IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 7955/21

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

....
DATE SIGNATURE

In the matter between:

ORGANISATION UNDOING TAX ABUSE NPC Applicant

and

BAKWENA PLATINUM CORRIDOR CONCESSIONAIRE (PTY) LTD Respondent

In re: the *in limine* Application between:

BAKWENA PLATINUM CORRIDOR CONCESSIONAIRE (PTY) LTD Applicant

ORGANISATION UNDOING TAX ABUSE NPC First Respondent

SOUTH AFRICAN NATIONAL ROAD AGENCY SOC LIMITED	Second Respondent
THE MINISTER OF TRANSPORT NO	Third Respondent
SKHUMBUZO MACOZOMA N.O (In his capacity as Information Officer)	Fourth Respondent

Brought in re: the Main PAIA Application between:

ORGANISATION UNDOING TAX ABUSE NPC	Application
SOUTH AFRICAN NATIONAL ROAD AGENCY SOC LIMITED	First Respondent
THE MINISTER OF TRANSPORT NO	Second Respondent
SKHUMBUZO MACOZOMA N.O (In his capacity as Information Officer)	Third Respondent
BAKWENA PLATINUM CORRIDOR CONCESSIONAIRE (PTY) LTD	Fourth Respondent

JUDGMENT

DE BEER AJ

Introduction

1. This is an application in terms of rules 30 and 30A of the Uniform Rule of

Court ("*the rules*"). The applicant's founding affidavit[1] contains reasons for the institution of the rule 30/30A application. The respondent opposed the rule 30/30A application for the reasons dealt with in its answering affidavit read with the annexures thereto[2]. The replying affidavit was subsequently delivered by the applicant.

2. The applicant seeks the setting aside of a process referred to as the *in limine* application, as the heading hereof suggests. The *in limine* application instituted by the respondent consists of a "*NOTICE IN TERMS OF Rule 6(5)(d)(iii) OF THE UNIFORM RULE OF COURT*"[3] and a founding affidavit together with annexures[4]. This *in limine* application is instituted based on the provisions of rule 6(5)(d)(iii). Reference herein will interchangeably be made to the *in limine* application or the rule 6(5)(d)(iii) application.

3. It is common cause, as the heading suggests, that the current rule 30/30A application consists of various applications and processes instituted under the above case number. This rule 30/30A application is the consequence of the following:

    3.1. The applicant instituted an application in terms of the provisions of the Promotion of Access to Information Act, 2 of 2000 against SANRAL, the Minister of Transport and S Macozoma N.O. (information officer) during February 2021.

    3.2. On 25 June 2021, the current respondent (Bakwena Platinum Corridor Concessionaire (Pty) Limited) instituted an application to intervene and file an answering affidavit in the main application.

    3.3. On 26 May 2022, the Honourable Justice Potterill granted leave to intervene and provided time periods for the filing of a notice of intention to oppose and an answering affidavit as sought in the intervention application by the respondent.

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1 CaseLines pages 024 – 1 to 024 – 89.
2 CaseLines pages 027 – 4 to 027 – 87.
3 See CaseLines pages 019 – 1 to 019 – 5.
4 See CaseLines pages 019 – 6 to 019 – 78.

3.4. The time periods provided for in the order granted by Justice Potterill[5] expired on 2 June 2022 (in respect of the proposed notice of intention to oppose the main application as detailed in prayer 2 of the order) and 20 June 2022 (for the filing of its answering affidavit in the main application as provided for in paragraph 3 of the order) respectively.

3.5. On 1 July 2022, the respondent delivered its *in limine* application in terms of rule 6(5)(d)(iii). The applicant filed its notice of intention to oppose the *in limine* application on 15 July 2022.

3.6. The respondent enrolled the *in limine* application on the unopposed roll for hearing on 29 August 2022.

3.7. The applicant delivered its notice in terms of rule 30/30A on 31 August 2022, in consequence, the rule 30/30A application was delivered on 30 September 2022. The respondent delivered a notice of intention to oppose the rule 30/30A application on 5 October 2022, and its subsequent answering affidavit on 8 November 2022.

3.8. During the period between the delivery of the respondent's notice of intention to oppose and an answering affidavit in the rule 30/30A application, the parties requested an audience with the Deputy Judge President, which occurred on 12 October 2022. The Deputy Judge President directed that this rule 30/30A application should be heard before any of the other applications (referred to in the heading).

