement.

[12] During June 2015 the applicant and MISA by mutual agreement terminated their agreement (the SLA). The applicant thereafter instituted arbitration proceedings against MISA for outstanding payments under the SLA, which dispute is currently on arbitration. It is common cause that clauses 66 to 68 and 70 and 71 of the SLA make detailed provision for dispute resolution including mediation and arbitration.

[13] On 10 June 2015 the respondent purported to cancel the Amathole Agreement with the applicant on the basis that by virtue of the cancellation of the SLA, the contractual basis of the Amathole Agreement no longer exists. The applicant disputes the validity of the cancellation of the Amathole Agreement on the basis that the Amathole Agreement is a separate

and independent contract, the existence and continuation of which is not dependent on the Amathole Agreement, but on its own terms and conditions. [14] It contends that because the Amathole Agreement incorporates certain terms and conditions of the SLA, it does not mean that its existence is dependent on the continued existence of the SLA.

[15] On 17 July 2015 the applicant requested respondent to consent to the appointment of an arbitrator for purposes of resolving the dispute between them by arbitration. The respondent declined the request and persisted with the view that the dispute is not subject to arbitration. This deadlock resulted in the applicant instituting the main application, asking for the appointment of Adv. Phillips Daniels SC as arbitrator in terms of section 12 (1) (a) of the Arbitration Act 42 of 1965 in the arbitration proceedings to be instituted by the applicant against the respondent.

[16] The stance taken by the respondent in its answering affidavit in the main application is no longer that the cancellation of the SLA resulted in the simultaneous cancellation of the Amathole Agreement, but that the Amathole Agreement is void *ab initio* since Regulation 32 had no application to the facts of this case and could not legally spawn the Amathole Agreement without due tender and procurement processes being followed. I mention, in passing, that it is common cause that since Regulation 32 had been invoked for the "*participation*" of the applicant under the SLA to provide the services under the Amathole Agreement, no tender or procurement processes had been followed in the appointment of the applicant under the Amathole Agreement.

[17] The respondent accordingly instituted a counter application asking for the Amathole Agreement to be declared unlawful and void *ab initio* on the basis that Regulation 32 has not been complied with.

[18] The main application was instituted as a matter of urgency. The respondent denies that the matter is urgent and asks for the dismissal of the main application on this ground alone. I am of the strong prima facie view that the main application is not urgent and the usual rules should apply. However, in view of the conclusion I have arrived at on the merits, I believe to dismiss the main application on the ground of absence of urgency alone will only delay the finalization of these proceedings unnecessarily. I therefore propose to deal with the main application and with the counter application on the merits.

The Legislative Matrix:

[19] Neither of the parties have referred me to any authority on the meaning and interpretation of Regulation 32, and nor has my own research revealed any authority on the subject. It follows that the Regulations must be interpreted in accordance with the usual rules of interpretation. In particular, I believe Regulation 32 calls for a contextual and purposive interpretation. It follows that the point of departure is section 217 of the Constitution, 1996, which reads as follows:

> *"217 Procurement*
>
> (1) *When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods and services, it must do so in*

accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2) *Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for−*

(a) *categories of preference in the allocation of contracts; and*

(b) *the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.*

(3) *National legislation must prescribe a framework within which the policy referred to in subsection 2 must be implemented."*

[20] The procurement policy of an organ of state must therefore be compliant with section 217 (1), and must be implemented within the framework prescribed by national legislation. The national legislation contemplated by sub-section (3) are the *Preferential Procurement Policy Framework Act* (PPPFA 5 of 2000) read with *Part 1*, *Chapter 11* (*Goods and Services) (ss110-120)* of the LGMFMA referred to in the first paragraph of this judgment.

[21] Of particular relevance to this case is Part 1 of Chapter 11 (ss110-120) of the LGMFMA. Section 111 requires each municipality to have and implement a supply chain management policy which gives effect to the provisions of Part 1 and therefore to section 217 of the Constitution; section 112 requires that the supply chain management policy must comply with the prescribed framework which covers a long range of supply chain management processes, procedures and mechanisms relating to, *inter alia*, tenders and bids; section 116 describes the requirements of contract

management; and section 119 describes the competency levels of officials involved in supply chain management. The object and purpose of ss 110-120 (Part1) are clearly to give effect to the procurement process required by section 217 of the Constitution.

