



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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INDEX: SEQ 18/2020

No.	Description	Pages
Application filed by: <ul style="list-style-type: none">- Siyangena Technologies (Pty) Ltd;- TMM Holdings (Pty) Ltd; and- Mario J Ferreira for leave to: <ul style="list-style-type: none">- leave to cross-examine Mr Clinton Oellermann; and- Rule 11.1 for the hearing of any further evidence implicating the applicants in connection with matters pertaining to or concurrent with the facts in the High Court application under number 14332/18 be heard in camera alternatively be postponed.		
1.	Notice of Application dated 02 July 2020	001 to 005
2.	Sworn Statement by Thomas Andreas Dubek dated 2 nd July 2020	006 to 037
3.	Confirmatory Affidavit dated Mario Jose Andrade Ferreira undated.	038 to 039
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**IN THE JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO
ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN
THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

SIYANGENA TECHNOLOGIES (PTY) LTD	First Applicant
TMM HOLDINGS (PTY) LTD	Second Applicant
MJA FERREIRA	Third Applicant

**NOTICE OF APPLICATION IN TERMS OF RULES 3.4 AND 11.1 OF
THE RULES OF THE COMMISSION OF INQUIRY, TO INQUIRE INTO
ALLEGATIONS OF STATE CAPTURE**

TAKE NOTICE THAT the abovementioned Applicants hereby make application in terms of:

1. Rule 3.4 of the Rules of the Commission of Inquiry to inquire into allegations of State Capture and in terms of the Rules and principles applicable in terms of the common law, to the Commissioner for leave to cross-examine the witness, **Mr Clinton Oellermann**, in relation to the contents of his affidavit(s) and version(s) and report(s) with reference to the subject matter of the relationship and/or alleged relationship between the Applicants and **PRASA** and/or the Applicants and **Mr Lucky Montana's** involvement in alleged property transactions and/or the relationship between the Applicants and attorney **Riaan van der Walt** and/or alleged

payments, directly or indirectly from the Applicants to said **Riaan van der Walt** and/or **Precise Trade and Invest (Pty) Ltd** and/or **Lucky Montana**; and

2. Rule 11.1 for the hearing of any further evidence implicating Applicants regarding or in connection with matters pertaining to or concurrent with the facts in the High Court application **under number 14332/18** be heard in camera alternatively be postponed until such time that the Applicants have been granted consent to cross-examine any such witnesses implicating the Applicants on such allegations.

The basis upon which the allegations and/or report and/or provisional report and annexures thereto are disputed and the basis upon which the Applicants rely to apply for cross-examination of **Mr Oellermann** are self-evident from the annexed affidavit of **Mr Thomas Andreas Dubek**, the Chief Financial Officer of **Siyangena Technologies (Pty) Ltd** and **TMM Holdings (Pty) Ltd**.

The application is supported by the Third Applicant as is evident from the confirmatory affidavit of **Mr Mario Jose Andrade Ferreira**.

In considering this request to cross-examine **Mr Oellermann** the Commissioner is requested to consider inter alia the following:

1. The Rules governing proceedings of the Commission of Inquiry (hereinafter referred to "*the Rules*") provide for the inclusion of both a natural and jurisdiction person under the definition "*person*".
2. The Commission's Legal Team bears an overall responsibility to present the evidence of a witness to the Commission.
3. The Commission's Legal Team may put questions to a witness to present evidence **aimed at assisting the Commission in accessing the truthfulness of the evidence of a witness**. It is submitted that the Legal Team of the Commission has an obligation to scrutinise, consider and present evidence with a fair measure of objectivity and unbiased.
4. Rule 3.3 obligates the Commission's Legal Team to notify a "*person*" in writing within a reasonable time before a witness gives evidence implicating the "*implicated person*".

5. The aforesaid notice (Rule 3.3 notice) must be in writing and must be furnished within a reasonable time before the witness gives evidence as envisaged in Rule 3.3.1 to 3.3.5.
6. The Commission's Legal Team has an obligation to inform the "*implicated person*" in writing that, if he wishes:
 - 6.1 to give evidence himself;
 - 6.2 to call any witness to give evidence on his or her behalf; or
 - 6.3 to cross-examine the witness,he must, within 2(Two) weeks from date of notice apply in writing to the Commission for leave to do so.
7. It is submitted that fair administrative procedure requires an unbiased, objective and transparent approach, not only in the presentation of evidence but also in the process of obtaining evidence prior to it being presented.
8. If the evidence of **Mr Oellermann** and/or witnesses giving evidence relating to the relationship between the Applicants and **PRASA/ Lucky Montana** are allowed to be led without the veracity of such evidence, it will have a severely prejudicial impact on the Applicants' right to a fair hearing in the High Court **under number 14332/18**.

Annexed hereto are the sworn statements of **Thomas Andreas Dubek** and a confirmatory affidavit of **Mario Jose Andrade Ferreira** together with annexures in support of this application to cross-examine **Mr Oellermann** in order to ensure that the Commission is assisted in pursuing its objective i.e. to establish the truth based on accurate facts.

DATED at PRETORIA on this the 2nd day of JULY 2020


VAN DER MERWE & ASSOCIATES

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TO:

THE COMMISSION

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**IN THE JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO
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SWORN STATEMENT

I, the undersigned,

THOMAS ANDREAS DUBEK

hereby declare under oath and say:

1.

I am a major male person employed as the Chief Financial Officer of the First and the Second Applicants.

2.

I depose to this affidavit in my capacity as Chief Financial Officer of the aforesaid entities, duly authorised thereto.



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3.

I am, further, fully acquainted with the facts to which I depose this affidavit since I have been in the employment of both Applicants since they started business.

4.

I will, briefly, deal with the background to this application to cross-examine **Mr Oellermann** and I intend to do so by structuring this affidavit as follows:

- 4.1 Brief background to this application;
- 4.2 Failure to give notice in terms of Rule 3.3;
- 4.3 The pending court case between **Siyangena Technologies (Pty) Ltd** and **PRASA** and efforts employed by the Applicants to assist the Commission;
- 4.4 The report compiled by **Mr Oellermann** and the bases for the application to cross-examine;
- 4.5 Potential harm and prejudice to the Applicants;



4.6 Conclusion.

BRIEF BACKGROUND

5.

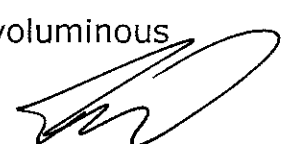
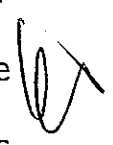
I will, hereinafter, refer to the First Applicant as "**Siyangena**", the Second Applicant as "**TMM**" and the Third Applicant as "**Ferreira**".

6.

It is a fairly well-known (but undisputed) fact that **PRASA** and **Siyangena** have been engaged in litigation for years on end.

7.

Following the institution of arbitration proceedings by **Siyangena** against **PRASA** during or about **2016 (2 February 2016)** (to recover amounts due to **Siyangena** by **PRASA** for goods and services rendered in terms of an agreement) **PRASA** approached the High Court in Pretoria under **case number 7839/16** to review and set aside the agreements/tender awarded to **Siyangena** by **PRASA**. I, on purpose, do not encumber the Commission with the detail of the aforesaid matter since the bundles consist of thousands of pages and, as a consequence, voluminous



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affidavits and annexures (which I am fully prepared to make available to the Commission if so requested).

8.

On **3 May 2017** the High Court in Pretoria dismissed the application by PRASA, a copy of the judgment of the Honourable Judge Sutherland is appended hereto marked **Annexure "TD1"**.

9.

PRASA applied for leave to appeal. The application for leave to appeal was dismissed. A copy of the order is appended hereto marked **Annexure "TD2"**.

10.

PRASA petitioned to the Supreme Court of Appeal. Which petition was dismissed. A copy of the order is appended hereto marked **Annexure "TD3"**.

11.

PRASA, then, applied for special leave for reconsideration to the Supreme Court of appeal. The aforesaid was similarly dismissed. A copy of the



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order is appended hereto marked **Annexure "TD4"**.

12.

On numerous occasions Siyangena directed correspondence to the various Ministers of Transport to alert the Ministers of the aforesaid and I take the liberty of appending hereto two examples of letters delivered to the offices of the Ministers at the time marked **Annexures "TD5"** and **"TD6"**.

13.

As and when **Siyangena** pursued the arbitration proceedings against **PRASA** following the unsuccessful attempt to review the agreement(s) between **PRASA** and **Siyangena**, **PRASA** issued a second application for review with which I will deal hereinunder under a separate heading.

14.

The aforesaid matter is duly enrolled for hearing thereof before a full court in Pretoria on **11 August 2020** until **14 August 2020**.



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15.

Siyangena accused **PRASA** of delaying tactics as is evident from the papers in an application by **PRASA** to postpone the previous hearing of the matter, same due to be heard in **February 2020**. I append hereto the application for postponement launched by **PRASA** as well as the opposing affidavit filed by **Siyangena** respectively as **Annexures "TD7"** and **"TD8"**.

16.

I incorporate the contents of my affidavit resisting the postponement of the matter. The aforesaid affidavit will, in any event, play a role when I address the issue of the potential prejudice in allowing untested, highly inadmissible and bias evidence.

17.

On **24 February 2020** the High Court in Pretoria postponed the hearing of the matter on request of **PRASA** and awarded punitive costs against **PRASA**.



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18.

In the meantime **Siyangena** realised that an alternative methodology gained momentum *i.e.* an effort to pursue the aforesaid hearing in the public domain by **introducing inaccurate and untested "evidence"** at the Zondo Commission without allowing the Applicants an opportunity to protect their interests as I will illustrate hereinunder.

EFFORTS TO PRESENT EVIDENCE WITH THE EXCLUSION OF THE APPLICANTS' INPUT

19.

It must be common cause that all three Applicants are entitled to receive a notice in terms of Rule 3.3 of the Rules if and when the Commission's Legal Team intends to present a witness whose evidence implicates or may implicate the implicated person. For that reason our legal representative referred the Commission to the definition of "*person*" in the application to which this affidavit is appended. In fact, on **2 July 2020 Mr Soni** for the Commission submitted to the Commission that he **did** issue **notices to the Applicants**. It is denied.

20.

Allow me the opportunity to illustrate the efforts employed by the



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Applicants to assist the Legal Team of the Commission since **March 2020** and, in response, a failure to acknowledge the application of the Rules by the Commission's Legal Team.

21.

On **19 February 2020** the Third Applicant, **Ferreira**, received a notice in terms of Rule 3.3 with specific reference to evidence the Commission's Legal Team intended to present. It, specifically, related to potential evidence of **Mr Adurrazack "Zackie" Achmat**.

22.

On **24 February 2020 Ferreira** instructed his attorneys to record that they also represent **Siyangena**. A copy of the letter dated **24 February 2020** is annexure "SCC2" to a further letter directed to the Commission's Legal Team on **17 March 2020** to which I humbly refer the Commission as **Annexure "TD9"**.

23.



I incorporate the contents of the letter of our attorney dated **17 March 2020** and in particular refer the Honourable Commissioner to the correspondence dated **24 February 2020** incorporated in the letter dated



17 March 2020.

24.

In the same letter our attorney deals, chronologically, with the pending application in the High Court in Pretoria and the potential prejudice it may cause if untested and potentially ill-considered "*evidence*" is introduced as fact.

25.

No response was received from the Legal Team of the Commission and on **3 April 2020** a further letter was directed to the Legal Team of the Commission marked **Annexure "TD10"**.

26.

On **6 April 2020** our attorneys received a letter from the Legal Team of the Commission, a copy thereof appended hereto marked **Annexure "TD11"** to which the Commission is referred and from which it is evident that, due to **an error in the secretariat of the Commission**, the Chairperson was not aware of our correspondence.



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27.

The letter, further, states that the Chairperson was not aware that the review application referenced above is scheduled to be heard in **August 2020**.

28.

The letter, further, states that **the Chairperson was of the *prima facie* view** that the Commission must continue to present evidence notwithstanding the fact that the application in the High Court will be heard on **11 August 2020**. We accepted the *prima facie* view of the Chairperson at the time and did not want to interfere with the proceedings of the Commission.

29.

Having regard to the fact that the Applicants have no intention to disrupt the proceedings of the Commission and having regard to the fact that **the Chairperson took note of the contents of the correspondence** directed to the Commission's Legal Team the Applicants assumed that the principles underpinning the conduct of the Commission's Legal Team will be adhered to and respected.



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30.

The contrary, however, occurred.

31.

On **Thursday, 18 June 2020, at 21h48** in the evening the Third Applicant received a notice in terms of Rule 3.3 with specific reference to evidence the Commission's Legal Team intends to present through a witness, **Mr Clinton Oellermann**. I emphasise that the First and Second Applicants did not receive any notices as far as I could ascertain.

32.

I pause to state and record that:

32.1 it is evident from the aforesaid that **TMM** is implicated in the report; and

32.2 it is evident from the report that **Siyangena** is implicated in the report.



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33.

Despite the aforesaid and despite having recorded the fact that the First and the Second Applicants are represented the Commission's Legal Team failed to issue notices to **Siyangena** and/or **TMM**. Mr Soni advised the Commission otherwise on **2 July 2020**.

34.

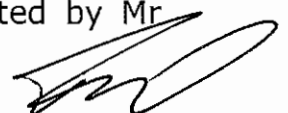
Regardless, on **20 June 2020** the Third Applicant's attorneys recorded the fact that the report of **Mr Oellermann** is materially inaccurate and incomplete, deceptive and seemingly rushed and based on factual inaccuracies **which could have been prevented if an objective investigative process was followed**.

35.

A copy of the aforesaid letter directed to the Commission is appended as **Annexure "TD12"**.

36.

I pause to confirm that the Third Applicant received two further notices on **19 June 2020**, the one pertaining to evidence to be presented by Mr



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Nicholas Johannes Loubser and the other regarding evidence to be presented by **Mr Andre Wagner**.

37.

Again neither of the first two Applicants (Siyangena and TMM) received any notice as they were entitled to.

38.

In a letter dated **22 June 2020** the Third Applicant indicated that he instructed his attorneys to appoint of a forensic auditor to prepare a report and/or assist the Third Applicant in preparation of an application to cross-examine Mr Oellermann. A copy of which is appended hereto marked **Annexure "TD13"**.

39.

In the meantime, on **26 June 2020**, the Legal Team of the Commission directed correspondence to the Applicants' attorney stating that the affidavit and/or report of **Mr Oellermann** stands to be amended as is evident from **Annexure "TD14"** appended hereto.



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40.

On **30 June 2020** the Applicants instructed its attorney to direct an urgent letter to the Commission's Legal Team and to record the prejudice and lack of procedure to which the Applicants are subjected. A copy of the letter is appended hereto marked **Annexure "TD15"** to which the Honourable Chairperson is humbly referred.

41.

Repeated in the aforesaid correspondence is the plea of the Applicants to be allowed an opportunity to assist **Mr Oellermann** to remedy what seems to be fatally defective and factually incorrect information which, against presentation thereof in the public domain, will **cause the Applicants to suffer irreparable harm to which I will refer to later in this affidavit.**

42.

In the letter the Applicants' attorney re-emphasises the Applicants' concerns with regards to a reasonable opportunity to respond and to be heard on the principle *audi alteram partem*.



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43.

Our attorney emphasised the fact that cross-examination of witnesses at a later date will not remedy the irreparable harm to be suffered.

44.

The rushed presentation of evidence without allowing the Applicants an opportunity to either contribute or test the veracity of the evidence will have immediate adverse effects, same out of proportion and out of context.

45.

The Legal Team of the Commission informed the Applicants that the evidence of the witnesses will be presented on **1 and 2 July 2020**. Copies of the aforesaid letters are appended hereto as **Annexures "TD16"** and **"TD17"**.

46.

The Commission's Legal Team, further, directed a letter to the Applicants' attorney on **1 July 2020 (Annexure "TD18"** appended hereto) received at 08h44 "*instructing*" our attorneys to inform the Commission's Legal



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Team before close of business on **1 July 2020** (before the fourteen day period provided for in the Rules expire) to indicate whether they intend to pursue an application for cross-examination.

47.

Despite the Rules affording (at least the Third Applicant) 14(Fourteen) days from the date of receipt of the Rule 3.3 notice the Commission's Legal Team "*considered*" the letter of the Applicant and encumbered the Third Applicant to exercise an election with regards to a right it has in terms of the Rules until the next evening.

48.

Again and with a fair measure of frustration the Applicants' attorney directed an urgent letter to the Commission's Legal Team on **1 July 2020 at 13h50** in the afternoon. On **2 July 2020** Mr Soni advised the Commissioner that it was "*received late in the afternoon*". I wish to record that it was prior to the evidence of Mr Loubser being presented.

A handwritten signature in black ink, consisting of a large, stylized 'O' or 'G' shape followed by a series of loops and a long horizontal stroke.

49.

The aforesaid letter is appended hereto marked **Annexure "TD19"** and the Honourable Commissioner is referred to the contents thereof from which I humbly quote the following:

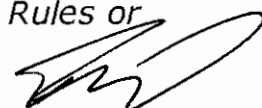
"3. *It will be common cause that we received a notice under Rule 3.3 (referencing the evidence of Mr Oellermann) on **18 June 2020 at 21h48** in the evening whilst we received a similar notice for Mr NJ Loubser on **19 June 2020 at 13h42** in the afternoon.*

4. *The fourteen day period has not expired.*

5. *On **28 June 2020** we received your correspondence advising that Mr Loubser will give evidence on **1 July 2020** whilst Mr Oellermann will give evidence on **2 July 2020**.*

6. *Your letter received earlier this morning encumbered us with an obligation-(we could not find authority for the aforesaid) to "inform the Commission by the end of today, **1 July 2020**, whether we intend to bring such application".*

7. *Although we believe there is no obligation to do so we confirm that we intend to apply (within the timeframes stipulated in the Rules or*



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any such extended time decided by the Commissioner on application) for cross-examination of:

7.1 *Mr Loubser; and*

7.2 *Mr Oellermann.*

8. *We request you to ensure that the contents of our correspondence be brought to the attention of the Commissioner whilst we, again, reserve our clients' rights in toto."*

50.

Despite receipt of the letter directed to the Legal Team of the Commission the witness, **Mr Loubser**, gave evidence as per the notice given by the Commission's Legal Team on **28 June 2020**.

51.

By the time this application was prepared it was uncertain whether the Commission's Legal Team pursued the evidence of **Mr Oellermann** with which I will deal hereinafter.

A handwritten signature in black ink, consisting of a large, stylized initial 'O' followed by a series of loops and a long horizontal stroke extending to the right.

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52.

Under the aforesaid (strenuous) circumstances the Applicants instructed their attorney to prepare and file this application to bring pivotal information to the attention of the Chairperson of the Commission.

SEVERE PREJUDICE AND IRREPARABLE HARM BEING CAUSED AND ALLOWED

53.

Let me, firstly, illustrate one of the first examples of how the Legal Team of the Commission allowed severe and irreparable harm to be caused to the Applicants by disallowing the Applicants to protect their interests and their rights.

54.

It is common cause that the Applicants, through their attorney, advised the Legal Team of the Commission **prior to the commencement of the evidence of Mr Loubser** that a request for the cross-examination of **Mr Loubser** would be necessary.



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55.

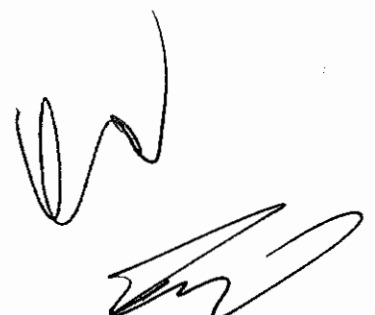
The aforesaid should also be read against the background of the obligation on the Commission's Legal Team to scrutinise information and to present evidence truthfully.

56.

When the evidence leader, **Mr Vas Soni**, opened his address prior to the questions advanced to **Mr Loubser** he (**Mr Soni**) informed the Commission that he (**Mr Soni**) will illustrate through the evidence that **Mr Montana** benefited in the sense that immovable property was registered in his personal name without him paying a cent for same and insinuated that **TMM** paid, directly or indirectly, for the properties.

57.

The suggestion was that Mr Riaan van der Walt, obviously presented as a front, used a company called **Precise Trade and Invest 02 (Pty) Ltd** to launder money and to pay for properties for and on behalf of Mr Montana, directly or indirectly.



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58.

The aforesaid is factually untrue and, with respect, misleading.

59.

Mr Soni referred to the affidavit of **Mr Loubser** (and the annexures thereto).

60.