3.9. The matter was enrolled on the opposed motion roll for the week commencing 24 April 2023 in accordance with the practice directives and in compliance therewith. The matter was ultimately heard on 26 April 2023 and judgment was reserved.

Issues to be determined

[5] See CaseLines pages 017 – 4 to 017 – 6.

4. The issues for determination have been recorded and summised under the commensurate heading in the joint practice note filed by the parties.[6]

5. The applicant contends that the *in limine* application instituted by the respondent in terms of rule 6(5)(d)(iii) is irregular, does not comply with the rules, and furthermore does not comply with the court order granted by Justice Potterill referred to above. The applicant contends that the *in limine* application instituted by the respondent under the auspices of rule 6(5)(d)(iii) cannot and should not be considered, heard, adjudicated and/or heard separately from the main application. The applicant contends that such a separate process to hear the *in limine* application is not in line with the trite authoritative position and should therefore be either set aside or dismissed.

6. Conversely, the respondent contends that the position held and authorities referred to by the respondent such as the Minister of Finance v The Public Protector[7] and Ngomane v Ngomane & Others[8] are "*entirely misplaced*". The respondent contends that the *in limine* application and the enrolment thereof "*can stand alone and can be decided separately of the main application*" as it is dispositive of the main application in its entirety and can be heard separately in a convenient and expeditious fashion.

7. The respondent contends that the *in limine* application should be heard separately and can stand alone, so to speak, and can be disposed of "*quickly*", if separated. An analogous situation should be allowed by the court in the exercise of its inherent jurisdiction that this "*point of law which will dispose of the entire matter*" should be heard separately, tantamount to a process envisaged in terms of rule 33(4) where a court can decide *mero motu* or on the application of a party to separate and adjudicate upon a question of law and of such issues determined.

Rule 6(5)(d)(iii) applied to the facts

8. Rule 6(5)(d) reads as follows:

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6 See CaseLines pages 033 – 3 to 033 – 4.
7 2022 (1) SA 244 (GP).
8 2021 JDR 2491 (GJ)

"(d) Any person opposing the grant of an order sought in the notice of motion must –

(i) within the time stated in the said notice, give applicant notice, in writing that such person intends to oppose the application, and in such notice appoint an address within 15 kilometres of the office of the registrar, at which such person will accept notice and service of all documents, as well as such person's postal, facsimile or electronic mail addresses where available;

(ii) within fifteen days of notifying the app of his or her intention to oppose the application, deliver such person's answering affidavit, if any, together with any relevant documents; and;

(iii) if such person intends to raise any question of law only, such person must deliver notice of intention to do so, within the time stated in the preceding paragraph, setting forth such question."

9. As each matter should be adjudicated upon its own merits, it is also necessary to refer to the contents of the court order granted by Justice Potterill on 26 May 2022. Paragraphs 1 to 5 thereof read as follows:

"1. The Applicant (respondent herein) *is granted leave to intervene in the application brought in terms of section 78(2)(c) of the Promotion of Access to Information Act, 2000 in the above*

*Honourable Court under case number 7955/2021 on 16 February 2021 (the "**Main Application**") as Fourth Respondent;*

2. *The Applicant is granted leave to file its Notice of Intention to Oppose the Main Application within 5 (five) days of the granting of this order in the application for leave to intervene;*

3. *The Applicant is granted leave to file its Answering Affidavit in the Main Application within 20 days of the granting of this order in the application for leave to intervene;*

4. *Directing that the time periods relating to the filing of affidavits, and any other procedural aspect in the Main Application are suspended, pending the filing of the Applicant's Answering Affidavit; and*

5. *The costs of this Intervening Application are to be costs in the Main Application*."

10. As to the court order referred to above, the following:

10.1. It is common cause that the respondent applied to intervene in the main application.

10.2. That the order directs the filing of a notice of intention to oppose and an answering affidavit.

10.3. It also suspends the time periods regarding any procedural aspects in the main application pending the filing of the answering affidavit, so applied for by the respondent.

11. Rather than filing the notice of intention to oppose and the answering affidavit in the main application, the respondent decided not to file the notice of intention to oppose nor an answering affidavit in the main application as

ordered by this court in subsequence of applying therefore in the intervention application.