[22] It is necessary to set out the relevant wording of section 110 of the LGMFMA:

> ***"110 Application of this Part***
>
> (1) *This Part, subject to subsection (2), applies to−*
>
> (a) *the procurement by a municipality or municipal entity of goods and services;*
>
> (b) *the disposal by a municipality or municipal entity of goods no longer needed;*
>
> (c) *the selection of contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; and*
>
> (d) *the selection of external mechanisms referred to in section 80(1)(b) of the Municipal Systems Act for the provision of services in circumstances contemplated in section 83 of the Act.*
>
> (2) *This Part, except where specifically provided otherwise, does not apply if a municipality or municipal entity contracts with another organ of state for−*
>
> (a) *the provision of goods or services to the municipality or municipal entity;*

(b) *the provision of a municipal service or assistance in the provision of a municipal service; or*

(c) *the procurement of goods and services under a contract secured by that organ of state, provided that the relevant supplier agreed to such procurement.*

(3) *The disposal of goods by a municipality or municipal entity in terms of this Part must be read with sections 14 and 90."*

[23] It follows from subsection (1) (a) read with sub-section (2) that, unless subsection (2) applies, Part 1 of Chapter 11 of the LGMFMA has application to the respondent.

[24] As stated earlier, the Minister of Finance promulgated Supply Chain Management Regulations with which the supply chain management policies of municipalities must comply. It is not disputed that the respondent's supply chain management policy complies with the Regulations.

[25] Regulation 32 provides as follows:

"Procurement of Goods and Services under Contract Secured by other Organs of State

"A Supply Chain Management Policy may allow the accounting officer to procure goods or services for the municipality or municipal entity under a contract secured by another organ of state, but only if−

(a) *The contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;*

(b) *The municipality or municipal entity has no reason to believe that such contract was not validly procured;*

(c) *There are demonstrable discounts or benefits for the municipality or municipal entity to do so; and*

(d) *That that organ of state and the provider have consented to such procurement in writing."*

[26] It is now established, as a general principle, that Regulations must be read subject to the empowering legislation. In this regard *Kellaway* has the following to say in *Principles of the Legal Interpretation of Statutes, Contracts and Wills,* E. A. Kellaway, *P. 374-375* (footnotes and authorities omitted):

> *"South African courts have followed the English rule of interpretation and have said that as a statute and a regulation made thereunder shall not be treated as a single piece of legislation, the regulation may not be used as an aid to interpret a provision of the statute. In* ***Moodley v Minister of Education and Culture***, ***House of Delegates*** *the appeal court stated very specifically that even where a statute provides that the regulations made under it are part of the enactment, it must not be treated as a unitary piece of legislation and the regulations shall not be used as an aid to interpreting any of the statutory provisions, nor can the regulations be used to extend the meaning of the enactment.*
>
> *A provision in a statute must be interpreted before the regulation is considered, and if the regulation purports to vary the provision as so*

*interpreted it is **ultra vires** and void. Also, the regulation cannot be used to cut down or enlarge the meaning of a statutory provision.*

*On the other hand, a regulation clearly stated and needing no interpretation and not **ultra vires** must be read without reference to the reason why it was drafted and effect must be given to its clear language."*

The Interpretation of Section 110 of the LGMFMA and of Regulation 32.

[27] In *Municipal Manager: Qaukeni v F V General Trading* 2010 (1) SA 356 (SCA) at para. 11 page 360 the Supreme Court of Appeal held:

*"In considering the validity or otherwise of the written contract …it is necessary to recall that s 217(1) of the Constitution, couched in peremptory terms, provided **inter alia** that an organ of State in the local sphere (such as a municipality) which contracts for goods and services 'must do so in accordance with a system which is fair, equitable, competitive and cost-effective' (my emphasis). This constitutional imperative is echoed in both the Local Government: Municipal Systems Act 32 of 2000 and the Local Government: Municipal Finance Management Act 56 of 2003."*

[28] The SCA per *Leach* AJA (as he then was) in *Qaukeni* (*supra*) *para [16]* accordingly held *"I therefore have no difficulty in concluding that a procurement contract for municipal services concluded in breach of the provisions dealt with above which are designed to ensure a transparent,*

cost-effective and competitive tendering process in the public interest, is invalid and will not be enforced."