Nowhere (as far as I could ascertain) did **Mr Soni** inform the Commission (and the public for that matter) that:

60.1 there is a Share Certificate appended to the affidavit of **Mr Loubser** clearly indicating that **Mr Jan Adrian van der Walt** is the **sole and exclusive shareholder of Precise Trade and Invest 02 (Pty) Ltd.** A copy of the Share Certificate is appended hereto marked **Annexure "TD20"**;

60.2 nowhere did **Mr Soni** correct his remark that the immovable properties were, allegedly, registered in the name of Montana. As at **20 October 2015** the properties referenced in numbered paragraph 1 of a letter to **Loubser van der Walt** (Annexure

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"NJL4") were registered in the name of the company. For the convenience of the Commissioner I append hereto Annexure "NJL4" to the affidavit of **Mr Loubser** and refer to numbered paragraph 1 thereof. It is appended hereto as **Annexure "TD21"**.

61.

The aforesaid two documents clearly illustrate that:

61.1 all the immovable properties in question were (and apparently still today) registered in the name of **Precise Trade and Invest 02 (Pty) Ltd;**

61.2 **Riaan van der Walt** is the only shareholder and the only director of the company.

62.

It is, therefore, incorrect and, again with respect, misleading to suggest that **Mr Montana** obtained any benefit through and from Riaan van der Walt and/or **Precise Trade and Invest 02 (Pty) Ltd.**



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63.

Now that **Mr Loubser** gave his evidence (under guidance and with leading questions from **Mr Soni**) the Applicants received numerous media enquiries from, *inter alia*, **Mr Pieter Louis Myburgh**, the same reporter who covered the "story" in Rapport in **2015**.

64.

I take the liberty of quoting the following query received on the cell phone of the Applicants' attorney at 20h50 in the evening on **1 July 2020**:

*"Testimony heard today at the Zondo Commission of Inquiry into State Capture seemingly indicate that TMM/Siyangena/Mario Ferreira had **allegedly gratified or 'bribed'** Mr Lucky Montana in relation to the multi-billion rand contracts that Siyangena Technologies had secured from Prasa. These alleged bribes were effected by **seemingly making payments to Precise Trade and Invest, Mr Riaan vd Walt's company**. Here is one chain of transactions and events as a case in point: On 17 June 2014, Prasa sent a 'notice of appointment' for the ISAMS II contract to Mr Ferreira (this is documented). The very next day, 18 June 2014, TMM Holdings, Siyangena's holding company, transferred R1.85m and R4m (altogether R5.85m) to Precise Trade and Invest. Precise Trade and Invest, also on 18 June 2014, then paid R2.25m*



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towards settling Mr Lucky Montana's bond for a property located at 335 Main Street in Waterkloof, Pretoria. Could Mr Ferreira/Siyangena/TMM kindly comment on these events and transactions? For what possible reasons should they not be construed or viewed as alleged bribes that they had paid to Mr Montana through Precise Trade and Invest?" (Own emphasis)

65.

In addition and to illustrate the immediate consequences of inaccurate evidence I refer to an article that appeared on News 24 on **2 July 2020** from which I quote the following:

"Between 2014 and 2015, Montana snapped up prime properties in upscale Sandhurst in Johannesburg and Waterkloof in Pretoria. Van der Walt featured prominently in both transactions and assumed ownership of the assets although Montana was the purchaser.

Van der Walt also had links to Siyangena Technologies, a company that scored multibillion-rand contracts with Prasa under Montana's tenure."

66.

The immediate and unsolicited narrative is that the Applicants funded



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properties for Montana. Such narrative is incorrect and factually unsustainable yet it was presented as fact by the Legal Team of the Commission.

67.

The aforesaid was presented despite the fact that there were documents in the possession of the Commission's Legal Team suggesting exactly the contrary.

68.

I refer to the aforesaid as one single example of the backlash of inaccurate and bias presentation of evidence whilst the contrary is clearly shown on the documentation before the Commission's Legal Team.

69.

I now turn to deal with the report of **Mr Clinton Oellermann** and the evidence he will probably lead on **2 July 2020** and reasons for cross-examining **Mr Oellermann**.



70.

Despite neither of the first two Applicants receiving any notice from the Commission's Legal Team (and I submit that both the First and Second Applicants were entitled to a notice) the Applicants apply for the cross-examination of **Mr Oellermann's** evidence (as it is envisaged to be lead at present) on the following basis:

70.1 **Mr Oellermann** does not contextualise, at least within reasonable measures, his report.

70.2 **Mr Oellermann** fails to report that **Siyangena** commenced the execution of **Phase 1 ISAMS** several years prior to the date on which he commences with his report.

70.3 **Mr Oellermann** fails to explain in any way whatsoever what the benefit for **Mr Montana** was or would have been with regards to:

70.3.1 the Waterkloof property;

70.3.2 the Sandhurst property;

70.3.3 the Hurlingham property.



- 70.4 The alleged benefit to **Mr Montana** on the Parkwood property is explained as a profit of **R3 000 000.00** (three million rand) over a period of 18(Eighteen) months based on what seems to be a bank valuation at the time.
- 70.5 In his report (and in the property related reports) generous reference is made to "**TMM**" and "*TMM payments*".
- 70.6 It seems as if **Mr Oellermann** suggests that **TMM** (the Second Applicant) made direct payments to **Precise Trade and Invest 02 (Pty) Ltd** and/or, for instance, transferring attorneys (**Borchardt and Hansen**) from time to time.
- 70.7 **Mr Oellermann** suggests that the aforesaid "*payments*" by **TMM** coincide with certain payments to and from **Precise Trade and Invest 02 (Pty) Ltd**.
- 70.8 Nowhere in his report, his affidavit or any of the further documents did **Mr Oellermann** "*fact check*" the so called source of payment referenced as "*TMM payments*".



70.9 With a little effort **Mr Oellermann** would have been able to establish the following:

70.9.1 None of the payments mentioned in the report of **Mr Oellermann** were made from a **TMM** bank account. I am the Chief Financial Officer of **TMM** (and **Siyangena**) and I can confirm the aforesaid and I will put Mr Oellermann to the proof thereof if and when allowed an opportunity to do so.

70.9.2 The bank account from which the "TMM payments" were made is not a bank account opened by TMM or any of its officials or any of its employees. In fact, it seems as if it was a "*Cash Money Market Account*" opened for and on behalf of Loubser van der Walt Attorneys at Investec Bank. To illustrate the aforesaid I append hereto marked **Annexure "TD22"** a copy of what seems to be a printout of a bank statement "*reflecting*" TMM payments.

70.10 With reference to the affidavit of **Mr Loubser, Mr Oellermann** relies, further, on handwritten notes on an Investec Private Bank bank statement for **Precise Trade and Invest 02 (Pty) Ltd**, a copy for the convenience of the a copy thereof appended hereto




marked **Annexure "TD23"**.

- 70.11 Assuming that payments into the aforesaid account came from **TMM Mr Oellermann**, in his report(s) suggests that payments were made by the Applicants for the benefit of Precise Trade and Invest 02 (Pty) Ltd.
- 70.12 Where **Mr Oellermann's** assumption is inaccurate and misplaced is where he failed to investigate the source of the payments. **TMM Holdings (Pty) Ltd** held an account with ABSA Bank, not Investec Bank.
- 70.13 The Investec account from which payments were apparently made was an Investec account opened with **Loubser van der Walt Incorporated** with "*client name*" **TMM Holdings (Pty) Ltd** as is evident from **Annexure "TD24"** appended hereto.
- 70.14 **Loubser van der Walt Incorporated, Mr Riaan van der Walt**, informed **TMM** (myself and **Mr Mario Ferreira**) on **12 March 2014** that the aforesaid account was opened in order to receive payments in terms of the agreement(s) concluded with the Applicants and payments made into the account were with specific reference to the Wetlands/Wakkerstroom Farm. I append hereto marked **Annexure "TD25"** a copy of an email



received from **Mr Van der Walt** on **12 March 2014** clearly confirming the following:

"Sal jy asb alles toekomstige betalings rakende Wetlands/Wakkerstroom Plaas direk in die Investec Investment acc maak. Gebruik asb verwysing vir inbetaling as Triple Trade.

Vgl fin ooreenkoms moet daar begin Maart 'n bedrag van R8 321 000.00 BETAAL word: Mario het bevestig dat R4 000 000.00 vandag en R4 321 000.00 vgl week betaal kan word." (Sic)

- 70.15 Any payments made from the actual bank account of **TMM** to the aforesaid account were made in accordance with the agreement with Mr van der Walt.
- 70.16 Mr van der Walt had full control and exclusive access to the aforesaid account **opened in the name of Loubser van der Walt Incorporated.**
- 70.17 The funds paid into the aforesaid account of **Van der Walt** were paid for the referenced project and I can, categorically, state that the Applicants had no further control over of or access to the said account.



70.18 **Mr Oellermann** did not request any of the Applicants to address him on the aforesaid structure and I submit that, as a consequence, his provisional report(s) are misleading, inaccurate and factually flawed.

70.19 **Mr Oellermann** implicates the Applicants with nuances, suggestions and unfounded assumptions of wrongdoing. The Applicants were not allowed an opportunity to address **Mr Oellermann** whilst the Applicants believe **Mr Oellermann** had an obligation to investigate the matter properly.

71.

As a consequence of the aforesaid the Applicants believe that:

71.1 they were not afforded an opportunity to protect their rights as envisaged in the Constitution, the Rules of the Commission, applicable legislation and/or the common law;

71.2 they are entitled to make submissions to the Commission;

71.3 they are entitled to cross-examine **Mr Oellermann** on a date and time convenient for the Commission.



- 32 -

72.

I conclude to record that any evidence presented and allowed prior to the court case to be heard in **August 2020** in the High Court of Pretoria will, for obvious reasons, prejudice the right of the Applicants and, in particular infringe on the rights of **Siyangena** to pursue its rights without undue interference, delay and prejudice.

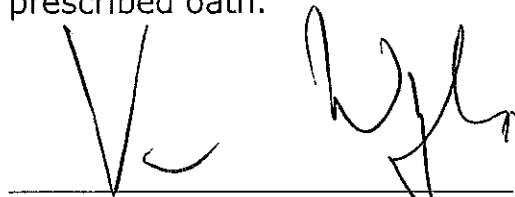
73.

I therefore request the Honourable Commissioner to grant the relief sought in the application to which this affidavit is appended.

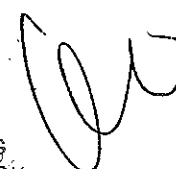


DEPONENT

Signed and sworn before me at Pretoria on this 2nd day of July 2020 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath.



COMMISSIONER OF OATHS



Justus van Wyk
Commissioner of Oaths
Practising Auditor, RSA
Wyk Accountants & Auditors
c/o Koedoesnek & Grysbok St
Waterkloof Ridge, Pretoria, 0181
Republic of South Africa

**IN THE JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO
ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN
THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MARIO JOSE ANDRADE FERREIRA

hereby declare under oath as follows:

1.

I am a major male businessman and director of **TMM Holdings (Pty) Ltd.** I am also the Third Applicant in this application.

2.

The contents of this affidavit is true and correct and falls within my own personal knowledge, except where the contrary clearly appears from the context or is otherwise stated.

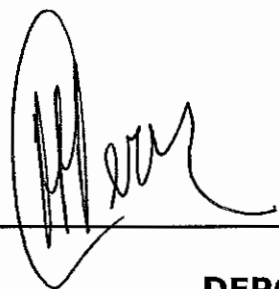
3.



I have read the affidavit deposed of by **THOMAS ANDREAS DUBEK** and confirm the contents thereof insofar as it relates to me.

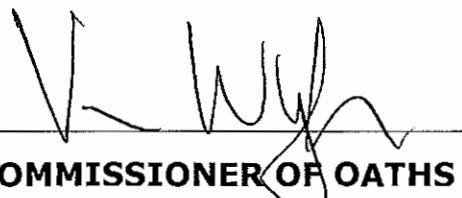
4.

I support the relief sought in the application.



DEPONENT

Signed and sworn before me at _____ on this _____ day of _____ 2020 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath.



COMMISSIONER OF OATHS

Justus van Wyk
Commissioner of Oaths
Practising Auditor, RSA
Wyk Accountants & Auditors
c/o Koedoesnek & Grysbok St.
Waterkloof Ridge, Pretoria, 0181
Republic of South Africa



"TD1"¹



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO 2016/7839

In the Matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

APPLICANT

AND

SIYAGENA TECHNOLOGIES (PTY) LTD

FIRST RESPONDENT

RETIRED JUSTICE EZRA GOLDSTEIN

SECOND RESPONDENT

RETIRED JUSTICE MEYER JOFFE

THIRD RESPONDENT

JUDGMENT

Sutherland J:

Introduction

1. In this application, the applicant (Prasa) seeks to review decisions made by itself in awarding tenders to the first respondent (Siyagena) on the grounds that the awards were unlawful for want of compliance with several peremptory legal injunctions. The remaining respondents were appointed to arbitrate a dispute between the parties in respect of which a stay was sought, an issue now resolved by agreement. The sole remaining controversy exists between Prasa and Siyagena. However, there are several legal controversies which complicate the review application.
2. At the hearing, Siyagena brought an application in terms of Rule 33(4) of the Uniform rules of Court. That rule reads:

‘If, in any pending action, it appears to the court mero motu that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of, and the court shall on the application of any party make such order unless it appears that the questions cannot conveniently be decided separately’.
3. Prasa opposed such a separation. A debate was conducted about whether or not an order should be granted. As is apparent, unless it was inconvenient, if the question posed could be dispositive of the application, Siyagena’s application had to be granted.
4. The gravamen of the application turned on an interpretation of sections 7(1) and 9 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) as to how the period of 180 days was to be computed and what would constitute an application to extend the period. Those sections provide thus:

‘Section 7(1)

Any proceedings for judicial review in terms of section 6 (1) must be instituted without unreasonable delay and not later than 180 days after the date-

(a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2) (a) have been concluded; or

(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.’

‘Section 9 Variation of time

(1) The period of-

(a) 90 days referred to in section 5 may be reduced; or

(b) 90 days or 180 days referred to in sections 5 and 7 may be extended for a fixed period,

by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned.

(2) The court or tribunal may grant an application in terms of subsection (1) where the interests of justice so require.’

5. The affidavits filed had already alluded to the difference of opinion between the parties about the computation of the 180-day period. Prasa alleged that it had brought its application within 180 days of the receipt of a report by the Public Protector and that it was compliant with section 7(1) on the premise that it was only upon such receipt that the board of Prasa learnt of the alleged improprieties of its former CEO, Mr Lucky Montana, who is elsewhere alleged to be the principal perpetrator of several irregularities and corrupt conduct in favouring Siyagena for the award of tenders in return for financial benefits. Siyagena disputes that Prasa had complied with section 7(1) and alleged that the application was years out of time because the relevant dates when the decisions were made by Prasa to award the tenders were between 2011 and 2014.

6. During this debate Prasa introduced a notice to amend its notice of motion. The amendment proposed a prayer for condonation. The proposition was not based on a concession that Prasa was not compliant, but in the alternative, should the court hold that its approach to the computation was incorrect. The ancillary contention by Prasa was that the contents of the affidavits could be relied upon to substantiate the condonation sought. This proposition was resisted by Siyagena, which filed a notice of objection setting out several grounds.
7. I thereupon ruled that I would grant a Rule 33(4) application to separate certain issues. I did so because it was indeed convenient to decide the question of compliance by Prasa. Either Prasa satisfied section 7(1) or it did not. If not, did the material that Prasa relied upon to assert that a condonation application was before me, satisfy the prescripts of section 9? If it was not possible to find for Prasa on one or other of those bases, it would follow that I had no authority to hear the matter of the review. That would indeed dispose of the matter.
8. To this end, I formulated the issues sought to be separated in terms of rule 33(4) thus:
 - (1) Is the period of 180 days prescribed by Section 7(1) of PAJA to be calculated from the date upon which an applicant for review becomes aware of an impropriety attaching to the decision sought to be reviewed?
 - (2) If the answer to (1) is yes; has the review application before this court been brought after the expiry of the 180-day period?
 - (3) If the answer to (2) is yes; is there an application before the court as contemplated by section 9 of PAJA?
 - (4) If not, has this court the authority to entertain the review application?

The separated questions

Question no 1

9. Section 7(1) has been the subject of several decisions. The argument that knowledge of improprieties is the relevant date to trigger the 180-day period has been raised and roundly rejected. In *Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality* [2017] ZASCA 23 (24/03/2017) at [7] the proposition that the date of first knowledge of the irregularities triggered the computation period was held to be 'untenable'. The Court held:

'The contention of the respondent that the time period only commenced running once it became aware of the unlawful administrative action, is untenable. The issue of whether knowledge of the reviewable irregularities in the decision sought to be reviewed was required before this period commenced running, was decided by this Court in *Aurecon South Africa (Pty) Ltd v Cape Town City* [2015] ZASCA 209; 2016 (2) SA 199 (SCA) para 16, in the following terms: 'The decision challenged by the City and the reasons therefore were its own and were always within its knowledge. Section 7(1) unambiguously refers to the date on which the reasons for administrative action became known or ought reasonably to have become known to the party seeking its judicial review. The plain wording of these provisions simply does not support the meaning ascribed to them by the court a quo, ie that the application must be launched within 180 days after the party seeking review became aware that the administrative action in issue was tainted by irregularity. That interpretation would automatically entitle every aggrieved applicant to an unqualified right to institute judicial review only upon gaining knowledge that a decision (and its underlying reasons), of which he or she had been aware all along, was tainted by irregularity, whenever that might be. This result is untenable as it disregards the potential prejudice to the respondent (the appellant here) and the public interest in the finality of administrative decisions and the exercise of administrative functions.' (Underlining supplied)

10. The Court referred to the SCA decision in the *Aurecon Case* as authority, and in the Constitutional Court decision the proposition was endorsed. Mbha AJ in *City of Cape Town v Aurecon SA (Pty) Ltd* [2017] ZACC 5 (28/02/2017) held at [41] that:

‘On a textual level, the City’s contention confuses two discrete concepts: *reasons* and *irregularities*. Section 7(1) of PAJA does not provide that an application must be brought within 180 days after the City became aware that the administrative action was tainted by irregularity. On the contrary, it provides that the clock starts to run with reference to the date on which the reasons for the administrative action became known (or ought reasonably to have become known) to the applicant.’

11. Mbha J went on to hold at [43] that the awareness of the decisions and their reasons, as contemplated in section 7(1) occurred when the decisions were made. This is, in a sense, self-evident when the applicant for review is the entity that made the decision, as distinct from a person at arms-length who might ‘learn’ of the decision and the reasons only subsequently.

12. Accordingly, question No 1 must be answered No.

Question No 2

13. Accordingly, the approach of Prasa that only when its Board of Control learned of the irregularities, committed in 2011 and 2014, in August 2015 when it read the report of the Public Protector, did the ‘clock start to run’, is incorrect. That stance permeated the approach of Prasa throughout the entire application, a matter of some significance, as shall be evidenced.

14. The review application, launched on 2 February 2016 has been brought after the expiry of the period of 180 days because the dates upon which it 'learned' of the impugned decisions and the reasons therefor, (ie the awards of tenders and the contracts that followed) were the dates they were taken on behalf of Prasa on 20 February 2011, 31 March 2011, 6 June 2014, 1 July 2014 and 19 October 2014.
15. It was suggested that a material distinction should be made between the case of an employee making a decision he was not authorised to make and one making an authorised decision. That cannot be correct. Any decision purporting to be made on behalf of the juristic entity, and indeed acted upon by the juristic entity, satisfies section 7(1). The imputing of knowledge derives from the juristic person's human agents making the decisions and it is not, in law, significant whether the person making the decision could lawfully make it; eg by approving expenditure of a sum in excess of his delegated authority. The enquiry at that stage is about the external manifestation of a decision not about the propriety of making it.
16. Accordingly, question No 2 must be answered: No; Prasa has not complied with the 180 day rule.

Question No 3

17. What took place in this matter was that at the outset, Prasa believed that it was compliant. The *bona fides* of Prasa can be accepted. In the answering affidavit that stance was challenged. The response by Prasa appears from the replying affidavit. That response was to assert that the challenge was ill-conceived, offer an argument that Prasa could not logically

take action until the ignorance of the present Board members had been dispelled, but then to say this:

‘Insofar as is necessary, the applicant makes application for condonation of its delay in launching the review proceedings on the grounds set out in the founding, supplementary and this replying affidavit. The applicant will therefore seek an amendment of its notice of motion to incorporate the conditional condonation it seeks.’ (paragraph 10.9)

18. This statement was the foundation for the notice of amendment already referred to. The text reads:

‘Insofar as is necessary condoning the applicant’s late institution of the review application outside the 180n days prescribed ...and that the court should exercise its discretion conferred upon it in terms of section 9 ...to condone the applicant’s non-compliance’

19. The contention that accompanied this prayer was that the existing affidavits contain all the necessary allegations of fact to support such relief. Several passages were pointed to in argument; they addressed the *de facto* predicament of the Board discovering belatedly that, so it is alleged, their CEO was deceitful and corrupt. The essential question, however, whether this material is what section 9 requires.