12. Rather than complying with the court order [and supposedly rule 6(5)(d)(iii)], the respondent instituted the *in limine* application by filing a founding affidavit[9]. The respondent chose not to file a notice of intention to oppose, it filed a notice in terms of rule 6(5)(d)(iii)[10], which seems to also fulfill the role of a notice of motion [as opposed to a notice of intention to oppose or a notice seeking the adjudication of a question of law in terms of rule 6(5)(d)(iii)].

13. As to the process to be followed, during argument counsel on behalf of both parties referred to various passages in respect of the same authorities, but for different reasons. These included reference to the Minister of Finance v Public Protector and Others[11], the relevant sections of that matter is quoted herein as follows:

> *"13] What, by way of comparison, is a rule 6(5)(d)(iii) notice? In terms of this rule, where a respondent who opposes the relief sought in the notice of motion, intends to rely on a point of law only, he or she must deliver a notice to that effect in lieu of an answering affidavit setting out the point or question of law. A rule 6(5)(d)(iii) notice may, however, be filed together with or without the answering affidavit. In instances, such as we have here, where the respondent elects not to file an answering affidavit in response to the applicant's allegations, but to take a legal point only by way of a rule 6(5)(d)(iii) notice, a court may hear the case without giving the respondent an opportunity to file an answering affidavit on the merits. Alternatively, it may grant a postponement to enable the respondent to prepare and file an answering affidavit. This approach is, however, discouraged as it is likely to give rise to an undue protraction of*

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9 See CaseLines page 019 – 6.
10 See CaseLines page 019 – 1.
11 2022 (1) SA 244 (GP).

the proceedings and a piecemeal handling of the matter.

[14] Once a respondent intending to rely on a point of law only, delivers a rule 6(5)(d)(iii) notice of his or her intention to do so to the applicant, then the matter is ready to be set down for hearing in court. The applicant will have an opportunity, at the hearing, to present argument on, inter alia, why the law points raised, in the notice, fail to establish a defence capable of being adjudicated without a factual basis (supported by evidence) being put up by the respondent in an answering affidavit.

[15] Viewed in its proper context, a rule 6(5)(d)(iii) notice is not a pleading as contemplated in rule 23(1). It is merely a notice in which the respondent sets forth its intention to rely on point/s of law that are dispositive of the dispute between the parties. The respondent is merely required to set out, in the rule 6(5)(d)(iii) notice, the points of law that it seeks to rely on that will be dispositive of the issues for determination in the matter. Since a rule 6(5)(d)(iii) notice is neither a pleading nor an affidavit, it is impermissible for the respondent to plead facts or produce evidence in support of the law points raised, which should have been placed before the court in an answering affidavit. In the absence of an answering affidavit dealing with the merits of the dispute, the court has a discretion to simply deal with the matter on the points of law raised and the evidence in the founding affidavit. If the respondent relies exclusively on the notice in terms of rule 6(5)(d)(iii), as the Public Protector does in this case, the allegations in the founding affidavit must be taken as established facts by the court."

14. The relevant portion from the matter of Theron and Another NNO v Loubser NO and Others[12], is also quoted herein as follows:

"[23] I agree with Ponnan JA that the appellants clearly had locus

[12] 2014 (3) SA 323 (SCA).

standi to bring these applications and that they must be remitted to the high court for further disposal. But I do not think that it is necessary to discuss, as he does in paras 10 to 20 of his judgment, an issue that does not arise here, of the circumstances in which a high court may, in the exercise of its inherent jurisdiction, separate issues in application proceedings. The issue does not arise because, contrary to what might be thought from paras 10 and 16 of my colleague's judgment, the judge did not agree to separate the issue of locus standi from the remaining issues. It is unnecessary and in my view undesirable to examine cases in the high court where that has been done, especially as to do so may be taken, notwithstanding the express reservation in paragraph 16, as implying an endorsement of some or all of those cases."

15. Various authors in the commentary of published legal works have also considered the issues before court in this application. In this regard, reference is made to various passages in Herbstein and Van Winsen, the Civil Practice of the High Court of South Africa, 5th Edition, Vol 1 at page 429, as follows:

> *"A respondent who raises preliminary issues but also has a defence on the merits may not postpone the filing of an affidavit setting out his defence on the merits pending the court's decision on the preliminary issues."* (See Standard Bank of SA Limited v RTS Techniques and Planning (Pty) Limited 1992 (1) SA 432 (T) at 442A – B; Ebrahim v Georgoulas 1992 (2) SA 151 (B) at 154E – H).