[29] The point of departure is accordingly the compliance with s217 of the Constitution and with the PPPFA and Chapter 11 of the LGMFA. The ultimate enquiry is whether an organ of state which contracts for goods and services, had done so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. It follows that the exclusionary provisions of section 110(2) of the LGMFMA and of Regulation 32 must not only be restrictively interpreted, but the exclusion of Part 1 under Chapter 11 of the LFMFA may not detract from or erode the constitutional imperatives of fairness, equity, competiveness and cost-effectiveness.

[30] It cannot be gainsaid that a supply chain management policy which complies with the framework prescribed by section 112 of the LGMFMA and with section 217 of the Constitution, is not only costly, but the implementation is more often than not very time consuming resulting in a further escalation of costs and expenses. In order to prevent these inescapable consequences, the exclusionary provision under section 110(2) has as its object and purpose, in my respectful view, the prevention of unnecessary duplication of costly and time-consuming tender procedures and processes.

[31] Thus, where an organ of state had procured goods or services under a contract preceded by due processes in compliance with the prescribed supply chain management policy, then another organ of state which requires the same goods or services, may contract with the first organ of state for the

supply of such goods or services. Of course, the supplier must agree to such procurement. This procedure removes the duplication of costs relating to bureaucratic red-tape from the tender process, whilst retaining all the elements of the constitutional imperatives under section 217 of the Constitution. It cannot be over-emphasized that the enquiry must always be whether the constitutional imperatives have been compromised by the exemption; if so, it is unconstitutional, if not, the exemption is permissible under section 110(2).

[32] I find the following example of an exemption under section 110(2) read with Regulation 32 and advanced by Mr *Buchanan* SC, who together with Mr *Beningfield* appeared for the respondent, to be helpful and apt, and I quote from his written heads of argument:

> *"The usual example would be where an organ of state contracts, in accordance with a Section 217 compliant process, with a supplier to supply say R5 Million Rand's worth of A4 paper. If that organ of state thereafter does not intend to utilize the entire consignment, it is permissible for another organ of state to, as it were, 'take up the slack' in respect of the remaining portion of the same contract."*

[33] I must add that the second organ of state will do so by procuring the A4 paper under the contract between the first organ of state and the supplier, as required by section 110(2)(c).

[34] The constitutionality of the exemption will always depend on the facts of the particular case. For the exemption to operate under section 110(2) of

LGMFMA, I cannot conceive compliance with the constitutional imperatives unless the goods or services procured by the second organ of state are the same as that required by the first organ of state, and the contract price is the same. If the procurement by the second organ of state had withstood the scrutiny of due process, there is no need to duplicate the same process provided the goods or services and the contract price remain the same. If not, the procurement by the first organ of state was not subjected to the due procurement processes and supply management policy, and the constitutional imperatives are not met.

[35] In my respectful view, the terms and conditions of a procurement contract between the second organ of state and the supplier which complies with Chapter 11 of the LGMFMA (including section 116 thereof which requires the contract to be in writing and stipulates the nature of the terms and conditions thereof and the management of the contract) cannot be deleted or amended or compromised in such a manner as to render the contract with the first organ of state not compliant with either Chapter 11 or with the constitutional imperatives. If so, the exemption is unconstitutional.

[36] It follows from the above that the supply chain management policy of a municipality may cater for the exemption of Part 1 in terms of section 110 (2) of the LGMFMA, and Regulation 32 was clearly intended to give force and effect to the exemption. Regulation 32 thus declares that a *"… Supply Chain Management Policy may allow the accounting officer to procure goods or services for the municipality … under a contract secured by another organ of state …,"* subject to the stated requirements. The words *"… under a contract secured by another organ of state …"* in the Regulation

can only refer to the *"… contract with another organ of state …"* as contemplated by section 110(2) of the empowering legislation (LGMFMA).