20. In my view, the basis put forward by Prasa, at best, (and without expressing a view about the strength or weakness of its intrinsic merits) reaches towards an application to condone non-compliance. But that is not what section 9 demands. What section 9 envisages is not a condonation application, but an application to extend the period of 180 days. In the absence of an agreement between the litigants, a party who needs an extension must motivate it with

regard to the 'interests of justice'. On that premise, a focussed application is required, not an *en passant* condonation application.

21. Were there to be any doubt about that construction, it is dispelled by the remarks of Swain JA in *Asla* at [8] – [11]:

[8] The respondent therefore required an extension of the period fixed by PAJA within which to bring the application for review. Section 9 contemplates a substantive application to the relevant court or tribunal, by the person or administrator concerned. That application ought to have been made by the respondent when it first approached the court for relief. It did not do so. Once the appellant had raised the issue of compliance with PAJA, the respondent was obliged to launch an application in terms of this section for an extension of the fixed period. This application could thereafter have been consolidated with the review application. The correct procedure would have ensured that the relevant facts were placed before the court a quo, to enable it to exercise its discretion properly.

[9] The court a quo held that the decisive factor in exercising its discretion whether to grant an extension, was its finding that the procurement in respect of the Reeston contract was not 'legal and regular'. This was based upon a finding that the award of this contract did not comply with the requirements of s 217 of the Constitution. Accordingly, so held the court a quo, the award of the contract was consequently invalid and fell to be set aside. Because of the serious breach of the section, and the other statutory instruments that regulated procurement in the context of local government, the court a quo decided that it was in the interests of justice that the respondent be granted the requisite extension in terms of s 9 of PAJA, to review and set aside the award of the contract. It added that 'Accordingly, the invalidity of the decision to award the Reeston contract to the respondent cannot be validated'.

[10] This conclusion was erroneous. It was the product of a number of misdirections committed by the court a quo.

(a) It impermissibly decided the merits of the review application before considering and determining the application for condonation. In doing so, it effectively precluded any finding that the application for condonation should be refused on its merits, with the result that any unlawful award of the Reeston contract would be 'validated' by the delay.

(b) It regarded the serious nature of the breach of s 217 of the Constitution, as a complete bar to the 'validation' of the award of the Reeston contract to the appellant, which could have followed as a result of the delay in bringing the application for condonation.

(c) It failed to consider whether the respondent had furnished a full and adequate explanation for the entire duration of the delay.

(d) It failed to properly consider the extent to which the appellant had proceeded with the performance of the contract, and the resulting prejudice to the appellant in setting the contract aside at that stage.

(e) It failed to properly consider the nature and extent of the prejudice to be suffered by the inhabitants of Duncan Village and the broader public interest, in setting the contract aside at that stage.

[11] The manner in which the discretion to extend the statutory time period should be exercised, was described in *Camps Bay Ratepayers' and Residents' Association & another v Harrison & another* [2010] ZASCA 3; 2010 (2) All SA 519 (SCA) para 54, in the following terms: 'And the question whether the interests of justice require the grant of such extension depends on the facts and circumstances of each case: the party seeking it must furnish a full and reasonable explanation for the delay which covers the entire duration thereof and relevant factors include the nature of the relief sought, the extent and cause of the delay, its effect on the administration of justice and other litigants, the importance of the issue to be raised in the intended proceedings and the prospects of success.' [My emphasis.]'

22. In short, Prasa needed to put up an application that meets these requirements. It has not done so. The reason why it has not done so is that the premise of its application was that it was unnecessary. Having been found to have erred in that regard, it has been left without a pleaded case to substantiate it. Understandably, there is no full exposition, there is no account of the progress of the projects which were the subject matter of the tenders, the prejudicial consequences of a successful review are not addressed, and the public interest in getting the projects completed is not addressed.

23. These findings must not be interpreted to mean that this judgment purports to find that Prasa has no case to advance in support of an application as contemplated by section 9; this judgment is confined to holding that Prasa has not put up a section 9 application.

24. Accordingly, question No 3 must be answered No.

Question No 4.

25. It must follow that I am not authorised to hear a review application in this matter. The application falls to be dismissed for that reason.

Costs

26. Costs are sought and, in my view, must follow the result. The costs of two counsel is also appropriate.

The Order

(1) The period of 180 days prescribed by Section 7(1) of PAJA is not to be calculated from the date upon which an applicant for review becomes aware of an impropriety attaching to the decision sought to be reviewed, but from the date that it is aware of the decision and the reasons therefor.

- (2) The review application before this court has not been brought within the 180-day period because the relevant dates, for the purposes of Section 7(1) of PAJA, occurred between 2011 and 2014, and the application was launched in 2016.
- (3) There is no application before this court as contemplated by section 9 of PAJA.
- (4) This court does not have the authority to entertain the review application.
- (5) The application is dismissed.
- (6) The applicant shall bear the costs including the costs of two counsel.



Roland Sutherland
Judge of the High Court,
Gauteng Division, Pretoria.

Heard: 2 May 2017
Judgment: 3 May 2017

For the Applicant:
Adv V Maleka SC, with him,
Adv E Mokutu
Instructed by Werksmans.

For First Respondent:
Adv K N Luderitz SC, with him,
Adv A R J Els
Instructed by Van der Merwe & Associates.

"TDZ"

REPUBLIC OF SOUTH AFRICA



THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO 2016/7839

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED
	6/6/2017
DATE	SIGNATURE

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Applicant

and

SIYAGENA TECHNOLOGIES (PTY) LTD

First Respondent

RETIRED JUSTICE EZRA GOLDSTEIN

Second Respondent

RETIRED JUSTICE MEYER JOFFE

Third Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

Sutherland J:

Introduction

[1] On 3 May 2017, I dismissed a review application which sought to invalidate a tender awarded to the respondent by the applicant. The order was based on the finding that the court was denied jurisdictional competence to hear the review because the applicant had brought the application later than the 180 days prescribed in section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA)¹ A litigant who is late in bringing a review is not absolutely unsuited. Section 9 of PAJA provides that an extension of the period can be granted, either with the agreement of the other litigants or by a court 'where the interests of justice so require'.² I held that the applicant was late with its review application and that no substantive application to extend had been made. Moreover, the substance of what would need to be traversed in such an application to extend had not been put up in the papers. As a result, in consequence of those findings, logically, the judgment did not address the merits of the review application.

¹ Section 7(1):

Any proceedings for judicial review in terms of section 6 (1) must be instituted without unreasonable delay and not later than 180 days after the date-

- (a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2) (a) have been concluded; or
- (b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.

² Section 9:

(1) The period of-

- (a)
 - (b) 90 days or 180 days referred to in sections 5 and 7 *may be extended* for a fixed period, by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned.
- (2) The court or tribunal may grant an application in terms of subsection (1) where the interests of justice so require. (Emphasis supplied)

[2] The applicant now seeks leave to appeal against that order. As I read the notice of application for leave to appeal, despite a degree of ambivalence, what the applicant wishes to invite the Court of appeal to decide, contrary to the findings in the judgment, is this:

- 2.1. That the finding that the applicant had knowledge of the controversial decisions, in the sense contemplated by section 7, at the time that the chief executive officer, one Montana or the Board of Directors took the decisions in question was wrong.
- 2.2. That the error in making such finding was the consequence of the Court not undertaking a mandatory 'factual enquiry' into when the applicant had knowledge of the decisions.
- 2.3. That had the factual enquiry been carried out, the finding that the applicant acquired knowledge of the decisions at a later date might have been made; thus, another court might do just that.
- 2.4. That furthermore, even if the finding was correct, the formality of a substantive application to fulfil the requirements of section 9 for an extension of the 180 period, is not absolute, and in certain circumstances a court shall grant an extension in the absence of such a default approach, this case being one which warranted an 'exception' to the default rule.

Evaluation

[3] In my view these contentions are without merit.

[4] The test for determining when the clock starts running for the purpose of section 7 is not controversial. The decisions in *Aurecon South Africa (Pty) Ltd v Cape Town City 2016 (2) SA 199 (SCA)* and in *Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality & another [2017] ZASCA 23 (24 March 2017)* are unequivocal that the critical moment when a person or a juristic entity acquires the requisite knowledge of its own decision which it later wishes to impugn, is when the decision is taken.³

[5] In my view, as a fact, so it can be accepted, the members of the board, as composed at present, did not know of the decisions in question. They were either appointed after the decision were taken or in one instance, the Chief Executive Officer, allegedly, made a decision behind their back. Frequently, the allusion has been made to the 'present' or the 'reconstituted' board. This is a dangerous way of articulating the identity of the board. The 'board' is an organ of the applicant, not a discreet juristic entity. Its function is to take decisions *as the applicant*. Its membership may vary from time to time, but no random collection of board members can repudiate what their predecessors on the board have decided or purport to be free from the consequences of what the organ has decided in the past. Nor can the board set itself up as a distinctive 'thing' that can on

³ *Asla* at [7]; *Aurecon* at [41]

behalf of the applicant escape the consequences of what its chief executive officer does on behalf of the applicant, albeit irregularly.

[6] That the board, as presently composed, correctly and honourably seeks to redeem the applicant from the skulduggery allegedly perpetrated in the past is commendable. But the *de facto* knowledge the present members have is not the knowledge contemplated by section 7 of PAJA.

[7] It was argued, contrary to the plain dictum in *Asla*, that a substantive application for an extension is not always required and that the present case offers an example of where a less strict approach is appropriate. I doubt that this a cogent contention. But assuming that the *form* of seeking the section 9 relief is not critical, what remains critical is the disclosure of factual allegations that address the requirements of that section; ie facts pertinent to the 'interests of justice'. The notion of the 'interests of justice; is not a one-way street; an assessment implies a traverse of the prejudice to all interested parties including the general public and the respondent, no less than the applicant, if a review succeeds or fails. That consideration then leads into the notion that a *factual enquiry* might have yielded a different result.

[8] Put bluntly, the substance of such an enquiry was not to be found in the papers. There is no surprise that it was absent; the papers were drawn on the premise that no extension was required. *Ergo*, this theme was not addressed. The 'condonation' application launched at the hearing was not amplified, and it sought to rely on the remarks

made in the body of an application that did not have as its aim the addressing of the issue of the interests of justice. The judgment expressly addressed that shortcoming.

[9] Assistance was sought to be drawn from the decisions in *Allpay 1* and *All pay 2* and the two-stage approach to reviews.⁴ The notion is misdirected. These decisions do not address the application of sections 7 and 9 and the approach articulated therein relates, rather, to the way that the merits of the review be dealt with. That stage could not be reached in this case.

[10] Three days before this application for leave to appeal was heard, the judgment in *PRASA v Swifambo Rail agency (Pty) Ltd (Unreported 2015/42219 ZAGJ)* was handed down. That matter, decided by Francis J, dealt with a review application to set aside as invalid another tender irregularly awarded by the applicant through the alleged ill-doings of the Chief Executive Officer. It is apparent that this review was launched late. Ten days before that matter was due to be heard the applicant launched a substantive application as contemplated in *As/a*. Francis J granted the extension. At [32] Francis J, addressed an argument about the propriety of additional affidavits by the applicant to seek the section 9 extension and held that the judgment given by me was distinguishable. I agree. Not only was there a substantive application for an extension as contemplated in section 9, but that court had allegations of fact before it with which to address the requisite issues prescribed by section 9. In this matter neither was present. On behalf of the respondent, attention was drawn to the fact that the project was alleged to have been 93 % complete

⁴ *Allpay Consolidated Investment Holdings (Pty) Ltd v CEO, SASSA 2014 (1) SA 604 (CC) (Allpay 1)* and *Allpay Consolidated Investment Holdings (Pty) Ltd v CEO, SASSA 2014 (4) SA 179 (CC) (Allpay 2)*

and the cancellation of the contract had perilous implications for rail traffic and the public interest. The pertinence of these considerations to the propriety of a late review, in the interests of justice, are self-evident, and moreover, section 9 requires these value judgments to be made *before* embarking on the merits of the review and enquiring into the alleged irregularities.⁵

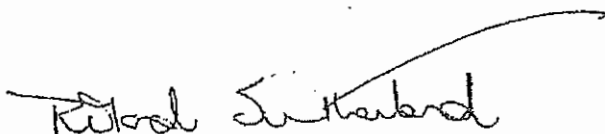
[11] Francis J made the finding (at [33]) that the late revelation of improprieties in a decision by the current members of a board was a relevant factor in deciding an extension application. That finding must be correct. However, it is but one among many factors, listed in *As/a* at [9] – [10]. In my view, this decision offers no support for the application in this matter.

[12] Accordingly, I cannot conclude that the grounds advanced afford a basis upon which another court might reach a different conclusion. In reaching this result, I am not unmindful of the need for clean government and the need to eradicate corruption in public procurement, factors which counsel for the applicant has stressed are important. Notwithstanding those sentiments, no cogent case is made out for the relief claimed as contemplated in section 17(1)(a) of the Superior Courts Act 10 of 2013. The case law relied upon to reach the decision is clear, and the factual substratum said to exist is absent.

⁵ *As/a* at [10] cited in the judgment in this matter at [21].

The Order

[13] The application for leave to appeal is dismissed with costs, including the costs of two counsel.



Roland Sutherland
Judge of the High Court,
Gauteng Local Division, Johannesburg

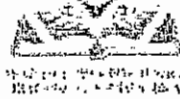
Hearing: 5 July 2017
Judgment: 7 July 2017

Appearances:

For Applicant:
Adv V Maleka SC,
with him Adv E Mokutu,
instructed by Werksmans.

For Respondent:
Adv K Lüderitz SC,
With him, Adv A Els.
Instructed by Van der Merwe & Associates.

"TD3"



Registrar's Office • PO Box 258, Bloemfontein, 9300 • c/o Elizabeth- & President Brand Street,
Bloemfontein •
Tel (051) 4127 400 • Fax (051) 4127 449 • www.supremecourtofappeal.gov.za

Enquiries:	Mr Myburgh	Date: 22 August 2017	Ref: 745/17
Contact number:	051 – 412 7400		
E-mail address:	PaMyburgh@justice.gov.za		

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Symington & De Kok
P O Box 12012
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YOUR REF: BM JONES/bv

Honey
P O Box 29
BRANDHOF
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Mr/Ms

**APPLICATION FOR LEAVE TO APPEAL
PASSENGER RAIL AGENCY OF S.A v SIYANGENA
TECHNOLOGIES (PTY) LTD & OTHERS**

With reference to the application lodged in this office on 21 JULY 2017 this Court ordered on 22 AUGUST 2017 that the application be **dismissed** as per attached order:-

Yours faithfully


P S W MYBURGH (Mr.)/SM
REGISTRAR

REGISTERED POST (H/B/D/O)

YOUR REF: 7839/2016 SUTHERLAND J (Court a quo)

Registrar of the High Court
Private Bag X 67
PRETORIA
0001
Copy for your information.



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

**CASE NO: 745/17
GP CASE NO: 7839/2016**

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

APPLICANT

and

SIYANGENA TECHNOLOGIES (PTY) LTD

1ST RESPONDENT

RETIRED JUSTICE EZRA GOLDSTEIN

2ND RESPONDENT

RETIRED JUSTICE MEYER JOFFE

3RD RESPONDENT

COURT ORDER

BOSIELO JA and TSOKA AJA

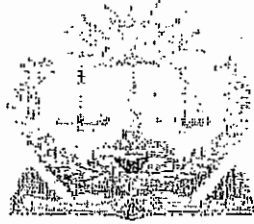
ORDERED ON 22 AUGUST 2017

The application for leave to appeal is dismissed with costs on the grounds that there are no reasonable prospects of success on appeal and there is no other compelling reason why an appeal should be heard.

By the court

**E.S.W. MYBURGH (Mr.)/SM
REGISTRAR**

"TD4"



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

**CASE NO: 967/17
SCA CASE NUMBER: 745/17
GP CASE NO: 7839/2016**

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

APPLICANT

and

SIYANGENA TECHNOLOGIES (PTY) LTD

1ST RESPONDENT

RETIRED JUSTICE EZRA GOLDSTEIN

2ND RESPONDENT

RETIRED JUSTICE MEYER JOFFE

3RD RESPONDENT

COURT ORDER

MAYA P

ORDERED ON 07 NOVEMBER 2017

The application in terms of s 17(2)(f) of Act 10 of 2013 is dismissed with costs for the reason that no exceptional circumstances warranting reconsideration or variation of the decision refusing the application for leave to appeal have been established.

By the court

**P S W MYBURGH (Mr.)/SM
REGISTRAR**



van der Merwe
&
Associates Incorporated

COPY
COPY

"TD5"

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

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Ilze Mattheus (B.Com, LLB,
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Assisted by / Bygestaan deur:
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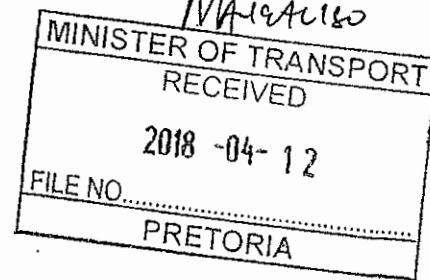
Our Ref: **MR GT VD MERWE/st/S493/24**

Your Ref: **HONOURABLE MINISTER BLADE NZIMANDE**

12-04-2018

URGENT

BY HAND



**The Minister of Transport
National Department of Transport
159 Forum Building
Cnr Bosman and Struben Streets
Pretoria**

The Honourable Minister Nzimande,

**SIYANGENA TECHNOLOGIES (PTY) LTD / PASSENGER RAIL
AGENCY OF SOUTH AFRICA**

1. I act on behalf of a service provider of PRASA, Siyangena Technologies (Pty) Ltd.
2. **During or about 2011 and again in 2014** my client was awarded contracts to conduct certain services and render certain goods to PRASA with a combined **value of approximately R5 000 000 000.00 (Five billion rand)**.
3. My client **complied with its contractual obligations towards PRASA** and instituted arbitration proceedings against PRASA during or about **October 2015** in order to recover payment on outstanding invoices.
4. The purpose of this letter is not to substitute any pending litigation but, merely, to inform you of certain and important

aspects and events pertaining to the **SOE currently under your hand.**

5. I endeavoured to ventilate some of the issues of concern with your predecessor, the then Honourable Minister Joe Maswanganyi. I intend not to regurgitate what I have said in correspondence to Mr Maswanganyi on 2(two) different occasions hence I append hereto as **Annexure "Minister A"** a copy of my previous letter dated **29 November 2017** served on the offices of your predecessor on that very same day.
6. Appended to the aforesaid letter you will find correspondence directed to Mr Maswanganyi on **31 May 2017** and annexures thereto with specific reference to previous court orders and judgments.
7. I have been instructed to bring to your attention that my client is, again, involved in litigation against PRASA, this time under a **second review application** launched by PRASA. The papers are extremely voluminous and I intend to not burden you with same. I, however, **need to alert you to the fact that PRASA, on its own version**, reported in **December 2017** that the work done by our client (on the different phases and extensions thereof) **was very much completed and in order**. To acquaint yourself with that version I take the liberty of appending hereto a copy of a **report of PRASA as at December 2017 as Annexure "Minister B"**.
8. You may, of course, maintain a *prima facie* view that the matter must take its normal course through the courts but I have advised my client to bring to your attention that the interest component alone on the outstanding amount causes the debt to **increase with approximately R1 000 000.00 (One million rand) per day**.
9. On **13 March 2018** the Deputy Judge President of the High Court in Pretoria issued a directive that the matter will be heard on **27, 28 and 29 June 2018**. A copy of the directive is appended hereto as **Annexure "Minister C"** to which you are kindly referred.
10. My client disputed the authority of the representatives acting on behalf of PRASA (to institute the review proceedings and to act on PRASA's behalf) which caused my client to launch a further urgent application. Our application was launched on

26 March 2018. In response to the urgent application we received an answering affidavit whereto was appended what purports to be a document signed on **28 March 2018** attempting to ratify what my client argues to be a complete lack of authority.