16. On the same page, footnote 51 refers to the issue at hand and states the following:

> *"It is always open to a respondent in application proceedings to take the point by way of a preliminary objection that the supporting affidavits do not make out a prima facie case for the relief claimed, but then he*

should generally do so by filing affidavits on the merits, in the course of which he may take the preliminary point: Bader v Western 1967 (1) SA 134 (C); Provisional Council, Cape v Mohr 1973 (2) SA 310 (C); Pearson v Magrep Investments (Pty) Limited 1975 (1) SA 186 (D)".

17. Having regard to the foregoing and in applying them to the facts *in casu*, the court is not convinced that the respondent's *in limine* application can or should be heard, considered, and adjudicated upon separately. Based thereon that the *in limine* application instituted by the respondent is based thereon that the relief sought by the applicant in the PAIA application "*… this discloses no cause of action, alternatively discloses insufficient averments to sustain a cause of action, to justify the relief sought*" and in consequence therein seeks that "*the Main Application instituted by the applicant, OUTA, is dismissed with costs*", the respondent has not made out a case that there should be a substantial deviation from the authorities referred to above and the usual process to be followed when a respondent seeks to rely on the provisions of rule 6(5)(d)(iii) in prosecuting a question of law.

18. In fact, the reasoning behind a question of law that should be heard together with the main application, as initially sought by the respondent, is that all issues should be prosecuted conjointly, regardless of whether a point *in limine* may dispose of the entire case or not. One of the current issues is whether the prosecution, process, and presentation of the *in limine* application (not an outcome on the merits of the main application) should be heard and dealt with separately. The court is not convinced that the applicant has made out a case for a departure from the rule and the manner in which the respondent should procedurally prosecute a question of law under the auspices of rule 6(5)(d)(iii).

19. The respondent's argument that a separate hearing in respect of the *in limine* application will save judicial time, that the papers will be voluminous, and that the services of the third court will have to be invoked if the respondent is put to task to file an answering affidavit on the merits (in the main application), as argued during the hearing of the application, is

respectfully unconvincing. Specifically, the contentions that the *in limine* application will deal with the main application expeditiously and conveniently. In this regard, the respondent requested to file an answering affidavit, which should have been filed in terms of the court order as far back as 20 June 2022. Even if an extension of time was requested thereafter, such an answering affidavit incorporating the current *in limine* question of law could have been finalised a long time ago. The contention raised by the respondent in this regard, therefore, seems rather contradictory.

20. The Court cannot in these instances make an exception to the current authorities regarding the longstanding process that *in limine* aspects should be included in a respondent's answering affidavit.

21. As contended by the applicant, the applicant will be prejudiced in this regard as it will lose its status as the dominus party, an aspect the Supreme Court of Appeal has also warned against. I will return to this aspect hereunder.

22. Further prejudice would include that the main application be heard in a piecemeal fashion, which is contrary to the intention of rule 6(5)(d)(iii) indicating that the merits of the main application should not be postponed and any preliminary issues should be detailed and included in an answering affidavit, alternatively if a respondent chooses not to file an answering affidavit, such *in limine* question of law should be detailed in the relevant notice.

23. What the rule contemplates is therefore a notice, alternatively a notice together with an answering affidavit, not as the respondent has currently prosecuted the *in limine* application, with reference to a notice of motion and a founding affidavit. Such a process is irregular, does not comply with the rules and furthermore does not comply with the court order of Justice Potterill.

24. Counsel on behalf of the respondent argued that the facts *in casu* are distinguishable from the facts in the Minister of Finance matter. As contended, the distinguishable factor is that the respondent herein intends to

file an affidavit (founding and not answering) together with a question of law/point *in limine*, whereas only a notice was filed (without an affidavit) in the Minister of Finance matter. This election does not amount to a distinguishable principle. A preliminary objection may be instituted with or without the filing of an affidavit, if the election is to depose to an affidavit, a point *in limine* should be contained in an answering affidavit, not a founding affidavit. The very definition of *in limine* is that a question of law should be heard initially and at the very outset of the hearing, not separately. Also, the status and purpose of a founding affidavit as opposed to an answering affidavit is very different. What the respondent intends by way of the *in limine* application should not be presented by way of a founding affidavit, which is currently the case.