[37] Thus, since the Regulation cannot cut down the meaning of section 110 (2), it must be read, and the policy must be interpreted, subject to the requirements set under section 110(2)(a), (b) and (c) of LGMFMA. On the ordinary grammatical meaning of the words used in the section, (a) refers to the situation where a municipality contracts with another organ of state for the provision of goods or services to such municipality. In these instances the other organ of state becomes the supplier who supplies the municipality. This will happen, for instance, where the other organ of state has an excess of goods procured by it in terms of its approved procurement policy and tender processes, has no further use of such excess products, and now provides the municipality with such goods at the same price it has procured same.

[37] Sub-section 110(2)(b) relates to the provision of a municipal service or assistance and is not relevant to the facts of this case. Sub-section (2)(c) on its ordinary literal meaning relates to a contract by a municipality with another organ of state for the procurement of goods and services under a contract secured by that organ of state, provided that the relevant supplier agreed to such procurement. In my respectful view, this can only refer to the situation where the municipality, with the consent of the supplier, either becomes a party to the existing contract between the other organ of state and the supplier; or where the other organ of state concludes a contract with the supplier for the benefit of a third party, namely for the benefit of the municipality, against payment by the municipality of the approved contract

price. In either case, the material terms and contract price of the contract already secured by that organ of state remain binding, and thus remain compliant with section 217 of the Constitution and with the procurement policy of the other organ of state, and therefore with LGMFMA.

[38] Likewise, the requirements set out under paragraphs (a) to (d) of Regulation 32(1) do not widen or enlarge the ambit of section 110(2) of LGMFMA. Those requirements are fully compliant with section 217 of the Constitution, the PPPFA and the LGMFMA.

[39] The requirement of a competitive bidding process under (a) is a constitutional requirement under section 217 of the Constitution. The requirement that the municipality (the respondent) had no reason to believe that such contract (*in casu* the SLA between MISA and the applicant) was not validly procured refers to the belief that the contract duly complied with section 217 of the Constitution, the PPPFA and the LGMFMA. The requirement that there must be demonstrable discounts or benefits for the municipality concerned refers to the constitutional imperative of cost-effectiveness and the unnecessary duplication of costly and time-consuming tender processes and procedures and site establishment. The requirement that the other organ of state and the provider have consented to the procurement follows as a matter of law and is a requirement under section 110(2)(c).

[40] I therefore come to the conclusion that Regulation 32 simply gives effect to the constitutional requirements under sections 217 of the Constitution and the PPPFA and LGMFMA, and they all serve the same

purpose and cater for the same eventuality. Regulation 32 is neither ultra vires the LGMFMA, nor does it detract from or ad to section 217 or LGMFMA.

Has there been compliance with section 110(2)(c) and with Regulation 32?

[41] The first requirement under section 110(2) is that the municipality – *in casu* the respondent –must contract with another organ of state for the procurement of such goods. Such other organ of state, on the facts of this case, is MISA. There is no allegation in applicant's founding affidavit that it contracted with MISA, and nor is MISA joined as a party to the proceedings. The applicant's case is rather that it contracted direct with the supplier acting under Regulation 32. There is a passing comment in paragraph 18 of the founding affidavit to the following effect:

> *"18. That the respondent also advised the applicant that it approached MISA for their consent for the procurement of the services from the applicant and that MISA had advised them that it had no objection thereto."*

[42] The allegations in paragraph 18 are clearly not evidence of a contractual relationship between MISA and the respondent under the SLA, and nor is it the case of the applicant. As I said, the applicant, in its founding affidavit, relies on its contract with the supplier. And this is not allowed under section 110(2). The essential requirement for the exemption under section 110(2) has thus not been established.

[43] Secondly, the procurement of the goods and services relied on by the applicant is clearly not a procurement of those goods and services under the SLA as required by section 110(2)(c). The applicant's case in these proceedings is that it contracted directly with the respondent and such contract is distinct from and separate to the SLA. It contends that the cancellation of the SLA had no effect on the validity of the Amathole Agreement. This contention rests on a misconception of the meaning of the words in section 110(2)(c) *"(for) … the procurement of goods and services under a contract secured by that other organ of state …"* Such contract is the SLA and the section requires the procurement under such contract, or at least under the terms of such contract. When the SLA was cancelled and/or the material terms thereof were amended, the goods and services could no longer be procured under the SLA or under its terms and the exemption allowed under section 110(2)(c) came to an end.