11. Subsequent to the urgent application (referred to hereinabove) but prior to the filing of the opposing affidavit a telephonic discussion took place between the writer and the attorney acting on behalf of PRASA. During the conversation the writer was informed that **you will be requested to authorise the litigation and to mandate the representatives acting on behalf of PRASA to proceed with the matter.** I requested to be afforded an opportunity to address you. The aforesaid opportunity was also requested in written correspondence following the said conversation.
12. Until today I have not been afforded any opportunity to address you on the concerns of my client and it is, therefore, uncertain whether you have been briefed on all the relevant facts prior to your instruction and/or mandate for the matter to proceed.
13. Since we have received a document purporting to be written authority (albeit dated long after the fact and purports to be a ratification of any authority) our request to address you on these issues may seem to be water under the bridge.
14. My client, as a responsible corporate citizen, instructed me to ensure that you are fully aware of the prevailing circumstances, the previous correspondence directed to your predecessor and the pending litigation to which our client filed a formal opposing affidavit on **3 April 2018.**
15. My client submits that **the pending litigation is ill-conceived *inter alia* on the basis that my client received continued instructions to conduct the work (on the one hand) whilst the validity of the agreements pursuant to which my client was forced to perform is challenged in court.** My client receives instructions from PRASA to perform under the agreements as if the litigation is non-existent. I submit that this is a factor to be taken cognisance of since it is, in my view, **inappropriate and unlawful to instruct a service provider like my client to conduct work, employ employees, acquire resources and subsidise**

a State Owned Enterprise whilst that very same entity leaves no stone unturned to deny liability for the goods and services delivered/rendered by our client on its pertinent instructions. I thought you should be aware of this damaging practise.

16. I conclude to record that I (and my client) will avail ourselves at any point in time to address you on any issues raised in this letter and to embroid on any further issues you would like our feedback on.
17. I conclude to wish you a prosperous term as the Minister of Transport and, regardless of what happens in this matter, that you will actively contribute to the well-being of those you serve.

Regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES



van der Merwe
&
Associates Incorporated

" MINISTER A "
COPY
COPY

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simone@vdmass.co.za

Our Ref: **MR GT VD MERWE/st/S493**

Your Ref: **HONOURABLE MINISTER MASWANGANYI**

29-11-2017

URGENT

BY HAND

The Minister of Transport
National Department of Transport
159 Forum Building
Cnr Bosman and Struben Streets
Pretoria

MUDAU ANNAH
~~VAN DER MERWE~~
29/11/17
15:17

Dear Sir/Madam,

**NOTICE OF INFORMATION - UNPAID GOODS AND SERVICES
RENDERED: SIYANGENA TECHNOLOGIES (PTY) LTD /
PASSENGER RAIL AGENCY OF SOUTH AFRICA**

I act on behalf of a service provider of PRASA, Siyangena Technologies (Pty) Ltd.

On **31 May 2017** I took the liberty of directing correspondence to your offices and in order to ensure that you have a comprehensive view of my plight I take the liberty of appending hereto as **Annexure "ST1"** a copy of my letter so delivered to your offices.

You might be aware of the fact that the Honourable Judge Sutherland **dismissed the application** launched by PRASA (with costs) and I take the liberty of appending hereto as **Annexure "ST2"** a copy of his judgment.

PRASA then filed an **application for leave to appeal**. On 7 July 2017 the Honourable Judge Sutherland **dismissed PRASA's application for leave to appeal with costs** and I take the liberty of appending hereto **Annexure "ST3"** being a copy of his judgment.

PRASA then **petitioned the Supreme Court of Appeal** and on 20 August 2017 the Supreme Court of Appeal **dismissed PRASA's petition with costs**. I take the liberty of appending hereto as **Annexure "ST4"** a copy of the order of the Supreme Court of Appeal clearly stating that the petition should fail as **there are simply no prospects of success for PRASA**.

PRASA then applied in terms of Section 17(2)(f) of Act 10 of 2013 for a **reconsideration of the matter** before the Supreme Court of Appeal. On 7 November 2017 the Supreme Court of Appeal **dismissed PRASA's further application with costs** and I take the liberty of appending hereto, for your kind attention, a copy of the court order confirming this as **Annexure "ST5"**.

We realised that **taxpayers' money is being spent** at a rate the taxpayer, with respect, cannot afford and since there are two concurrent arbitration processes running before two retired judges of the High Court, we thought it prudent to direct urgent correspondence to the attorneys acting on behalf of PRASA clearly setting out our argument as to **the severe prejudice imposed on not only our client but also the taxpayer and your Department**. We advised Werksmans that we will, in due course, have to report the continued delay and frustration (and the obvious severe consequences of interest and costs) under the provisions of the PFMA. A copy of our letter to Werksmans is appended hereto as **Annexure "ST6"**.

Since you are the custodian of the Department of Transport and its affairs we, again, take the liberty of repeating the fact that:

1. It is common cause that the **goods and services were rendered by our client. PRASA even certified this;** and

2. That the interest calculated on the outstanding amount runs at rate of more than R1 000 000.00 (One million rand) per day!

Taking you into our full confidence I have taken the liberty of appending a copy of the letter directed to Werksmans Attorneys.

We apologise for encumbering you on this matter but we submit that the nature and extent of the consequences justifies you, at least, having full knowledge of what is transpiring under your watch.


I, lastly, append hereto a statement of indebtedness issued by our client as **Annexure "ST7"** to which you are kindly referred.

We conclude this letter to record that we are being "*threatened*" with further litigation under circumstances where the courts dealt with this issue extensively and repetitively. Should PRASA pursue further efforts to delay and frustrate the inevitable it will most definitely result in wasteful expenditure. The interest component alone is, at this point in time, approximately **R600 000 000.00 (Six hundred million rand)** whilst PRASA will have to cough up our client's legal costs, on its own a substantial amount which could have served the taxpayer.

We conclude to leave the matter at your offices for consideration. In the meantime we have to thrust the arbitration process in order to recover amounts long overdue to our client.

Regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES





van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

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Our Ref: **MR GT VD MERWE/yvd/S493**

Your Ref: **THE HONOURABLE MINISTER JOE MASWANGANYI**

31/05/2017

Minister of Transport
The Honourable Minister Joe Maswanganyi
National Department of Transport
159 Forum Building
Corner Bosman and Struben Streets
Pretoria Central

BY HAND

MARK MABITSELA
31/05/2017

Dear Minister Maswanganyi,

**SIYANGENA TECHNOLOGIES (PTY) LTD / PASSENGER RAIL
AGENCY OF SOUTH AFRICA**

I act on behalf of a service provider of PRASA, **Siyangena Technologies (Pty) Ltd.**

During or about 2011 and again in 2014 my client was awarded contracts to conduct certain services and render certain goods to PRASA with a **combined value of R5,0 billion.**

My client complied with its obligations towards PRASA and is, at present, **owed an amount of approximately R2,3 billion.**

On **3 May 2017** the Honourable Judge Sutherland dismissed PRASA's application to rescind and set aside the agreements concluded with our

client. PRASA refused to pay my client pending the finalisation of the said application.

We have advised the attorneys acting on behalf of PRASA that we are of the view that continued delay is not in the interest of the taxpayer and that the interest on the outstanding amount exceeds R30 000 000.00 (Thirty million rand) per month (that is one million rand per day!).

We might add that, on 16 May 2017, we directed a letter to Werksmans Attorneys acting on behalf of PRASA in which we clearly stated that:

1. The work our client had to execute under phase 1 of the agreements have been done satisfactorily on any version.
2. The work done under phase 2 of the agreements has been completed 95% and our client still receives instructions from PRASA's technical team on a daily basis.
3. We take the liberty of quoting the following from the letter we directed to Werksmans on behalf of PRASA on 16 May 2017:

"We conclude this letter to submit that your client, as a State Owned Enterprise, needs to consider its position carefully and we record that further attempts to delay payment will be challenged with costs orders against the members of your client's Board. Kindly, though urgently, confirm that a copy of this letter was sent to your client and that each of the Board members received a copy. If not we will direct a copy of this letter to each of the Board members separately in order to ensure that they receive same as they will have a vested interest in the future of this matter."

It was, ironically, following the aforesaid stern warning that we received a notice of application for leave to appeal which is, in itself, a delay of the inevitable.

On **24 May 2017** PRASA's attorneys, Werksmans Attorneys, served a notice of application for leave to appeal on our offices. The application is now pending.

We have advised on numerous occasions that the amount of **R30 000 000.00 (Thirty million rand) per month** spent by a State-owned entity on arrear interest is, in our view, a **wasteful expenditure** under the provisions of the PFMA and we can't seem to get the message through to the Board of PRASA.

Parliamentary Committees became part of the daily lives of South Africans and it is broadcasted on television for hours on end. During a recent parliamentary committee session one of the current ministers responded to a question from a member of Parliamentary Committee to the effect that he/she was unaware of certain actions (or omissions) of the board of a State-owned entity.

We also had the liberty of reading a **newspaper article on 23 May 2017** in which you were copied to say that you are the custodian of the Department of Transport and that the Boards of State-owned entities (obviously including PRASA) should be reminded that they are **accountable to you as the representative of the shareholder**.

Following the aforesaid I advised my client to write this letter **to you and to alert you to the fact that money is streaming out of your budget at an alarming rate**, same in the form of interest which will be due to our client.


I do not intend to convince you that I have dealt with all the relevant facts in this letter. I am fully aware of the fact that you are over encumbered with your own obligations and still finding reason in the Department to which you have recently been appointed as Minister.

As a result of the aforesaid, I conclude this letter to inform you of the circumstances prevalent, the risk of wasteful expenditure, the delays and, ironically, the fact that PRASA

insists that our client complete the work in line with the agreement but rely on the voidness of those agreements when it comes to payment.

I make myself available at your convenience to furnish you with any and all information you require in order to give guidance on the matter very relevant to your conduct as Minister of the Department of Transport.

Regards.


Gert van der Merwe
VAN DER MERWE & ASSOCIATES

"Stz"

1



**THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO 2016/7839

In the Matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

APPLICANT

AND

SIYAGENA TECHNOLOGIES (PTY) LTD

FIRST RESPONDENT

RETIRED JUSTICE EZRA GOLDSTEIN

SECOND RESPONDENT

RETIRED JUSTICE MEYER JOFFE

THIRD RESPONDENT

JUDGMENT

Sutherland J:

Introduction

1. In this application, the applicant (Prasa) seeks to review decisions made by itself in awarding tenders to the first respondent (Siyagena) on the grounds that the awards were unlawful for want of compliance with several peremptory legal injunctions. The remaining respondents were appointed to arbitrate a dispute between the parties in respect of which a stay was sought, an issue now resolved by agreement. The sole remaining controversy exists between Prasa and Siyagena. However, there are several legal controversies which complicate the review application.
2. At the hearing, Siyagena brought an application in terms of Rule 33(4) of the Uniform rules of Court. That rule reads:

‘If, in any pending action, it appears to the court mero motu that there is a question of law or fact which may conveniently be decided either before any evidence is led or separately from any other question, the court may make an order directing the disposal of such question in such manner as it may deem fit and may order that all further proceedings be stayed until such question has been disposed of, and the court shall on the application of any party make such order unless it appears that the questions cannot conveniently be decided separately’.
3. Prasa opposed such a separation. A debate was conducted about whether or not an order should be granted. As is apparent, unless it was inconvenient, if the question posed could be dispositive of the application, Siyagena’s application had to be granted.
4. The gravamen of the application turned on an interpretation of sections 7(1) and 9 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) as to how the period of 180 days was to be computed and what would constitute an application to extend the period. Those sections provide thus:

‘Section 7(1)

Any proceedings for judicial review in terms of section 6 (1) must be instituted without unreasonable delay and not later than 180 days after the date-

(a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2) (a) have been concluded; or

(b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.’

‘Section 9 Variation of time

(1) The period of-

(a) 90 days referred to in section 5 may be reduced; or

(b) 90 days or 180 days referred to in sections 5 and 7 may be extended for a fixed period,

by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned.

(2) The court or tribunal may grant an application in terms of subsection (1) where the interests of justice so require.’

5. The affidavits filed had already alluded to the difference of opinion between the parties about the computation of the 180-day period. Prasa alleged that it had brought its application within 180 days of the receipt of a report by the Public Protector and that it was compliant with section 7(1) on the premise that it was only upon such receipt that the board of Prasa learnt of the alleged improprieties of its former CEO, Mr Lucky Montana, who is elsewhere alleged to be the principal perpetrator of several irregularities and corrupt conduct in favouring Siyagena for the award of tenders in return for financial benefits. Siyagena disputes that Prasa had complied with section 7(1) and alleged that the application was years out of time because the relevant dates when the decisions were made by Prasa to award the tenders were between 2011 and 2014.

6. During this debate Prasa introduced a notice to amend its notice of motion. The amendment proposed a prayer for condonation. The proposition was not based on a concession that Prasa was not compliant, but in the alternative, should the court hold that its approach to the computation was incorrect. The ancillary contention by Prasa was that the contents of the affidavits could be relied upon to substantiate the condonation sought. This proposition was resisted by Siyagena, which filed a notice of objection setting out several grounds.
7. I thereupon ruled that I would grant a Rule 33(4) application to separate certain issues. I did so because it was indeed convenient to decide the question of compliance by Prasa. Either Prasa satisfied section 7(1) or it did not. If not, did the material that Prasa relied upon to assert that a condonation application was before me, satisfy the prescripts of section 9? If it was not possible to find for Prasa on one or other of those bases, it would follow that I had no authority to hear the matter of the review. That would indeed dispose of the matter.
8. To this end, I formulated the issues sought to be separated in terms of rule 33(4) thus:
 - (1) Is the period of 180 days prescribed by Section 7(1) of PAJA to be calculated from the date upon which an applicant for review becomes aware of an impropriety attaching to the decision sought to be reviewed?
 - (2) If the answer to (1) is yes; has the review application before this court been brought after the expiry of the 180-day period?
 - (3) If the answer to (2) is yes; is there an application before the court as contemplated by section 9 of PAJA?
 - (4) If not, has this court the authority to entertain the review application?

The separated questions

Question no 1

9. Section 7(1) has been the subject of several decisions. The argument that knowledge of improprieties is the relevant date to trigger the 180-day period has been raised and roundly rejected. In *Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality* [2017] ZASCA 23 (24/03/2017) at [7] the proposition that the date of first knowledge of the irregularities triggered the computation period was held to be ‘untenable’. The Court held:

‘The contention of the respondent that the time period only commenced running once it became aware of the unlawful administrative action, is untenable. The issue of whether knowledge of the reviewable irregularities in the decision sought to be reviewed was required before this period commenced running, was decided by this Court in *Aurecon South Africa (Pty) Ltd v Cape Town City* [2015] ZASCA 209; 2016 (2) SA 199 (SCA) para 16, in the following terms: ‘The decision challenged by the City and the reasons therefore were its own and were always within its knowledge. Section 7(1) unambiguously refers to the date on which the reasons for administrative action became known or ought reasonably to have become known to the party seeking its judicial review. The plain wording of these provisions simply does not support the meaning ascribed to them by the court a quo, ie that the application must be launched within 180 days after the party seeking review became aware that the administrative action in issue was tainted by irregularity. That interpretation would automatically entitle every aggrieved applicant to an unqualified right to institute judicial review only upon gaining knowledge that a decision (and its underlying reasons), of which he or she had been aware all along, was tainted by irregularity, whenever that might be. This result is untenable as it disregards the potential prejudice to the respondent (the appellant here) and the public interest in the finality of administrative decisions and the exercise of administrative functions.’ (Underlining supplied)

10. The Court referred to the SCA decision in the *Aurecon Case* as authority, and in the Constitutional Court decision the proposition was endorsed. Mbha AJ in *City of Cape Town v Aurecon SA (Pty) Ltd* [2017] ZACC 5 (28/02/2017) held at [41] that:

‘On a textual level, the City’s contention confuses two discrete concepts: *reasons* and *irregularities*. Section 7(1) of PAJA does not provide that an application must be brought within 180 days after the City became aware that the administrative action was tainted by irregularity. On the contrary, it provides that the clock starts to run with reference to the date on which the reasons for the administrative action became known (or ought reasonably to have become known) to the applicant.’

11. Mbha J went on to hold at [43] that the awareness of the decisions and their reasons, as contemplated in section 7(1) occurred when the decisions were made. This is, in a sense, self-evident when the applicant for review is the entity that made the decision, as distinct from a person at arms-length who might ‘learn’ of the decision and the reasons only subsequently.

12. Accordingly, question No 1 must be answered No.

Question No 2

13. Accordingly, the approach of Prasa that only when its Board of Control learned of the irregularities, committed in 2011 and 2014, in August 2015 when it read the report of the Public Protector, did the ‘clock start to run’, is incorrect. That stance permeated the approach of Prasa throughout the entire application, a matter of some significance, as shall be evidenced.

14. The review application, launched on 2 February 2016 has been brought after the expiry of the period of 180 days because the dates upon which it 'learned' of the impugned decisions and the reasons therefor, (ie the awards of tenders and the contracts that followed) were the dates they were taken on behalf of Prasa on 20 February 2011, 31 March 2011, 6 June 2014, 1 July 2014 and 19 October 2014.
15. It was suggested that a material distinction should be made between the case of an employee making a decision he was not authorised to make and one making an authorised decision. That cannot be correct. Any decision purporting to be made on behalf of the juristic entity, and indeed acted upon by the juristic entity, satisfies section 7(1). The imputing of knowledge derives from the juristic person's human agents making the decisions and it is not, in law, significant whether the person making the decision could lawfully make it; eg by approving expenditure of a sum in excess of his delegated authority. The enquiry at that stage is about the external manifestation of a decision not about the propriety of making it.
16. Accordingly, question No 2 must be answered: No; Prasa has not complied with the 180 day rule.

Question No 3

17. What took place in this matter was that at the outset, Prasa believed that it was compliant. The *bona fides* of Prasa can be accepted. In the answering affidavit that stance was challenged. The response by Prasa appears from the replying affidavit. That response was to assert that the challenge was ill-conceived, offer an argument that Prasa could not logically

take action until the ignorance of the present Board members had been dispelled, but then to say this:

‘Insofar as is necessary, the applicant makes application for condonation of its delay in launching the review proceedings on the grounds set out in the founding, supplementary and this replying affidavit. The applicant will therefore seek an amendment of its notice of motion to incorporate the conditional condonation it seeks.’ (paragraph 10.9)

18. This statement was the foundation for the notice of amendment already referred to. The text reads:

‘Insofar as is necessary condoning the applicant’s late institution of the review application outside the 180n days prescribed ...and that the court should exercise its discretion conferred upon it in terms of section 9 ...to condone the applicant’s non-compliance’

19. The contention that accompanied this prayer was that the existing affidavits contain all the necessary allegations of fact to support such relief. Several passages were pointed to in argument; they addressed the *de facto* predicament of the Board discovering belatedly that, so it is alleged, their CEO was deceitful and corrupt. The essential question, however, whether this material is what section 9 requires.

20. In my view, the basis put forward by Prasa, at best, (and without expressing a view about the strength or weakness of its intrinsic merits) reaches towards an application to condone non-compliance. But that is not what section 9 demands. What section 9 envisages is not a condonation application, but an application to extend the period of 180 days. In the absence of an agreement between the litigants, a party who needs an extension must motivate it with

regard to the 'interests of justice'. On that premise, a focussed application is required, not an *en passant* condonation application.

21. Were there to be any doubt about that construction, it is dispelled by the remarks of Swain JA in *Asla* at [8] – [11]:

[8] The respondent therefore required an extension of the period fixed by PAJA within which to bring the application for review. Section 9 contemplates a substantive application to the relevant court or tribunal, by the person or administrator concerned. That application ought to have been made by the respondent when it first approached the court for relief. It did not do so. Once the appellant had raised the issue of compliance with PAJA, the respondent was obliged to launch an application in terms of this section for an extension of the fixed period. This application could thereafter have been consolidated with the review application. The correct procedure would have ensured that the relevant facts were placed before the court a quo, to enable it to exercise its discretion properly. 1 Approved in *City of Cape Town v Aurecon South Africa (Pty) Ltd* (CCT 21/16) [2017] ZACC 5 (28 February 2017) paras 40-44.

[9] The court a quo held that the decisive factor in exercising its discretion whether to grant an extension, was its finding that the procurement in respect of the Reeston contract was not 'legal and regular'. This was based upon a finding that the award of this contract did not comply with the requirements of s 217 of the Constitution. Accordingly, so held the court a quo, the award of the contract was consequently invalid and fell to be set aside. Because of the serious breach of the section, and the other statutory instruments that regulated procurement in the context of local government, the court a quo decided that it was in the interests of justice that the respondent be granted the requisite extension in terms of s 9 of PAJA, to review and set aside the award of the contract. It added that 'Accordingly, the invalidity of the decision to award the Reeston contract to the respondent cannot be validated'.

[10] This conclusion was erroneous. It was the product of a number of misdirections committed by the court a quo.