25. Lastly, the respondent contended that this court in the exercise of its inherent jurisdiction by virtue of section 173 of the Constitution should develop and/or extend the rule which will allow the High Court to deal with "*issues in applications in limine …*" to be heard "*separately*".[13]

26. This proposal by the respondent does not comply with the following authorities:

26.1. With reference to the authorities regarding special pleas and exceptions compared, the following is stated: "*the rules do not provide separately for special pleas and the defendant must plead to the whole case.*"[14]

26.2. The aforesaid authorities referred to countenance the respondent's contention that an analogy should be drawn between how questions of law may be separated and adjudicated upon, separately at the outset of a hearing. The respondent's contention and analogy in this regard is respectfully misplaced. It presupposes a separate hearing after the presentation and close of pleadings.

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13 See respondent's heads of argument.

14 Pretorius v Fourie NO 1962 (2) SA 280 (O); Du Plessis v Doubells Transport Eiendoms Beperk 1979 (1) SA 1046 (O); David Beckett Construction (Pty) Limited v Bristo 1987 (3) SA 275 (W); Amler's Precedents of Pleadings, Harms, Lexis Nexis, 9th Edition, page 5.

26.3. However, "*Until the actual hearing of the application on the affidavits are not before the court as evidence, they are merely documents filed with the registrar to be used later as evidence when the application is heard, and they can therefore not be objected to until then.*"

27. Applying these principles, the courts have refused applications to strike out offending matter/s from an opposing party's affidavit prior to the filing of answering or replying affidavits. There being no opportunity to object until the matter is before court on its merits, the allegations to which objection is intended to be made must meanwhile be dealt with in the answering or replying affidavits as the case may be, but it does not constitute a waiver of the right to object[15].

28. Following on the above, all the evidence should therefore be received by a court, which *in casu* means the filing of the answering affidavit by the respondent if it so chooses in the main application before any aspect can be heard. It cannot be done in a piecemeal fashion, and it also cannot be done separately prior to the hearing of the main application.

29. This court can also not exercise its discretion in favour of the respondent as sought, as the exercise of such an inherent discretion is limited, with reference to matters that have been considered in this regard by the Supreme Court of Appeal.[16] [17] [18]

30. The following is quoted from the Mhlongo matter which deals with the inherent power or jurisdiction of a Court, to emphasise why this court should not take away the status of the applicant as the dominus party in the main application and why the submissions raised on behalf of the respondent cannot be accepted:

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[15] See Herbstein & van Winsen, Ibid at page 448.

[16] Frank Mhlongo and Others v Tryphinah Mokoena N O and Others (865/2020) [2022] ZASCA 78; 2022 (6) SA 129 (SCA) (31 May 2022) at paragraph 25

[17] First National Bank v Lukhele and 7 Others [2016] ZAGPPHC 616

[18] Standard Bank of SA and Others v Thobejane and Others (and 2 other matters) [2021] ZASCA 92 [2021] 3 ALL SA 812 (SCA); 2021 (6) SA 403 (SCA) (Thobejane)

"[25] This Court in Thobejane rejected those justifications as a basis for a court to decline exercising its jurisdiction. Significantly, the court expressly rejected the proposition (a key holding in Lukhele) that a plaintiff had to institute action in a court closest to a defendant's place of residence. At para 25 the court said the following:

> *'Self-evidently, litigation begins by a plaintiff initiating a claim. Axiomatically, it must be the plaintiff who chooses a court of competent jurisdiction in just the same way that a game of cricket must begin by a ball being bowled. The batsman cannot begin. This elementary fact is recognised as a rule of the common law, founded, as it is, on common sense. The right of a plaintiff to do so was recognised in a Full Court of the Gauteng Division in Moosa v Moosa. That Court relied on Marth v Collier where it was stated:*
>
> > *"The granting of an order for the transfer of legal proceedings from the Supreme Court to the Magistrates' Court, in the absence of a Plaintiff 's consent, would clearly infringe upon the latter's substantive right to choose the forum in which he or she wishes to institute proceedings. As little as our courts have the inherent power to create substantive law (See: the Cerebos Foods case (supra) at 173D; Universal City Studios Inc & Others v Network Video (Pty) Ltd 1986 (2) SA 734 (A) at 754E-755E) do they have the power, in the absence of statutory - or common law authorisation or legal precedent. . . to make orders which infringe upon the substantive rights of litigants or others (See: Eynon v Du Toit 1927 CPD 76; E v E and Another 1940 TPD 333), such as the right of a Plaintiff, as dominus litis,*

to decide in which of concurrent fora he or she wishes to enforce his or her rights."'