[44] The material terms of the SLA were amended to such an extent that they can no longer be said to constitute a procurement under the SLA, or under its terms. In this regard I refer to the following amendments:

1. The contract amount under the SLA was R119.228.500,00. Under the Amathole Agreement the contract amount was R631.835.837,00. This amendment removes the constitutional imperative of a competitive bidding process in its entirety;
2. In terms of the SLA, the applicant undertook the supply and installation of prefabricated toilet structures for the utilization in both dry and water borne systems. In terms of the Amathole Agreement, the applicant undertook the supply and installation of Ventilated Improved Pit (VIP) latrines as per the DBSA/ADM Front Loading On

Site Sanitation Programme. Although similar, the goods and services under the two contracts are not the same but different. The goods and services and the contract price under the Amathole Agreement were therefore never subjected to a transparent and equitable tender process or procedure.

3. In terms of clause 3.2.3 of the Amathole Agreement, the works include an *"Incubator Programme"* which was not part of the SLA.
4. Clause 3.2.5 of the Amathole Agreement refers to various projects being part of the works to be performed which were not part of the SLA.
5. The duration of the two contracts is different.

[45] I therefore come to the conclusion that the goods and services contracted for under the Amathole Agreement are not for the procurement of goods and services under the SLA or under its terms as required by section 110(2)(c).

[46] There is a final issue which calls for comment.

[47] As said earlier, the object and purport of the exemption under section 110(2)(c) and Regulation 32 is to prevent a costly and time-consuming duplication of tender procedures whilst retaining the constitutional imperatives under section 217 of the Constitution. This is achieved by allowing an exemption if the procurement is in respect of goods and services under another contract with another organ of state, and which procurement by such other organ or state had been subjected to the operation of the

PPPFA and the LGMFMA and thus to the tender requirements prescribed by legislation to give effect to section 217 of the Constitution.

[48] The respondent's attempts set out from para. 8 to 12 of this judgment to invoke the exemption under the Regulation, and the applicant's participation in these attempts, either show a total misconception and misunderstanding of the scheme of the exemption, or a total disregard to its requirements. I refer only to the following aspects of the case.

[49] In its letter of 8 April 2014 addressed to MISA, the respondent advises MISA that the Regulation allows an accounting officer of a municipality to procure goods or service " …*using any contract arranged by means of a competitive bidding process by any organ of state…*" The legislation does not allow anything of the sort.

[50] Having obtained MISA's permission to "*participate*" in the SLA, the respondent then concludes an agreement direct with the service provider (the applicant) by substituting itself in the place of MISA as the contracting party under SLA, and then proceeds to amend the material terms of the SLA beyond recognition. The end result is that, using Regulation 32, the applicant and respondent have maneuvered themselves in a contractual setting for the procurement of goods and services with a contract value in excess of R631m, without having been subjected to any prescribed legislative tender procedure or process, and out of reach of the provisions of section 217 of the Constitution and of the provisions of PPPFA and LGMFMA. And this is certainly not allowed by either Regulation 32 or by section 110 of LGMFMA.

[51] It is clear from the correspondence referred to above and from the contracts entered into, that neither of the parties had any understanding of the object and purport of Regulation 32 or of its scheme of operation.

[52] For the above reasons I am driven to the conclusion that neither section 110(2) nor the Regulation apply to the facts of this case, and that the constitutional imperatives under section 217 of the Constitution read with the PPPFA an LGMFMA have not been met.

[53] In the circumstances I make the following orders:

1) The main application is dismissed;
2) The counter application is upheld and the agreement concluded between the parties on 12 September 2014 entitled **Confirmation of Contractual Terms** (annexure "E" to the Applicant's founding affidavit) is hereby declared unconstitutional, invalid and unlawful, and void *ab initio*;
3) The applicant is ordered to pay the costs of both the main application and the counter application, such costs to include the costs consequent upon the employment of two counsel.

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ALKEMA J

Heard on : 15 September 2015

Delivered on	:	24 November 2015
Counsel for Applicant	:	M C Erasmus SC with W T B Ridgard
Instructed by	:	Stirk Yazbek Attorneys
Counsel for Respondent:		R G Buchanan SC with P G Beningfield
Instructed by	:	Smith Tabata Inc.