(a) It impermissibly decided the merits of the review application before considering and determining the application for condonation. In doing so, it effectively precluded any finding that the application for condonation should be refused on its merits, with the result that any unlawful award of the Reeston contract would be 'validated' by the delay.

(b) It regarded the serious nature of the breach of s 217 of the Constitution, as a complete bar to the 'validation' of the award of the Reeston contract to the appellant, which could have followed as a result of the delay in bringing the application for condonation.

(c) It failed to consider whether the respondent had furnished a full and adequate explanation for the entire duration of the delay.

(d) It failed to properly consider the extent to which the appellant had proceeded with the performance of the contract, and the resulting prejudice to the appellant in setting the contract aside at that stage.

(e) It failed to properly consider the nature and extent of the prejudice to be suffered by the inhabitants of Duncan Village and the broader public interest, in setting the contract aside at that stage.

[11] The manner in which the discretion to extend the statutory time period should be exercised, was described in *Camps Bay Ratepayers' and Residents' Association & another v Harrison & another* [2010] ZASCA 3; 2010 (2) All SA 519 (SCA) para 54, in the following terms: 'And the question whether the interests of justice require the grant of such extension depends on the facts and circumstances of each case: the party seeking it must furnish a full and reasonable explanation for the delay which covers the entire duration thereof and relevant factors include the nature of the relief sought, the extent and cause of the delay, its effect on the administration of justice and other litigants, the importance of the issue to be raised in the intended proceedings and the prospects of success.' [My emphasis.]'

22. In short, Prasa needed to put up an application that meets these requirements. It has not done so. The reason why it has not done so is that the premise of its application was that it was unnecessary. Having been found to have erred in that regard, it has been left without a pleaded case to substantiate it. Understandably, there is no full exposition, there is no account of the progress of the projects which were the subject matter of the tenders, the prejudicial consequences of a successful review are not addressed, and the public interest in getting the projects completed is not addressed.

23. These findings must not be interpreted to mean that this judgment purports to find that Prasa has no case to advance in support of an application as contemplated by section 9; this judgment is confined to holding that Prasa has not put up a section 9 application.

24. Accordingly, question No 3 must be answered No.

Question No 4.

25. It must follow that I am not authorised to hear a review application in this matter. The application falls to be dismissed for that reason.

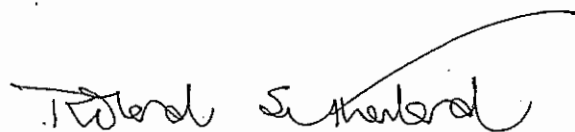
Costs

26. Costs are sought and, in my view, must follow the result. The costs of two counsel is also appropriate.

The Order

(1) The period of 180 days prescribed by Section 7(1) of PAJA is not to be calculated from the date upon which an applicant for review becomes aware of an impropriety attaching to the decision sought to be reviewed, but from the date that it is aware of the decision and the reasons therefor:

- (2) The review application before this court has not been brought within the 180-day period because the relevant dates, for the purposes of Section 7(1) of PAJA, occurred between 2011 and 2014, and the application was launched in 2016.
- (3) There is no application before this court as contemplated by section 9 of PAJA.
- (4) This court does not have the authority to entertain the review application.
- (5) The application is dismissed.
- (6) The applicant shall bear the costs including the costs of two counsel.



Roland Sutherland
Judge of the High Court,
Gauteng Division, Pretoria.

Heard: 2 May 2017
Judgment: 3 May 2017

For the Applicant:
Adv V Maleka SC, with him,
Adv E Mokutu
Instructed by Werksmans.

For First Respondent:
Adv K N Luderitz SC, with him,
Adv A R J Els
Instructed by Van der Merwe & Associates.

"ST3"

REPUBLIC OF SOUTH AFRICA



THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO 2016/7839

(1)	REPORTABLE: YES / NO		
(2)	OF INTEREST TO OTHER JUDGES: YES /NO		
(3)	REMOVED		
	<table> <tr> <td>..... 6/6/2017 DATE</td> <td>..... [Signature] SIGNATURE</td> </tr> </table> 6/6/2017 DATE [Signature] SIGNATURE
..... 6/6/2017 DATE [Signature] SIGNATURE		

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Applicant

and

SIYAGENA TECHNOLOGIES (PTY) LTD

First Respondent

RETIRED JUSTICE EZRA GOLDSTEIN

Second Respondent

RETIRED JUSTICE MEYER JOFFE

Third Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

Sutherland J:

Introduction

[1] On 3 May 2017, I dismissed a review application which sought to invalidate a tender awarded to the respondent by the applicant. The order was based on the finding that the court was denied jurisdictional competence to hear the review because the applicant had brought the application later than the 180 days prescribed in section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA)¹ A litigant who is late in bringing a review is not absolutely unsuited. Section 9 of PAJA provides that an extension of the period can be granted, either with the agreement of the other litigants or by a court 'where the interests of justice so require'.² I held that the applicant was late with its review application and that no substantive application to extend had been made. Moreover, the substance of what would need to be traversed in such an application to extend had not been put up in the papers. As a result, in consequence of those findings, logically, the judgment did not address the merits of the review application.

¹ Section 7(1):

Any proceedings for judicial review in terms of section 5 (1) must be instituted without unreasonable delay and not later than 180 days after the date-

- (a) subject to subsection (2) (c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2) (a) have been concluded; or
- (b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.

² Section 9:

(1) The period of-

(a)

(b) 90 days or 180 days referred to in sections 5 and 7 *may be extended* for a fixed period, by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned.

(2) The court or tribunal may grant an application in terms of subsection (1) where the interests of justice so require. (Emphasis supplied)

[2] The applicant now seeks leave to appeal against that order. As I read the notice of application for leave to appeal, despite a degree of ambivalence, what the applicant wishes to invite the Court of appeal to decide, contrary to the findings in the judgment, is this:

- 2.1. That the finding that the applicant had knowledge of the controversial decisions, in the sense contemplated by section 7, at the time that the chief executive officer, one Montana or the Board of Directors took the decisions in question was wrong.
- 2.2. That the error in making such finding was the consequence of the Court not undertaking a mandatory 'factual enquiry' into when the applicant had knowledge of the decisions.
- 2.3. That had the factual enquiry been carried out, the finding that the applicant acquired knowledge of the decisions at a later date might have been made; thus, another court might do just that.
- 2.4. That furthermore, even if the finding was correct, the formality of a substantive application to fulfil the requirements of section 9 for an extension of the 180 period, is not absolute, and in certain circumstances a court shall grant an extension in the absence of such a default approach, this case being one which warranted an 'exception' to the default rule.

Evaluation

[3] In my view these contentions are without merit.

[4] The test for determining when the clock starts running for the purpose of section 7 is not controversial. The decisions in *Aurecon South Africa (Pty) Ltd v Cape Town City 2016 (2) SA 199 (SCA)* and in *Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality & another [2017] ZASCA 23 (24 March 2017)* are unequivocal that the critical moment when a person or a juristic entity acquires the requisite knowledge of its own decision which it later wishes to impugn, is when the decision is taken.³

[5] In my view, as a fact, so it can be accepted, the members of the board, as composed at present, did not know of the decisions in question. They were either appointed after the decision were taken or in one instance, the Chief Executive Officer, allegedly, made a decision behind their back. Frequently, the allusion has been made to the 'present' or the 'reconstituted' board. This is a dangerous way of articulating the identity of the board. The 'board' is an organ of the applicant, not a discreet juristic entity. Its function is to take decisions as *the applicant*. Its membership may vary from time to time, but no random collection of board members can repudiate what their predecessors on the board have decided or purport to be free from the consequences of what the organ has decided in the past. Nor can the board set itself up as a distinctive 'thing' that can on

³ *Asla* at [7]; *Aurecon* at [41]

behalf of the applicant escape the consequences of what its chief executive officer does on behalf of the applicant, albeit irregularly.

[6] That the board, as presently composed, correctly and honourably seeks to redeem the applicant from the skulduggery allegedly perpetrated in the past is commendable. But the *de facto* knowledge the present members have is not the knowledge contemplated by section 7 of PAJA.

[7] It was argued, contrary to the plain dictum in *As/a*, that a substantive application for an extension is not always required and that the present case offers an example of where a less strict approach is appropriate. I doubt that this a cogent contention. But assuming that the *form* of seeking the section 9 relief is not critical, what remains critical is the disclosure of factual allegations that address the requirements of that section; ie facts pertinent to the 'interests of justice'. The notion of the 'interests of justice' is not a one-way street; an assessment implies a traverse of the prejudice to all interested parties including the general public and the respondent, no less than the applicant, if a review succeeds or fails. That consideration then leads into the notion that a *factual enquiry* might have yielded a different result.

[8] Put bluntly, the substance of such an enquiry was not to be found in the papers. There is no surprise that it was absent; the papers were drawn on the premise that no extension was required. *Ergo*, this theme was not addressed. The 'condonation' application launched at the hearing was not amplified, and it sought to rely on the remarks

made in the body of an application that did not have as its aim the addressing of the issue of the interests of justice. The judgment expressly addressed that shortcoming.

[9] Assistance was sought to be drawn from the decisions in *Allpay 1* and *All pay 2* and the two-stage approach to reviews.⁴ The notion is misdirected. These decisions do not address the application of sections 7 and 9 and the approach articulated therein relates, rather, to the way that the merits of the review be dealt with. That stage could not be reached in this case.

[10] Three days before this application for leave to appeal was heard, the judgment in *PRASA v Swifambo Rail agency (Pty) Ltd (Unreported 2015/42219 ZAGJ)* was handed down. That matter, decided by Francis J, dealt with a review application to set aside as invalid another tender irregularly awarded by the applicant through the alleged ill-doings of the Chief Executive Officer. It is apparent that this review was launched late. Ten days before that matter was due to be heard the applicant launched a substantive application as contemplated in *As/a*. Francis J granted the extension. At [32] Francis J, addressed an argument about the propriety of additional affidavits by the applicant to seek the section 9 extension and held that the judgment given by me was distinguishable. I agree. Not only was there a substantive application for an extension as contemplated in section 9, but that court had allegations of fact before it with which to address the requisite issues prescribed by section 9. In this matter neither was present. On behalf of the respondent, attention was drawn to the fact that the project was alleged to have been 93 % complete

⁴ *Allpay Consolidated Investment Holdings (Pty) Ltd v CEO, SASSA 2014 (1) SA 604 (CC) (Allpay 1)* and *Allpay Consolidated Investment Holdings (Pty) Ltd v CEO, SASSA 2014 (4) SA 179 (CC) (Allpay 2)*

and the cancellation of the contract had perilous implications for rail traffic and the public interest. The pertinence of these considerations to the propriety of a late review, in the interests of justice, are self-evident, and moreover, section 9 requires these value judgments to be made *before* embarking on the merits of the review and enquiring into the alleged irregularities.⁵


[11] Francis J made the finding (at [33]) that the late revelation of improprieties in a decision by the current members of a board was a relevant factor in deciding an extension application. That finding must be correct. However, it is but one among many factors, listed in *As/a* at [9] – [10]. In my view, this decision offers no support for the application in this matter.

[12] Accordingly, I cannot conclude that the grounds advanced afford a basis upon which another court might reach a different conclusion. In reaching this result, I am not unmindful of the need for clean government and the need to eradicate corruption in public procurement, factors which counsel for the applicant has stressed are important. Notwithstanding those sentiments, no cogent case is made out for the relief claimed as contemplated in section 17(1)(a) of the Superior Courts Act 10 of 2013. The case law relied upon to reach the decision is clear, and the factual substratum said to exist is absent.

⁵ *As/a* at [10] cited in the judgment in this matter at [21].

The Order

[13] The application for leave to appeal is dismissed with costs, including the costs of two counsel.



Roland Sutherland
Judge of the High Court,
Gauteng Local Division, Johannesburg

Hearing: 5 July 2017
Judgment: 7 July 2017

Appearances:

For Applicant:
Adv V Maleka SC,
with him Adv E Mokutu,
instructed by Werksmans.

For Respondent:
Adv K Lüderitz SC,
With him, Adv A Els.
Instructed by Van der Merwe & Associates.

"ST4"



Registrar's Office • PO Box 258, Bloemfontein, 9300 • c/o Elizabeth- & President Brand Street,
Bloemfontein •
Tel (051) 4127 400 • Fax (051) 4127 449 • www.supremecourtofappeal.gov.za

Enquiries:	Mr Myburgh	Date: 22 August 2017	Ref: 745/17
Contact number:	051 -- 412 7400		
E-mail address:	PaMyburgh@justice.gov.za		

YOUR REF: L VENTER/RA/FS2538

Symington & De Kok
P O Box 12012
BRANDHOF
9324

YOUR REF: BM JONES/bv

Honey
P O Box 29
BRANDHOF
9324

Mr/Ms

**APPLICATION FOR LEAVE TO APPEAL
PASSENGER RAIL AGENCY OF S.A v SIYANGENA
TECHNOLOGIES (PTY) LTD & OTHERS**

With reference to the application lodged in this office on **21 JULY 2017** this Court ordered on **22 AUGUST 2017** that the application be **dismissed** as per attached order:-

Yours faithfully


P S W MYBURGH (Mr.)/SM
REGISTRAR

REGISTERED POST (H/B/D/O)**YOUR REF: 7839/2016 SUTHERLAND J (Court a quo)**

Registrar of the High Court
Private Bag X 67
PRETORIA
0001
Copy for your information.



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

**CASE NO: 745/17
GP CASE NO: 7839/2016**

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

APPLICANT

and

SIYANGENA TECHNOLOGIES (PTY) LTD

1ST RESPONDENT

RETIRED JUSTICE EZRA GOLDSTEIN

2ND RESPONDENT

RETIRED JUSTICE MEYER JOFFE

3RD RESPONDENT

COURT ORDER

BOSIELO JA and TSOKA AJA

ORDERED ON 22 AUGUST 2017

The application for leave to appeal is dismissed with costs on the grounds that there are no reasonable prospects of success on appeal and there is no other compelling reason why an appeal should be heard.

By the court

**P.S.W. MYBURGH (Mr.)/SM
REGISTRAR**

"ST5"



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

**CASE NO: 967/17
SCA CASE NUMBER: 745/17
GP CASE NO: 7839/2016**

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

APPLICANT

and

SIYANGENA TECHNOLOGIES (PTY) LTD

1ST RESPONDENT

RETIRED JUSTICE EZRA GOLDSTEIN

2ND RESPONDENT

RETIRED JUSTICE MEYER JOFFE

3RD RESPONDENT

COURT ORDER

MAYA P

ORDERED ON 07 NOVEMBER 2017

The application in terms of s 17(2)(f) of Act 10 of 2013 is dismissed with costs for the reason that no exceptional circumstances warranting reconsideration or variation of the decision refusing the application for leave to appeal have been established.

By the court

**P S W MYBURGH (Mr.)/SM
REGISTRAR**

Simone Taljaard

From: Simone Taljaard <simone@vdmass.co.za>
Sent: Thursday, 16 November 2017 11:24
To: 'Sarah Moerane'; 'cmanaka@werksmans.com'
Subject: S493: SIYANGENA TECHNOLOGIES / PRASA
Attachments: S493 WERKSMANS 7.doc

"ST6"

Importance: High

Vriendelike groete/Kind regards

Simone Taljaard
Van der Merwe & Ass Inc
0876540209
62 Rigel Avenue
Vaterkloof
Pretoria



van der Merwe
&
Associates Incorporated



van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

Director / Direkteur:
Gert van der Merwe (BLC, LLB)

Associates/Assosiate
Ilze Loots (LLB)
Ilze Mattheus (B.Com, LLB,
LLM)

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
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Our Ref: **MR GT VD MERWE/st/S493/2**

Your Ref: **MR.C MANAKA/S MOERANE/SARC0001.581**

16-11-2017

URGENT

Werksmans Attorneys
cmanaka@werksmans.com
smoerane@werksmans.com

Dear Sir/Madam,

**SIYANGENA TECHNOLOGIES (PTY) LTD / PASSENGER RAIL
AGENCY OF SOUTH AFRICA**

We refer to the abovementioned matter as well as the matter in the **Constitutional Court between SITA and Gijima under case number CCT254/16 decided on 14 November 2017.**

We mention the aforesaid judgment in order to contextualise the contents and the message of this letter directed to you on behalf of our client.

It is common cause that:

1. Your client's **application to review and set aside the agreement concluded with our client was dismissed with costs** by the Honourable Judge Sutherland.
2. The **application for leave to appeal was dismissed with costs** by the Honourable Judge Sutherland.

3. The **petition to the Supreme Court of Appeal** was **dismissed with costs** due to the fact that the court found that there is no reasonable prospect of success.
4. The **application for reconsideration** was **dismissed with costs** by the Supreme Court of Appeal since the court found that there is **no reasonable prospect of success** and that there are no circumstances which would justify reconsideration of the previous orders.
5. During the past few years your client instructed our client on a daily basis to conduct itself (our client) **in line with the agreements concluded with our client** and we have collated lever arch files full of instructions received from your client's technical team. When our client did not act as instructed it got threatened with penalties and other contractual remedies.
6. Our client rendered the goods and services in line with the provisions of the agreement and **the work under both phases** (and the addendum) **got certified to such an extent that it is common cause that the work was done and the goods delivered.**
7. Your client only started to rely on a defence of "*invalidity*" **when our client commenced arbitration proceedings** and has, apart from the aforesaid, raised no defence to the claim for payment under the agreements.

The judgment by the Constitutional Court is, in our humble view, a clear alert to your client to stop squandering taxpayers' money and to resist the temptation of pursuing expensive but meritless litigation at the expense of the taxpayer.

As much as we are aware of the fact that your counsel represented one of the parties in the matter to which we make reference and although your client would have been advised in this regard we, still, take the liberty of referring to a passage from the judgment of the Constitutional Court in numbered paragraph 54 from which we quote the following:

"Overall, it seems to us that justice and equity dictate that, despite the invalidity of the award of the DoD agreement, SITA must no benefit from having given Gijima false

assurances and from its own undue delay in instituting proceedings. Gijima may well have performed in terms of the contract, while SITA sat idly by and only raised the question of the invalidity of the contract when Gijima instituted arbitration proceedings. In the circumstances, a just and equitable remedy is that the award of the contract and the subsequent decisions to the extent it be declared invalid with a rider that the declaration of invalidity must not have the effect of divesting Gijima of rights to which – but for the declaration of invalidity – it might have been entitled.”
(Own emphasis)

Our further humble submission is that any further attempt to frustrate and delay the arbitration proceedings (under circumstances where we are all aware of the legal position without uncertainty) we submit that such conduct will be sanctioned under the PFMA and you will expose your client and its Board to the risk of costs (and damages) *de bonis propriis*.

Cognisance must be taken of the fact that the interest on the outstanding capital amounts approximately **R1 000 000.00 (One million rand) per day** and the longer your client refuses to accept the reality the more severe the consequences become for the taxpayer and the fiscus.

Whilst we, therefore, issue a stern warning at this point in time (in order to avoid any possible confusion with regards to your client's knowledge about these issues in future) we also record that we have been instructed **to proceed with the arbitration proceedings as a matter of urgency**. Should your client instruct you to launch interim applications and/or employ further efforts to frustrate and delay, so be it. We will oppose any such application and will append this letter to the papers in order to show that any such effort would be ill-advised, ill-considered and a waste of taxpayers' money.

We conclude to record that it might serve purpose to engage in discussion with the writer in order to, at least, arrange for payment of the work certified thus far. There can, on no possible version, be prejudice to your client if our client gets paid for the certified work. We extend this formal invitation and hope to hear from you as a matter of urgency.

Regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES

"ST7"

Siyangena Technologies (Pty) Ltd P.O. Box 1699 Groenkloof 0027 21 George Storrar Drive Groenkloof 0181					STATEMENT		
Tel: 012-460-8216 Fax: 012-340-5529 VAT Reg.No. 4740233392 Reg. No.2006/012239/07					Date	31 12 2017	
					Page	1	
					Account Number	PRASA	
PRASA Cres Passenger Rail Agency of South Africa No.13 Wolmarans Street Braamfontein Johannesburg 2017 VAT Reg. No. 4900110612					Siyangena Technologies (Pty) Ltd P.O. Box 1699 Groenkloof 0027 21 George Storrar Drive Groenkloof 0181		
Account	Date	Page			Account	Date	Page
PRASA	31 12 2017	1			PRASA	31 12 2017	1
Date	Reference	Description	Debit	Credit	Date	Reference	Amount
02 10 2013	ST005014	Tax Invoice - SG/GATES/003/2009	"85'991 676.11		02 10 2013	ST005014	"85'991 676.11 D
15 11 2013	PMT	PRASA - ST005014		("85'991 676.11)	15 11 2013	PMT	("85'991 676.11) C
20 11 2013	ST05414	Tax Invoice - SG/GATES/003/2009	"94'608 000.00		20 11 2013	ST05414	"94'608 000.00 D
18 03 2014	PMT	PRASA - ST05414		("94'608 000.00)	18 03 2014	PMT	("94'608 000.00) C
15 01 2014	ST005914	Tax Invoice - WC/SCM/003/04/2013	"1'642 761.66		15 01 2014	ST005914	"1'642 761.66 D
17 05 2016	PMT	PRASA - ST005914		("1'642 761.66)	17 05 2016	PMT	("1'642 761.66) C
29 05 2014	ST000915	Tax Invoice - SG/GATES/003/2009	"92'439 242.89		29 05 2014	ST000915	"92'439 242.89 D
19 09 2014	PMT	PRASA - ST000915		("92'439 242.89)	19 09 2014	PMT	("92'439 242.89) C
20 08 2014	ST001115	Tax Invoice - HO/FM-CRES/142/09/2013	"304'000 025.54		20 08 2014	ST001115	"304'000 025.54 D
14 10 2014	PMT	PRASA - ST001115		("304'000 025.54)	14 10 2014	PMT	("304'000 025.54) C
30 10 2014	ST001715	Tax Invoice - HO/FM-CRES/142/09/2013	"339'250 676.60		30 10 2014	ST001715	"339'250 676.60 D
12 12 2014	PMT	PRASA - ST001715		("339'250 676.60)	12 12 2014	PMT	("339'250 676.60) C
29 12 2014	ST001815	Tax Invoice - HO/FM-CRES/142/09/2013	"133'512 368.81		29 12 2014	ST001815	"133'512 368.81 D
17 04 2015	PMT	PRASA - ST001815		("133'512 368.81)	17 04 2015	PMT	("133'512 368.81) C
01 04 2015	ST000116	Tax Invoice - HO/FM-CRES/142/09/2013	"389'465 396.88		01 04 2015	ST000116	"389'465 396.88 D
29 05 2015	PMT	PRASA - ST000116		("389'465 396.88)	29 05 2015	PMT	("389'465 396.88) C
01 04 2015	ST000216	Tax Invoice - SG/GATES/003/2009	"94'858 176.73		01 04 2015	ST000216	"94'858 176.73 D
18 05 2015	PMT	PRASA - ST000216		("94'858 176.73)	18 05 2015	PMT	("94'858 176.73) C
30 07 2015	ST00816	Tax Invoice - SG/GATES/003/2009	"42'151 022.75		30 07 2015	ST00816	"42'151 022.75 D
30 07 2015	ST00916	Tax Invoice - HO/FM-CRES/142/09/2013	"215'093 360.43		30 07 2015	ST00916	"215'093 360.43 D
31 07 2015	ST01016	Tax Invoice - SG/GATES/003/2009	"51'311 720.90		31 07 2015	ST01016	"51'311 720.90 D
02 12 2015	ST01116	Tax Invoice - HO/FM-CRES/142/09/2013	"264'685 433.98		02 12 2015	ST01116	"264'685 433.98 D
01 04 2016	ST00717PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"250'035 065.04		01 04 2016	ST00717PF	"250'035 065.04 D
18 04 2016	ST00117PF	Tax Invoice - HO/FM-CRES/142/09/2013	"313'958 747.56		18 04 2016	ST00117PF	"313'958 747.56 D
	ST005914	Interest charges	"557 067.20			ST005914	"557 067.20 D
17 05 2016	PMT	PRASA - ST005914 Interest		("557 067.20)	17 05 2016	PMT	("557 067.20) C
01 05 2016	ST00817PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11'342 714.56		01 05 2016	ST00817PF	"11'342 714.56 D
01 06 2016	ST00917PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11'342 714.56		01 06 2016	ST00917PF	"11'342 714.56 D
03 06 2016	ST01417PF	Tax Invoice - HO/FM-CRES/142/09/2013	"28'473 002.29		03 06 2016	ST01417PF	"28'473 002.29 D
01 07 2016	ST01517PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"137'288 093.54		01 07 2016	ST01517PF	"137'288 093.54 D
18 07 2016	ST01717PF	Tax Invoice - HO/FM-CRES/142/09/2013	"78'532 935.98		18 07 2016	ST01717PF	"78'532 935.98 D
01 08 2016	ST01817PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11'342 714.56		01 08 2016	ST01817PF	"11'342 714.56 D
01 09 2016	ST01917PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11'342 714.56		01 09 2016	ST01917PF	"11'342 714.56 D
01 10 2016	ST02017PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"137'288 093.54		01 10 2016	ST02017PF	"137'288 093.54 D
01 11 2016	ST02817PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11'342 714.56		01 11 2016	ST02817PF	"11'342 714.56 D
01 12 2016	ST03017PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11'342 714.56		01 12 2016	ST03017PF	"11'342 714.56 D

01 01 2017	ST03217PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"137288 093.54	01 01 2017	ST03217PF	"137288 093.54 D
25 01 2017	ST03317PF	Tax Invoice - HO/FM-CRES/142/09/2013	"208630 176.46	25 01 2017	ST03317PF	"208630 176.46 D
01 02 2017	ST03417PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11342 714.56	01 02 2017	ST03417PF	"11342 714.56 D
09 02 2017	ST03617PF	Tax Invoice - SG/GATES/003/2009	"20620 395.66	09 02 2017	ST03617PF	"20620 395.66 D
01 03 2017	ST03717PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11342 714.56	01 03 2017	ST03717PF	"11342 714.56 D
01 04 2017	ST00118PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11747 811.50	01 04 2017	ST00118PF	"11747 811.50 D
01 05 2017	ST00218PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11747 811.50	01 05 2017	ST00218PF	"11747 811.50 D
31 05 2017	ST00618PF	Tax Invoice - SG/GATES/003/2009	"20985 730.77	31 05 2017	ST00618PF	"20985 730.77 D
01 06 2017	ST00518PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11747 811.50	01 06 2017	ST00518PF	"11747 811.50 D
01 07 2017	ST00818PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11747 811.50	01 07 2017	ST00818PF	"11747 811.50 D
01 08 2017	ST01218PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11747 811.50	01 08 2017	ST01218PF	"11747 811.50 D
15 08 2017	ST01318PF	Tax Invoice - HO/FM-CRES/142/09/2013	"80490 189.29	15 08 2017	ST01318PF	"80490 189.29 D
01 09 2017	ST01418PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11747 811.50	01 09 2017	ST01418PF	"11747 811.50 D
01 10 2017	ST01718PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11747 811.50	01 10 2017	ST01718PF	"11747 811.50 D
01 11 2017	ST01918PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11747 811.50	01 11 2017	ST01918PF	"11747 811.50 D
01 12 2017	ST02018PF	Tax Invoice - HO/FM-CRES/142/09/2013 (A)	"11747 811.50	01 12 2017	ST02018PF	"11747 811.50 D
	ST00816	Interest charges	"17922 012.74		ST00816	"17922 012.74 D
	ST00916	Interest charges	"91454 624.21		ST00916	"91454 624.21 D
	ST01016	Interest charges	"21789 192.87		ST01016	"21789 192.87 D
	ST01116	Interest charges	"94840 072.48		ST01116	"94840 072.48 D
	ST00117PF	Interest charges	"89430 789.93		ST00117PF	"89430 789.93 D
	ST00717PF	Interest charges	"73638 839.87		ST00717PF	"73638 839.87 D
	ST00817PF	Interest charges	"3158 375.75		ST00817PF	"3158 375.75 D
	ST00917PF	Interest charges	"2972 712.99		ST00917PF	"2972 712.99 D
	ST01417PF	Interest charges	"7417 489.82		ST01417PF	"7417 489.82 D
	ST01517PF	Interest charges	"33836 243.18		ST01517PF	"33836 243.18 D
	ST01717PF	Interest charges	"18627 445.43		ST01717PF	"18627 445.43 D
	ST01817PF	Interest charges	"2615 019.95		ST01817PF	"2615 019.95 D
	ST01917PF	Interest charges	"2437 053.26		ST01917PF	"2437 053.26 D
	ST02017PF	Interest charges	"27441 701.52		ST02017PF	"27441 701.52 D
	ST02817PF	Interest charges	"2094 187.25		ST02817PF	"2094 187.25 D
	ST03017PF	Interest charges	"1929 062.59		ST03017PF	"1929 062.59 D
	ST03217PF	Interest charges	"21312 225.32		ST03217PF	"21312 225.32 D
	ST03317PF	Interest charges	"29336 315.28		ST03317PF	"29336 315.28 D
	ST03417PF	Interest charges	"1594 944.01		ST03417PF	"1594 944.01 D
	ST03617PF	Interest charges	"2812 774.92		ST03617PF	"2812 774.92 D
	ST03717PF	Interest charges	"1447 148.22		ST03717PF	"1447 148.22 D
	ST00118PF	Interest charges	"1331 641.88		ST00118PF	"1331 641.88 D
	ST00218PF	Interest charges	"1172 099.97		ST00218PF	"1172 099.97 D
	ST00618PF	Interest charges	"1803 389.83		ST00618PF	"1803 389.83 D
	ST00518PF	Interest charges	"1009 537.58		ST00518PF	"1009 537.58 D
	ST00818PF	Interest charges	"854 411.78		ST00818PF	"854 411.78 D
	ST01218PF	Interest charges	"698 518.48		ST01218PF	"698 518.48 D
	ST01318PF	Interest charges	"4279 607.75		ST01318PF	"4279 607.75 D
	ST01418PF	Interest charges	"546 348.09		ST01418PF	"546 348.09 D
	ST01718PF	Interest charges	"401 090.37		ST01718PF	"401 090.37 D
	ST01918PF	Interest charges	"253 033.15		ST01918PF	"253 033.15 D
	ST02018PF	Interest charges	"111 701.75		ST02018PF	"111 701.75 D

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120+ Days 2"136'312 835.89	90 Days "11'747 811.50	60 Days "11'747 811.50	30 Days "11'747 811.50	Current "572'317 423.72	Amount Due: 2"743'873 694.11
Bank of Athens Branch: 410145 Account: 30000001853					Amount Paid: " 0.00
Total Due 2 "743 '873 694.11					Comments

E&OE

"Minister B"

Be moved



prasa

PASSENGER RAIL AGENCY
OF SOUTH AFRICA

ISAMS REPORT

Facilities Management

December 2017

1. SUMMARY

PRASA approached the Northern Gauteng High Court in February 2016 with a view to seek the court order to the Review the ISAMS Contract and to set the ISAMS Contract aside and declared it invalid. The matter is still pending.

As a result of this development, PRASA CRES, the project implementing division, was requested to develop a contingency plan. The Plan was submitted to Special Group EXCO meeting in April 2016. Group EXCO recommended that the Report be submitted to the Finance, Capital and Investment Committee (FCIP) for final approval.

While this process was underway, Group SCM issued an instruction to immediately suspend all contract engagement with Siyangena until the Review Case at High Court had been finalised. The contract was suspended on the 17th May 2016. This instruction led to the court challenge through an urgent application and the court ordered PRASA on the 27th May 2016 to allow the contractor to proceed with works pending the finalisation of the Review Case.

As it stands now, the contractor is on site, proceeding with installation and maintenance of the ISAMS equipment as per the court order.

2. CURRENT PROJECT STATUS

2.1. ISAMS Phase 1

- **SUMMARY**
 - *Date of Contract Approval: March 2011*
 - *Date of Contract Validity: March 2016*
 - *Number of Stations: 71*
 - *Project Progress: 99.66%*
 - *Contract Amount: R1 959, 642, 352. 99*
 - *Expenditure: R 1 898 957 045.99 (PAID TO DATE)*
 - *Balance: R 60 685 307,00 (OUTSTANDING).*
 - *Status of Installation: Installation completed on all 71 stations but with eight (8) outstanding elements as per the outstanding items below.*

Project Completion and Handover Processes: The Final Handover Meeting was conducted at PRASA CRES Offices on the 13 June 2016 after the close out verification and audit was conducted. All the Handover documents requested by PRASA could not be provided as the contractor cited the litigation process which is underway.

The matter will be escalated to PRASA Group Legal to deal with it.

Outstanding installation items on Phase 1 Project: The installation part of the project closed with the following outstanding items:

1. Duffs Road: The installation *was completed* at this station for all components. The ISAMS contractor was requested to relocate the concourse EDB due to Metrorail operational reasons.
2. Durban Station: The contractor has installed all platform EDB's including three concourse boards, thus leaving only 1 more concourse boards to be installed. This installation is due to be completed 31 January 2018.
3. Kaptein klip: The installation of the speed gates is pending a decision by Metrorail. It seems that the Phase 1 will be closed without this installation, as it will be required to build an extra ticket office on the other side of the station.
4. Salt River: The speed gates were installed at the station on both entrance and access into the station. However, the Region requested that we allow for the extra speed gates inside the station as a change over access control facility between the south line and the north and central line. This was requested to improved access control, reduce fare evasion and increase revenue. However, final approval of the design is pending a decision from Metrorail. It is more likely that the project can be closed without finalisation of this scope.
5. Mzimholpe: The non-installation of the *speed gates is* due to the configuration of the station, it is only possible to install the speed gates on the platform. This is more strictly railway safety area and the clearances are not favourable for this installation as the risk of congestions is very high. The RSR was to consider and provide the necessary approval. Prasa CRES still waiting both Metrorail decision to advance installation together with guidance from RSR.
6. Long Dale: The non-installation of the speedgates were due to the non-availability of the land that belongs to Transnet. It appears that it will be difficult to get approval and authorisation to do this installation.
7. Olifantsfontein: The installation of the speed gates is still outstanding pending the necessary approvals from Metrorail however, it appears that the project will be closed without the installation of the speed gates.

Table: Phase 1: Status of the ISAMS Phase 1

ITEM	SGR	NGR	WCR	KZN	OVERALL
Installation * (Excl EDB's)	100.00%	100.00%	100.00%	100.00%	100.00%
Installation * (Incl EDB's)	100.00%	100.00%	100.00%	99.00%	99.76%
Standalone Pre- Commissioning	100.00%	100.00%	100.00%	99.00%	99.76%
Installation Handover (Excl EDB's)	100.00%	100.00%	100.00%	100.00%	100.00%
Functional Handover	100.00%	100.00%	100.00%	100.00%	100.00%
Final Commissioning Excluding EDB's, HP & PA	100.00%	100.00%	100.00%	100.00%	100.00%
Fibre Link to Control Room	3.85%	100.00%	100.00%	100.00%	79.96%
Asset Verification	100.00%	100.00%	100.00%	100.00%	100.00%
OVERALL	98.89%	100.00%	100.0%	99.75%	99.66%

Table: Phase 1: Detail of Phase 1 (X denotes exclusion from scope)

Project Phases	No.	Stations	ISAMS Elements								
			Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Civil Infrastructure	Control Centre
Phase 1 - SGR	1	Naledi	x	Done	Done	x	x	Done	Done	Done	x
	2	Merafe	Done	Done	Done	Done	Done	Done	Done	Done	x
	3	Inhiazane	Done	Done	Done	Done	Done	Done	Done	Done	x
	4	Ikwezi	x	Done	Done	x	x	Done	Done	Done	x
	5	Dube	Done	Done	Done	Done	Done	Done	Done	Done	x
	6	New Canada	x	Done	Done	x	x	Done	Done	Done	x
	7	Langlaagte	x	Done	Done	x	x	Done	Done	Done	x
	8	Braamfontein	x	Done	Done	x	x	Done	Done	Done	x
	9	Park Station	x	Done	Done	x	x	Done	Done	Done	Done
	10	Elandsfontein	x	Done	Done	x	x	Done	Done	Done	x
	11	Isando	x	x	x	x	x	x	x	Done	x
	12	Olifantsfontein	Done	Done	Done	Done	Done	Done	Done	Done	x
	13	Nancefield	Done	Done	Done	Done	Done	Done	Done	Done	x
	14	Kliptown	Done	Done	Done	Done	Done	Done	Done	Done	x
	15	Tshiawelo	Done	Done	Done	Done	Done	Done	Done	Done	x
	16	Mlamlankunzi	Done	Done	Done	Done	Done	Done	Done	Done	x
	17	Midway	Done	Done	Done	Done	Done	Done	Done	Done	x
	18	Kaalfontein	Done	Done	Done	Done	Done	Done	Done	Done	x
	19	Mzimhlope	Done	x	Done	Done	Done	Done	Done	Done	x
	20	Phomolong	Done	Done	Done	Done	Done	Done	Done	Done	x
	21	Longdale	Done	Done	Done	x	x	Done	Done	Done	x
	22	Doomfontein	x	Done	Done	x	x	Done	Done	Done	x
	23	Orlando	x	x	Done	x	x	Done	Done	Done	x
	24	Rhodesfield	x	x	Done	x	x	Done	Done	Done	x
	25	Phefeni	Done	Done	Done	Done	Done	Done	Done	Done	x
	26	Mayfair	Done	Done	Done	Done	Done	Done	Done	Done	x

Project Phases	No	Stations	Project Scope							
			Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Control Centre
Phase 1 - NGR	1	Pretoria	Done	Done	Done	Done	Done	Done	Done	done
	2	Hercules	Done	Done	Done	Done	Done	Done	Done	x
	3	Mountain View	Done	Done	Done	Done	Done	Done	Done	x
	4	Pretoria North	x	Done	Done	x	x	Done	Done	x
	5	Wintersnest	Done	Done	Done	Done	Done	Done	Done	x
	6	Akasiaboom	Done	Done	Done	Done	Done	Done	Done	x
	7	Centurion	Done	Done	Done	Done	Done	Done	Done	x
	8	Atteridgeville	Done	Done	Done	Done	Done	Done	Done	x
	9	Silverton	Done	Done	Done	Done	Done	Done	Done	x
	10	Bosmanstraat	Done	Done	Done	Done	Done	Done	Done	x
	11	Saulsville	Done	Done	Done	x	x	Done	Done	x
	12	Kopanong	x	Done	Done	Done	Done	Done	Done	x
	13	Soshanguve	Done	Done	Done	Done	Done	Done	Done	x
	14	Denneboom	Done	Done	Done	Done	Done	Done	Done	x
	15	Eerste Fabrieke	x	Done	Done	x	x	Done	Done	x
	16	Plenaarspoort	x	x	x	x	x	x	x	x

Project Phases	No.	Stations	Installation									
			Public Adress	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Civil Infrastructure	Control Centre	
Phase 1 - WCR	1	Chris Hani	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	2	Kuyasa	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	3	Khayelitsha	Done	Done	Done	x	x	Done	Done	Done	Done	x
	4	Nongubela	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	5	Notungile	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	6	Mandalay	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	7	Stock Road	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	8	Mitchelsplain	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	9	Kapteynsklip	Done	x	Done	Done	Done	Done	Done	Done	Done	x
	10	Nyanga	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	11	Heideveld	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	12	Bonteheuvel	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	13	Maitland	x	Done	Done	Done	Done	Done	Done	Done	Done	x
	14	Netreg	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	15	Salt River	x	Done	Done	x	x	Done	Done	Done	Done	x
	16	Cape Town	x	Done	x	x	x	x	x	x	x	Done

Project Phases	No.	Stations	Installation									
			Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Civil Infrastructure	Control Centre	
Phase 1 - KZN	1	Kwamashu	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	2	Thembalihle	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	3	Duffs Road	x	Done	Done	80%	80%	Done	Done	Done	Done	x
	4	Isipingo	x	Done	Done	Done	Done	Done	Done	Done	Done	x
	5	Lindokuhle	x	Done	Done	Done	Done	Done	Done	Done	Done	x
	6	Umlazi*	x	Done	Done	x	x	Done	Done	Done	Done	x
	7	Kwa-Mnyandu	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	8	Zwelethu	x	Done	Done	Done	Done	Done	Done	Done	Done	x
	9	Reunion	x	Done	Done	x	x	Done	Done	Done	Done	x
	10	Merebank	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	11	Clairwood	x	Done	Done	Done	Done	Done	Done	Done	Done	x
	12	Durban	Done	Done	Done	90%	80%	Done	Done	Done	Done	Done
	13	Rosburgh	x	Done	Done	x	x	Done	Done	Done	Done	x
	14	Umbilo	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	15	Congella	Done	Done	Done	Done	Done	Done	Done	Done	Done	x
	16	Montclair	x	Done	Done	Done	Done	Done	Done	Done	Done	x

2.1.1 Financial Progress

Listed below are invoices since the inception of the project.