31. The various authorities also deal with the aspect of restraint where a party seeks the exercise of the inherent jurisdiction of a court to regulate its own process[19]

32. To exercise the court's inherent jurisdiction in hearing the *in limine* application separately, will open a door for future litigants to delay the hearing of the merits in main applications as various other and a further process may be instituted and/or invoked at the outset. This is not in the interest of justice. To have matters heard in an expeditious fashion, without obviating the right of the respondent to oppose the merits of such an application or to object to the legal principles involved, is in the interest of justice.

33. The wording of rule 30/30A, the reasoning behind invoking the rule is well established and has been considered in the heads of argument, and will not be repeated herein.

34. As to the question of costs, which usually follow the event, it was argued on behalf of the respondent that, if the court is inclined to find in favour of the applicant, the respondent could not have been faulted by the institution of the *in limine* application and should not be criticized for doing so. Although the respondent is at liberty to invoke procedures and/or prosecute a defence in the manner it may choose the respondent in this application criticized the applicant for instituting the rule 30/30A application and referred throughout the papers that "*The applicant's interpretation of the rule is entirely misplaced and without merit*". The respondent also stated that the applicant's rule 30/30A application to countenance the novel approach by the respondent to seek a separate hearing of the *in limine* application "*is completely ridiculous to say the least.*" It is the applicant that invoked the correct process in requesting relief that the *in limine* application is irregular,

[19] Khunou and Others v M Fihrer & Son (Pty) Limited and Others 1982 (3) SA 353 (W); Universal City Studios Inc and Others v Network Video (Pty) Limited 1986 (2) SA 734 (A)

alternatively does not comply with the rules of court.

35. Also, a separation sought by the respondent will not dispose of the main application expeditiously. In fact, the element of expediency and efficacy will be lost if the respondent is to continue with the *in limine* application which is already lengthy in nature. Also, on a superficial reading of the respondent's founding affidavit (sic) in the *in limine* application, it seems to infuse merits applicable to the main application (although this issue is not before the court and no pronouncement is made in that regard). The voluminousness of the *in limine* application rather militates against a speedy resolution and opens up the possibility of an appeal should the court find in favour of the applicant. It will allow the applicant to take the reins of the main application. Justice will best be served if all these aspects are heard conjointly, as is provided by the rules and in accordance with a long line of authorities.

Relief sought

36. Having determined that the respondent's *in limine* application should not stand alone and should not be heard, considered, or adjudicated separately, the Court finds the application instituted by the respondent in terms of rule 6(5)(d)(iii) dated 1 July 2022 is irregular, does not comply with the rules and furthermore does not comply with the order granted by Justice Potterill, and is hereby set aside.

37. The following order is hereby granted:

    37.1. The respondent's *in limine* application instituted in terms of rule 6(5)(d)(iii) of the Uniform Rules of Court under the above case number is set aside.

    37.2. The respondent is afforded an opportunity, if it so chooses, to comply with the court order granted under the above case number by the Honourable Justice Potterill on 26 May 2022, alternatively by filing an answering affidavit in terms of the provisions of rule 6(5)(d)(ii) or delivering a notice in terms of rule 6(5)(d)(iii) together with an

answering affidavit.

37.3. That the respondent is ordered to pay the costs of the rule 30/30A application.

J DE BEER
Acting Judge of the High Court
Gauteng Division, Pretoria

Date of hearing:	26 April 2023
Judgment delivered:	9 May 2023
Counsel for Applicant:	S Mentz
Attorney for Applicant:	Jennings Inc.
Counsel for Respondent:	G Nel SC & A Saldulker
Attorney for Respondent:	Bell Dewar Inc.