- Paid to date R 1 898 957 045.99
- Final Account R 60 685 307.00

PHASE ONE CONTRACT

Invoice	Date	Total invoice including Vat	Status	Balance
PRAS 5-01	05-Apr-11	R 285 000 000.00	Paid	R 1 674 642 352.99
ST011212	21-Jun-11	R 25 724 974.67	Paid	R 1 648 917 378.32
ST19012	20-Jul-11	R 25 724 974.67	Paid	R 1 623 192 403.65
ST030612	28-Aug-11	R 25 724 974.67	Paid	R 1 597 467 428.98
ST031212	20-Sep-11	R 25 724 974.67	Paid	R 1 571 742 454.31
ST039912	12-Oct-11	R 25 724 974.67	Paid	R 1 546 017 479.64
ST040712	11-Nov-11	R 25 724 974.67	Paid	R 1 520 292 504.97
ST051512	22-Nov-11	R 641 250.00	Paid	R 1 519 651 254.97
ST052112	12-Dec-11	R 25 724 974.67	Paid	R 1 493 926 280.30
ST052312	12-Jan-12	R 25 724 974.67	Paid	R 1 468 201 305.63
ST002413	12-Feb-12	R 25 724 974.67	Paid	R 1 442 476 330.96
ST090812	13-Feb-12	R 25 724 974.67	Paid	R 1 416 751 356.29
ST009213	15-Apr-12	R 27 734 496.99	Paid	R 1 389 016 859.30
ST015013	14-May-12	R 27 734 496.99	Paid	R 1 361 282 362.31
ST055813	30-Aug-12	R 428 142 272.64	Paid	R 933 140 089.67
ST00613	30-Nov-12	R 73 795 284.12	Paid	R 859 344 805.55
ST000214	4-Mar-13	R 323 107 972.60	Paid	R 536 236 832.95
ST000614	25-Mar-13	R 243 459 347.16	Paid	R 292 777 485.79
ST004714	3-Sep-13	R 146 100 502.68	Paid	R 146 676 983.11
ST005014	2-Oct-13	R 85 991 676.11	Paid	R 60 685 307.00
ST01016	31-Oct-15	R 51 311 720.90	Accrued	R 9 373 586.10
Total		R 1 950 268 766.89		
Outstanding Balance		R 9 373 586.10		

2.2. ISAMS Phase 1 - Extension

SUMMARY

- o *Date of Approval of Contract Extension: September 2013*
- o *Date of Contract Validity: February 2016*
- o *Number of Stations: 12*
- o *Project Progress: 100 %*
- o *Contract Amount: R 342 000 000*
- o *Expenditure: R 281 905 419.62 (PAID TO DATE)*
- o *Balance: R 60 094 580.38 (OUTSTANDING)*
- o *Status of Installation: Installation completed on eleven (11) stations but with one (1) outstanding element at Loftus Station. However, there are operation issues that many necessitate that President Station is removed from the list.*

Outstanding installation items on Phase 1 Extension Project: The installation part of the project closed without the following outstanding items completed;

1. **President Station:** The installation of speed-gates⁹ at President Station was removed from the list due to infrastructure and operational issues at the station that speed gates not be installed. PRASA RAIL is to issue final decision and approval on this matter.

Table: Phase 1 Extension ISAMS Project

ITEM	OVERALL
Site Audit and Prep of As-Build	100.00%
Procurement	100.00%
Engineering	100.00%
Sign off Drawings	100.00%
Safety File Signoff	100.00%
Site Establishment	100.00%
Installation	100.00%
Standalone Pre- Commissioning	100.00%
Installation Handover	100.00%
OVERALL	100.00%

2.2.1 Financial Progress

Listed below are invoices since the inception of the project.

- Paid to date R 281 905 419.62
- Final Account R 60 094 580.38

PHASE One Extension Contract

Invoice	Date	Total	Status	Balance
ST005414	20-Nov-13	R 94 608 000.00	Paid	R 247 392 000.00
ST000915	30-Oct-14	R 92 439 242.89	Paid	R 154 952 757.11
ST000216	1-Apr-15	R 94 858 176.73	Paid	R 60 094 580.38
ST00816	30-Jul-15	R 42 151 022.75	Accrued	R 17 943 557.63
Total		R 324 056 442.37		
Outstanding Balance		R 17 943 557.63		

2.3. ISAMS Phase 2

- **SUMMARY**
 - *Date of Contract Approval: July 2014*
 - *Date of Contract Validity: June 2019*
 - *Installation Validity: 2 years – June 2016*
 - *Number of Stations: 100*
 - *Project Progress: 97.66 % complete.*
 - *Contract Amount: R 2 536 327 633.60 (VAT inclu)*
 - *Expenditure: R 1 166 228 467.75 (PAID TO DATE)*
 - *Balance: R 1 370 099 165.25 (OUTSTANDING)*

Outstanding installation items on Phase 2 Project:

Southern Gauteng region:

- Drie Hoek**: The installation *was in progress* at this station for all components. During this installation, this station has experienced cable theft on the platforms therefore incurring delay and as a result, installations were halted. See detailed Vandalism and theft report.

2. Cleveland Station: The installation *was in progress* at this station for all components. During this installation, this station has experienced cable theft and manhole damages on the platforms therefore incurring delay and as a result, installations were halted. See detailed Vandalism and theft report.
3. Tooronga Station: The Installation is in progress and will be completed without speed gate.
4. Denver Station: All ISAMS elements are progressively being installed however; delay has been experienced as a result waiting approval for drawing proposal for the ticket office, speed gate building and telecoms equipment room.
5. George Goch: All ISAMS elements were installed and were in the process for local commissioning. During this phase of the project this station experienced vandalism, theft and robbery. This resulted in huge delays resonating from the Telecoms equipment room being broken into and also the ISAMS contractor being exposed to life threatening incident. The contractor was held at gun point. The contractor was request to halt any further installations. See detailed Vandalism and theft report.
6. Daveyton Springs: All ISAMS equipment have been progressively installed however experienced delays due to customer services requiring some changes. The installation of the *speed gates is the only outstanding scope* and pending Prasa Rail.
7. Lenz Station: All ISAMS elements were installed but the project-experienced delays because of unrest and rioting from local community and therefore delayed the local commissioning of all elements. The contractor awaits directives from Prasa indicating if it is safe to proceed with the final local commissioning of ISAMS.
8. Middanadale Station: The ISAMS installation has been completed. During the final commissioning, this station however has experienced five theft incidents where all ISAMS equipment have been stolen. See detailed Vandalism and theft report.

Northern Gauteng region:

1. Schutte Street Station: Only PA system and CCTV were to be installed at this station. During the commissioning phase, this station experienced radical theft where nine PA system and CCTV poles were stolen. See detailed Vandalism and theft report.

Western Cape region:

- 1. Bellville Station:** The installation is complete at this station. The only element that remains outstanding are the speedgates on the platform. This is pending decision from Prasa Rail
- 2. Lentegeur Station:** The installation at this station is on hold by the region due to NSIP program in progress.
- 3. Esplanade Station:** The Installation at this station is on hold due to NSIP program which is waiting award. The NSIP program timelines for this station is set to be completed in March 2018.
- 4. Eiekefontein Station:** This is a TFR station - The installation at this station was delayed due to challenges in obtaining site access from TFR however the contractor is in receipt of site access and work streams has advanced almost done.
- 5. Elsies River Station:** The ISAMS installation were in progress however, this station has been exposed to vandalism and theft therefore delaying completion.
- 6. Huguenot Station:** This is a TFR station - The installation at this station was delayed due to challenges in obtaining site access from TFR however the contractor is in receipt of site access and work streams will advance.
- 7. Mbekweni Station:** This is a TFR station - The installation at this station was delayed due to challenges in obtaining site access from TFR however the contractor is in receipt of site access and work streams will advance. The timelines for the ISAMS program has been further negatively impacted by construction work being conducted by Prasa Cres
- 8. Kraaifontein Station:** This is a TFR station - The installation at this station was delayed due to challenges in obtaining site access from TFR however the contractor is in receipt of site access and work streams will advance.
- 9. Brackenfell Station:** This is a TFR station - The installation at this station was delayed due to challenges in obtaining site access from TFR however the contractor is in receipt of site access and work streams will advance.
- 10. Stikland Station:** This is a TFR station - The installation at this station was delayed due to challenges in obtaining site access from TFR however, the contractor is in receipt of site access and work streams will advance.

KwaZulu Natal region:

1. Berea Road Station: The installation is *in progress* at this station for all elements.

ITEM	SGR	NGR	WGR	KZN	EC	OVERALL
No of Stations	33	23	32	11	10	109
Safety File Signoff	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%
Site Access Certificate	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%
Procurement	98.12%	99.78%	100.00%	100.00%	HOLD	99.31%
Site Audit and Prep of As-Built's	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%
Engineering	99.64%	100.00%	100.00%	100.00%	HOLD	99.89%
Drawings Submitted	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%
Drawings Approved by Region	95.45%	100.00%	100.00%	100.00%	HOLD	98.84%
Site Establishment	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%
Installation	97.86%	99.74%	96.67%	92.83%	HOLD	96.03%
Standalone Pre- Commissioning	80.68%	100.00%	91.15%	88.89%	HOLD	92.48%
Fibre Link to Control Room	0.00%	71.43%	59.27%	88.89%	HOLD	49.24%
Installation Handover	59.09%	85.71%	78.89%	88.89%	HOLD	81.22%
Training	40.91%	93.33%	81.54%	59.38%	HOLD	68.94%
Asset Verification	72.73%	95.24%	79.03%	72.78%	HOLD	80.78%
OVERALL	96.03%	99.57%	98.27%	97.42%		97.66%

Project Phases	Total Stations		Region	Installation										
				Pipe and Chamber & Poles	Building Work	Cable Containment	Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Installation
Phase 2 - SGR	1	Oakmoor	SGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	2	Leralla	SGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	3	Umindlela	SGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	4	Temblisa	SGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	5	Birchlelgh	SGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	6	Kempton Park	SGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	7	Isando	SGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	8	Ravensklip	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	9	Knights	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	10	Germiston	SGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	N/A	N/A	100.00%	100.00%	100.00%
	11	Oriehoek	SGR	100.00%	98.00%	90.00%	35.00%	90.00%	35.00%	35.00%	35.00%	35.00%	35.00%	58.80%
	12	Geldenhuis	SGR	100.00%	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	13	Cleveland	SGR	100.00%	98.00%	80.00%	45.00%	70.00%	70.00%	20.00%	20.00%	60.00%	60.00%	62.30%
	14	Tooronga	SGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	15	Denver	SGR	100.00%	HOLD	50.00%	0.00%	0.00%	0.00%	100.00%	100.00%	0.00%	0.00%	38.89%
	16	George Goch	SGR	100.00%	90.00%	80.00%	80.00%	80.00%	80.00%	90.00%	90.00%	80.00%	80.00%	85.00%
	17	Jeppe	SGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	18	Grosvenor	SGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	19	Daveyton	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	20	Springs	SGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	21	Brakpan	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	22	Benoni	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	23	Randfontein	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	24	Krugersdorp	SGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	25	Luijpaardsvlei	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	26	Rodepoort	SGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	27	Kwesine	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	28	Pilot	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	29	Lenz	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	30	Midranddale	SGR	100.00%	100.00%	100.00%	90.00%	100.00%	100.00%	100.00%	100.00%	90.00%	100.00%	98.00%
	31	Residenda	SGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	32	Houtheuvel	SGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	33	Vereeniging	SGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD

Project Phases	Total Stations		Region	Installation										
				Pipe and Chamber & Poles	Building Work	Cable Containment	Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Installation
Phase 2 - NGR	1	Sportspark	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	2	Kloofsig	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	3	Greenview	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	4	Plenaarspoort	NGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	5	De Wildt	NGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	6	Tallardshoop	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	7	Ga Rankuwa	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	8	Rissik	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	9	Medunsa	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	10	Soshanguve	NGR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	11	Wolmerton	NGR	100.00%	N/A	100.00%	100.00%	N/A	N/A	N/A	N/A	100.00%	N/A	100.00%
	12	Plinedene	NGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	N/A	N/A	100.00%	100.00%	100.00%
	13	Fountains	NGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	N/A	N/A	100.00%	100.00%	100.00%
	14	Barracks	NGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	N/A	N/A	100.00%	100.00%	100.00%
	15	Pretoria West	NGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	N/A	N/A	100.00%	100.00%	100.00%
	16	Schuttestreet	NGR	100.00%	100.00%	100.00%	90.00%	N/A	90.00%	N/A	N/A	90.00%	90.00%	94.29%
	17	Mears	NGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	18	Technikon Rant	NGR	100.00%	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	100.00%
	19	Walker Street	NGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	20	Devenish	NGR	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	21	Mamelodi Gardens	NGR	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	22	Waitloo	NGR	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	23	Eersterust	NGR	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Project Phases	Total Stations		Region	Installation										
				Pipe and Chamber & Poles	Building Work	Cable Containment	Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Installation
Phase 2 - WCR	1	Parade Concourse	WCR	100.00%	100.00%	100.00%	N/A	100.00%	N/A	N/A	N/A	100.00%	100.00%	100.00%
	2	Bellville	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%
	3	Pinelands	WCR	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	4	Ndabeni	WCR	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	5	Cape Town Mess	WCR	100.00%	100.00%	100.00%	100.00%	N/A	N/A	100.00%	N/A	100.00%	100.00%	100.00%
	6	Philippi	WCR	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	7	Woodstock	WCR	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	8	Koeberg Road	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	9	Lentegeur	WCR	100.00%	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	10	Ysterplaat	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	11	Mutual	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	12	Esplanade	WCR	98.00%	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	13	Kuils River	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	14	Blackheath	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	15	Melton Rose	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	16	Eerste River	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	17	Eikenfontein	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	18	Parow	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	19	Tygerberg	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	20	Elsie's River	WCR	100.00%	100.00%	85.00%	90.00%	100.00%	100.00%	100.00%	100.00%	85.00%	100.00%	96.00%
	21	Vasco	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	22	Goodwood	WCR	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	23	Retreat	WCR	100.00%	HOLD	100.00%	100.00%	HOLD	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	24	Wynberg	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	25	Fish Hoek	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	26	Huguenot	WCR	100.00%	HOLD	HOLD	HOLD	HOLD	HOLD	100.00%	HOLD	HOLD	HOLD	HOLD
	27	Mbekweni	WCR	100.00%	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	28	Kraaifontein	WCR	100.00%	100.00%	90.00%	90.00%	100.00%	90.00%	100.00%	90.00%	90.00%	90.00%	94.00%
	29	Thornton	WCR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	30	Brackenfell	WCR	100.00%	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	31	Stikland	WCR	100.00%	100.00%	35.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	23.50%
	32	Woltemade	WCR	100.00%	100.00%	100.00%	100.00%	N/A	N/A	N/A	N/A	N/A	N/A	100.00%

Project Phases	Total Stations		Region	Installation										
				Pipe and Chamber & Poles	Building Work	Cable Containment	Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Installation
Phase 2 - KZN	1	Dalbridge	KZN	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	2	Umgeni	KZN	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	3	Temple	KZN	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	4	Effingham	KZN	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	5	Greenwood Park	KZN	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	6	Red Hill	KZN	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	7	Avoca	KZN	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
	8	Berea Road	KZN	95.00%	100.00%	50.00%	0.00%	85.00%	0.00%	25.00%	0.00%	0.00%	0.00%	35.50%
	9	Clairwood	KZN	100.00%	100.00%	100.00%	N/A	100.00%	100.00%	N/A	N/A	100.00%	100.00%	100.00%
	10	Kenville	KZN	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD
	11	Pilgrim	KZN	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD	HOLD

2.3.1 Financial Progress

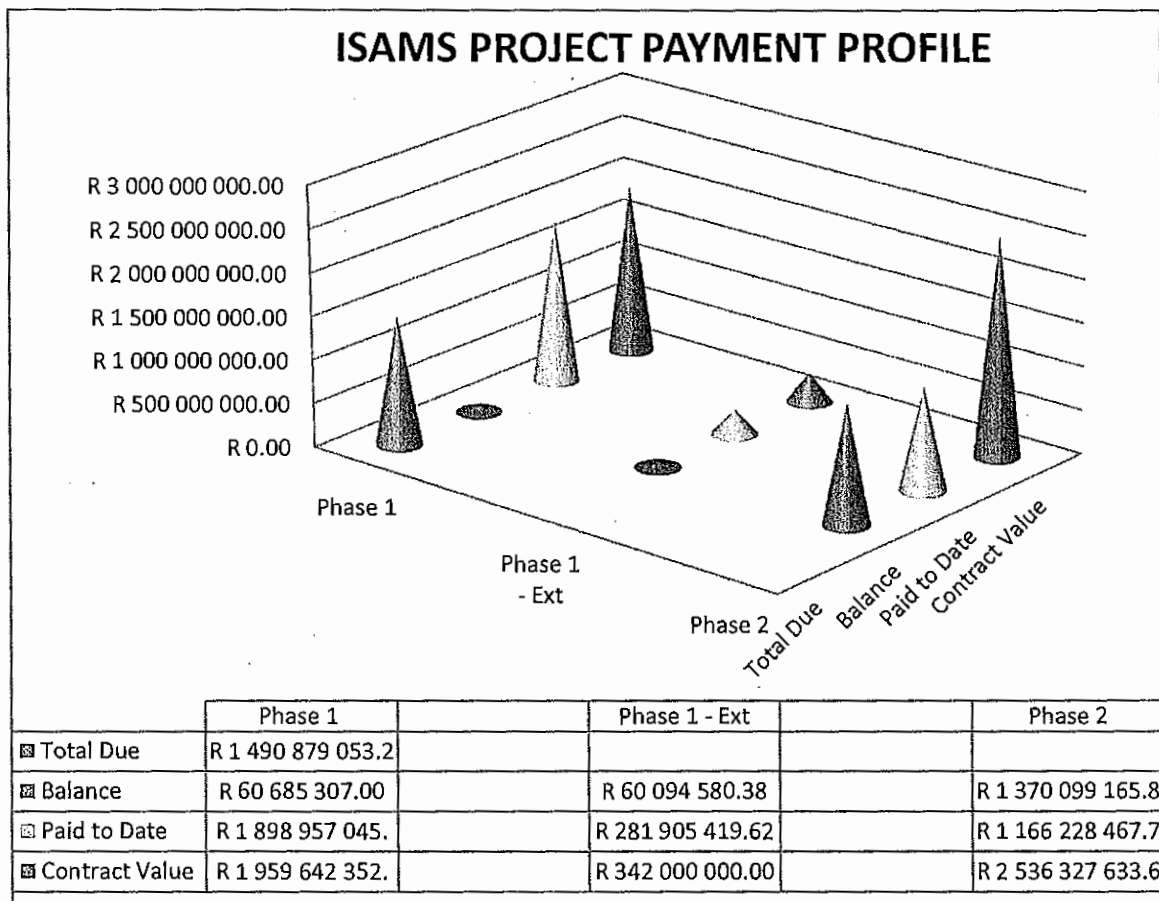
Listed below are invoices since the inception of the project.

- Paid to date - R 1 166 228 467.75
- Final Account - R 1 370 099 165.25

PHASE TWO

Invoices	Claim No	Date	Total	Status	Balance
000915	1	20-Aug-14	R 304 000 025.54	Paid	R 2 232 327 608.06
ST000915	2	30-Oct-14	R 339 250 676.60	Paid	R 1 893 076 931.46
ST0001815	3	29-Dec-14	R 133 512 368.81	Paid	R 1 759 564 562.65
ST000116	4	01-Apr-15	R 389 465 396.80	Paid	R 1 370 099 165.85
ST00916	5	30-Jul-15	R 215 093 360.43	Accrued	R 1 155 005 805.42
ST01116	6	02-Dec-15	R 264 685 433.96	Accrued	R 890 320 371.46
ST00117	7	18-Apr-16	R 313 958 747.56	Accrued	R 576 361 623.90
ST01717PF	8	18-Jul-16	R 78 532 935.98	Accrued	R 497 828 687.92
ST03317PF	9	25-Jan-17	R 208 630 176.46	Accrued	R 289 198 511.46
Total			R 2 247 129 122.14		
Outstanding Balance			R 289 198 510.86		

2.4 PAYMENT SUMMARY



1. 1st DEPLOYMENT CORRIDOR

The installation is currently in progress at the deployment corridor for the new trains, which will be launched during the October Public Transport month. PRASA has established a "Business Readiness for Modernization Focus Committee" to ensure that infrastructure, stations and facilities are ready for the 1st October launch. The elements which are been delivered by ISAMS Project, especially security, passenger communication and access management are required to be ready for the Launch.

The status of 1st Deployment Corridors is a follows:

- **SUMMARY**
 - 1st Deployment Corridor
 - Pretoria Station to Pienaarspoort Station
 - Total Number of Stations: 16
 - Total station completed on Phase 1: 9
 - Total Stations Outstanding Stations: 0
 - Total station in ISAMS Phase 2: 7

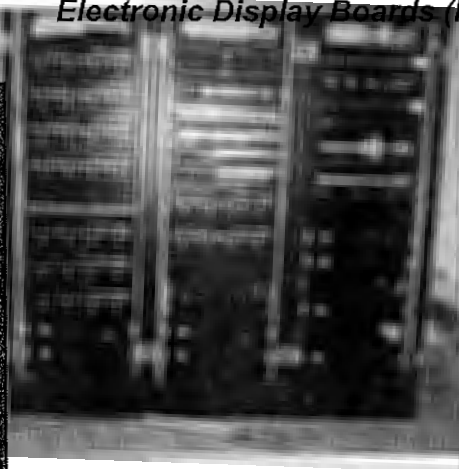
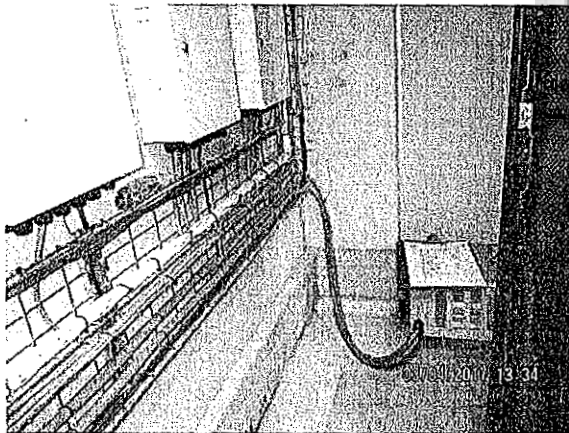
ISAMS - Deployment Corridor															
Line	Stations	Operator	Infrastructure											Commissioning	
			Electrical Power Supply	Building Works	Signage Installation	Public Address	Security	Fire Detection	Security Alarm	ISAMS	Access Control System	Escalator	Station Pre-Commissioning	Train	
1	Pretoria	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
2	Pretoria	NGR	100.00%	100.00%	100.00%	100.00%	N/a	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
3	Pretoria	NGR	100.00%	100.00%	100.00%	100.00%	N/a	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
4	Pienaarspoort	NGR	100.00%	100.00%	100.00%	100.00%	N/a	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	Installation complete Waiting for power	100.00%
5	Pretoria	NGR	100.00%	100.00%	100.00%	100.00%	80.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	98.00%	100.00%
6	Pretoria	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
7	Pienaarspoort	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
8	Pienaarspoort	NGR	100.00%	100.00%	100.00%	100.00%	N/a	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
9	Pretoria	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
10	Pienaarspoort	NGR	100.00%	100.00%	100.00%	100.00%	N/a	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
11	Pretoria	NGR	100.00%	100.00%	100.00%	100.00%	N/a	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
12	Pienaarspoort	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
13	Pienaarspoort	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
14	Waterloo	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
15	Pretoria	NGR	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	Standalone Pre-Commissioning done - Waiting for permanent power supply	100.00%
16	Pienaarspoort	NGR	100.00%	100.00%	100.00%	100.00%	N/a	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%

Examples of completed ISAMS Installation @ Greenview Station



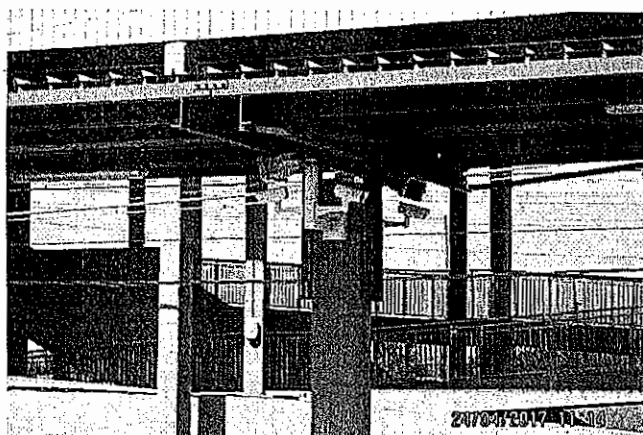
Speedgates

Electronic Display Boards (Platform)



Telecoms Equipment Room

Back End Equipment racks



Surveillances (CCTV) on platform

Annexure A – Phase ONE

Southern Gauteng region			Northern Gauteng region			Western Cape			KwaZulu		
No	Stations	Region	No.	Stations	Region	No.	Stations	Region	No.	Stations	Region
1	Naledi	SGR	1	Pretoria	NGR	1	Chris Hani	WCR	1	Kwamashu	KZN
2	Merafe	SGR	2	Hercules	NGR	2	Kuyasa	WCR	2	Themballhle	KZN
3	Inhlazane	SGR	3	Mountain View	NGR	3	Khayelitsha	WCR	3	Duffs Road	KZN
4	Ikwezi	SGR	4	Pretoria North	NGR	4	Nonqubela	WCR	4	Isipingo	KZN
5	Dube	SGR	5	Wintersnest	NGR	5	Nolungile	WCR	5	Lindokuhle	KZN
	New Canada	SGR	6	Akasiaboom	NGR	6	Mandalay	WCR	6	Umlazi	KZN
7	Langlaagte	SGR	7	Centurion	NGR	7	Stock Road	WCR	7	Kwa-Mnyandu	KZN
8	Braamfontein	SGR	8	Atteridgeville	NGR	8	Mitchelsplain	WCR	8	Zwelethu	KZN
9	Park Station	SGR	9	Silverton	NGR	9	Kapteinsklip	WCR	9	Reunion	KZN
10	Elandsfontein	SGR	10	Bosmanstraat	NGR	10	Nyanga	WCR	10	Merebank	KZN
11	Isando	SGR	11	Saulsville	NGR	11	Heideveld	WCR	11	Clairwood	KZN
12	Olifantsfontein	SGR	12	Kopanong	NGR	12	Bonteheuwel	WCR	12	Durban	KZN
13	Nancefield	SGR	13	Soshanguve	NGR	13	Maitland	WCR	13	Rossburgh	KZN
14	Kliptown	SGR	14	Denneboom	NGR	14	Netreg	WCR	14	Umbilo	KZN
15	Tshiwelo	SGR	15	Eerste Fabrieke	NGR	15	Salt River	WCR	15	Congella	KZN
16	Mlamlankunzi	SGR				16	Cape Town – speedgates only and control room	WCR	16	Montclair	KZN
17	Midway	SGR									
18	Kaalfontein	SGR									
19	Mzimhlope	SGR									
20	Phomolong	SGR									
21	Longdale	SGR									
22	Doomfontein	SGR									
23	Orlando	SGR									
24	Rhodesfield	SGR									
25	Phefeni	SGR									
26	Mayfair	SGR									

Annexure B – ISAMS Phase One – EXT

No	Stations	Region	Year
1	Dunswart	SGR	2014
2	Stretford	SGR	2014
3	Wonderboom	NGR	2014
4	Belle Ombre	NGR	2014
5	Van Riebeeck Park	SGR	2014
6	Hartebeespruit	NGR	2014
7	Croesus	SGR	2014
8	President	SGR	2014
9	Daspoort	NGR	2014
10	Koedoespoort	NGR	2014
11	Loftus	NGR	2014
12	Irene	NGR	2014

Annexure C - Phase Two

Southern Gauteng region			Northern Gauteng region			Western Cape			KwaZulu		
Total	Stations	Region	Total	Stations	Region	Total	Stations	Region	Total	Stations	Region
1	Oakmoor	SGR	1	Sportpark	NGR	1	Parade Concourse	WCR	1	Dalbridge	KZN
2	Leralla	SGR	2	Kloofsig	NGR	2	Bellville	WCR	2	Umgeni	KZN
3	Limindlela	SGR	3	Greenview	NGR	3	Pinelands	WCR	3	Temple	KZN
4	Tembisa	SGR	4	Plenaarspoort	NGR	4	Ndabeni	WCR	4	Effingham	KZN
5	Birchleigh	SGR	5	De Wildt - IM	NGR	5	Cape Town Mess	WCR	5	Greenwood Park	KZN
6	Kempton Park	SGR	6	Tallardshoop	NGR	6	Phillipi	WCR	6	Red Hill	KZN
7	Isando	SGR	7	GaRankuwa	NGR	7	Woodstock	WCR	7	Avoca	KZN
8	Ravensklip	SGR	8	Rissik	NGR	8	Koeberg Road	WCR	9	Berea Road	KZN
9	Knights	SGR	9	Medunsa	NGR	9	Lentegeur	WCR	10	Kenville	KZN
10	Germiston	SGR	10	Soshanguve	NGR	10	Ysterplaat	WCR	11	Pilgrim	KZN
11	Driehoek	SGR	11	Wolmerton	NGR	11	Mutual	WCR			
12	Geldenhuis	SGR	12	Pinedene	NGR	12	Esplanade	WCR			
13	Cleveland	SGR	13	Fountain	NGR	13	Kuils River	WCR			
14	Tooronga	SGR	14	Barracks	NGR	14	Blackheath	WCR			
15	Denver	SGR	15	Pretoria West	NGR	15	Melton Rose	WCR			
16	George Goch	SGR	16	Schuttestreet	NGR	16	Eerste River	WCR			
17	Jeppe	SGR	17	Mears	NGR	17	Elkenfontein	WCR			
18	Grosvenor	SGR	18	Technikonrant	NGR	18	Parow	WCR			
19	Daveyton	SGR	19	Walker Sreet	NGR	19	Tygerberg	WCR			
20	Springs	SGR	20	Devenish	NGR	20	Elsie's River	WCR			
21	Brakpan	SGR	21	Mamelodi Gardens	NGR	21	Vasco	WCR			
22	Benoni	SGR	22	Walloo	NGR	22	Goodwood	WCR			
23	Randfontein	SGR	23	Eestrerust	NGR	23	Retreat	WCR			
24	Krugersdorp	SGR				24	Wynberg	WCR			
25	Lulpaardsvlei	SGR				25	Fish Hoek	WCR			
26	Roodepoort	SGR				26	Huguenot	WCR			
27	Kwesine	SGR				27	Mbekweni	WCR			
28	Pilot	SGR				28	Kraaifontein	WCR			
29	Lenz	SGR				29	Thornton	WCR			
30	Middandale	SGR				30	Brakenfell	WCR			
31	Residendia	SGR				31	Stikland	WCR			
32	Houtheuwel	SGR				32	Woltemade	WCR			
33	Vereeniging	SGR									

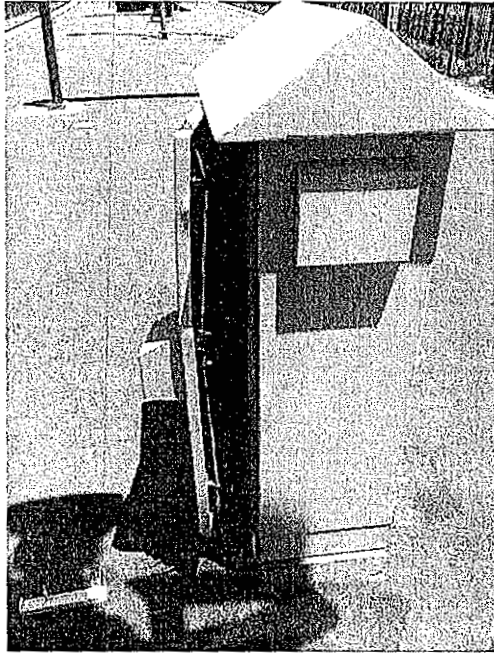
ISAMS - THEFT & VANDALISM

Description	Status / Comments
Woodstock station- theft	Over the weekend of 28th Nov 2015, theft took place. This will result in delays and additional costs.
Knights Station- power Kiosk issues	Power kiosk burnt out, noticed in 2 Dec 2015. Delaying project with additional costs as commissioning delayed.
Melton Rose station- theft	On 23 June 2016, theft of 4 x IR cameras took place. This will result in delays and additional costs.
Ravensklip station- theft	On 30 June 2016, theft of 2 x IR cameras took place. This will result in delays and additional costs.
Vasco - Theft	Before the 26 May 2016, 4 x IR cameras were stolen from the platform, while our site access was revoked. Around 29 March 2017, 4 x IR cameras were stolen from the platform. This will lead to additional costs.
Barracks - Theft	17 Aug 2016, 4 x IR cameras, speaker and pole were stolen from the platform. This will lead to additional costs.
Barracks Station - Theft	During November 2016, various cables were stolen. This will lead to delays and additional costs.
Technikonrant station - Theft & vandalism	During Aug 2016, various incidents of theft and vandalism have occurred. This will lead to delays and additional costs.
Tygerberg station- theft	Sept '16, 1 x ceiling & 4 x IR cameras stolen. Oct '16, 2 x IR cameras stolen and 1 x IR camera damaged. This will result in delays and additional costs. 15 Jan '17, 2 x IR cameras stolen. 18 Jan '17, 4 x IR cameras stolen. 8 Aug'17 theft of 1 x speedgate side panel. This will result in delays and additional costs.
Grosvenor station- theft	8 Oct 16 equipment room door damaged and CVT and aircon unit and condenser stolen. This will result in delays and additional costs. Visit 9 Jan 2017, equipment room cleaned out. 1 x aircon, 1 x CVT, 2 x 3KVA UPS, 1 x 6KVA UPS, 4 x DVR, 1 x Dome camera, 1 x KVM switch, 1 x KVM monitor, 1 x K32 controller, 2 x card readers, 1 x BGU, 1 x workstation, 3 x 24 port switch with patch panels, 1 x smoke detector, 1 x DOM, 1 x AMP, 1 x UIM, 1 x manual call point, 2 x siren & strobe, 1 x PSU, 1 x alarm keypad, 1 x 360 PIR, 1 x door JB stolen. All fibre and copper cable to be replaced as it was cut or stolen. False ceiling and wire trunking damaged. This will lead to additional costs.
Parrow- theft	Sept '16, 2 x IR cameras stolen. Oct '16, 36 x IR cameras stolen and cables damaged. This will result in delays and additional costs.
Elsiesrivier- theft	Oct 16 equipment room door damaged and power tools and hardware stolen. This will result in delays and additional costs.
Eerste Rivier- attempted break in	18 Nov 16 equipment room door damaged during attempted break in. This will result in delays and additional costs.
Lenz Station - attempted break in	Nov 16 attempted break in on Mini kiosk door that will have to be replaced. This will result in delays and additional costs.
Lenz Station - Theft & Vandalism	Visit 9 Jan 2017, 140m x power cable, 140m x 12core fibre cable, 370m x outdoor UTP cable stolen. Mini kiosk damaged. This will lead to delays and additional costs.
Middandale Staion- Theft -no power	In Oct 16, power cables stolen at station. This can lead to delays and additional costs.

<p>Middandale Station- theft & vandalism</p>	<p>In Nov 16, various cables, 2 x 8 port network switched, patch panels stolen at station. Mini kiosk door damaged. This will lead to delays and additional costs. Visit 9 Jan 2017, Mini Kiosk damaged, Distribution panel, CB's, Huawei switch, 8 port injector stolen. Main Kiosk damaged, CPD for EDB, CB's, Huawei switch, 8 port injector, fibre patch panel, brush panel, 2 x 3U trays stolen. UTP, speaker, power & Fibre cable to be replaced on platform. This will lead to additional costs. Visit of 27 Jan 2017, 1 x K32, 1 x N8000, 1 x UIM, 7 x 19 rack doors, 2 x fire panel batteries, 42 x 32Amp, 2 x 20amp, 1 x 16amp CB's stolen. 1 x KVM switch, 3 x 19' racks, 16m cable tray of 150mm, 8 x manholes and associated paving, 10 x cable tray bends, 56m x 12core Fibre cable & 4 x DVR's damaged. 153m x power cable, 726m x outdoor Cat5 cable, 240m x 8pr cable, 108m x speaker cable, 224m x fire cable, 154m x various UTP cable, 146m x 4mm power cable, 30m x 25mm Copex and 22m x 25mm sprage stolen. This can lead to delays and additional costs. Visit 2 Feb 2017, 1x ant-bandit door, 1 x speedgate solid door, 10 x manholes and associated paving, 203m x fibre cable, 5 x speedgates and motors damaged. i/o unit, ceiling speaker, 20 x speedgate panels, 5 x speedgate cables, 5 x speedgate transformers, 5 x speedgate batteries, 1 x complete wide left speedgate stolen. 10m x power cable, 7m x outdoor Cat5 cable, 60m x 2pr cable, 30m x speaker cable, 100m x comms cable stolen. Visit 5 June 2017, a second speedgate was stolen from building 2. This will lead to delays and additional costs.</p>
<p>George Goch Station - Theft</p>	<p>During November 2016, various cables, tools and generator were stolen. This will lead to delays and additional costs. Visit 9 Jan 2017, 6 x IR cameras, 14 x Dome cameras, Optical smoke detectors x 10, LED remote indicator x 2, Sounder x1, Bell x 1, Loop Sounder x 2, Card reader x 6, breakglass unit x 4, Magnet Lock x 3, door closer x 2, Indoor speaker x 5, 360deg infra red x 8, Panic button x 4, Roller Shutter monitor x 6, Anti- bandit door x 1 stolen. UTP, 4pr mylar, speaker & power cable stolen. This will lead to additional costs.</p>
<p>Thornton station- damage</p>	<p>1 Dec 2016 x 3 x IR cameras and EDB damaged due to Train fire. This will result in additional costs.</p>
<p>Mamelodi gardens Station- theft</p>	<p>6 Dec 2017, 4 x IR cameras stolen with associated cables. This will result in delays and additional costs. 31 Jan 2017, 4 x IR cameras, 1 x platform speaker with bracket stolen with associated cables. This will result in delays and additional costs.</p>
<p>Knights Station- theft</p>	<p>Feb 2017, 1 x Speedgate Monitor and Ticket office Video Monitor was stolen from Ticket Office. This will result in and additional costs.</p>
<p>Waltloo Station- theft</p>	<p>6 Dec 2017, 1 x IR cameras stolen with associated cables. This will result in delays and additional costs. 31 Jan 2017, 2 x platform speaker with bracket stolen with associated cables. This will result in delays and additional costs.</p>
<p>Dalbridge station - theft</p>	<p>During February 2017, aircon stolen at Dalbrige Station. During March 2017, aircon stolen for the second time. All control equipment switched off for protection of overheating. This will lead systems not functioning and additional costs.</p>
<p>Mutual- Theft</p>	<p>28 Feb 2017, Speedgates on platform the internals and the side panels stolen. This will result in additional costs.</p>

Elsies River Station – theft & vandalism	<i>During May 2017, equipment room door broken, all tools stolen. Broke into main Kiosk. Tried to drill out manhole lock. This has led to delays and additional costs.</i>
Driehoek Station – theft & vandalism	<i>During second week of June 2017, broke into manholes and 900m power cable, 1000m speaker cable and 1600m outdoor UTP cable stolen. This will lead to delays and additional costs.</i>
PTA West Station – theft & vandalism	<i>In June 2017, broke into manholes and cable stolen. This will lead to delays and additional costs.</i>
Driehoek Station – theft & vandalism	<i>During second week of June 2017, broke into manholes and 900m power cable, 1000m speaker cable and 1600m outdoor UTP cable stolen. This will lead to delays and additional costs.</i>
Blackheath Station – vandalism	<i>On 15 June 2017, second Anti- Bandit door destroyed. This has resulted in delays and additional costs.</i>
Cleveland Station – theft & vandalism	<i>Around middle of June 2017, 6 x manhole lids damaged. Pole plate stolen. 1500m power cable, 1000m speaker cable and 1000m outdoor UTP cable stolen. 1500m fibre optic cable damaged. Visit on 20 September 2017 Main Kiosk damaged, 1 x 5V PSU, 1 x media converter, 1 x CPD, 20x terminal connectors, 1 x fibre patch panel, 1 x 8 port injector, 1x network switch, 1 x victorian pole bracket stolen. This will lead to delays and additional costs.</i>
Schutte Str Station – theft & vandalism	<i>Visit 10 July 2017, 9 poles stolen from platform and damaged pole plinths and stole associated cable. This will lead to delays and additional costs.</i>
Toorong Station- theft	<i>2 August 2017, no power at equipment room. Commissioning delayed due to cable theft. This will lead to delays and additional costs.</i>
Koeberg station- theft	<i>30 Aug 2017, 2 x IR platform cameras stolen. This will result in additional costs.</i>
Retreat station- theft	<i>30 Aug 2017, 2 x IR platform cameras stolen. This will result in additional costs.</i>
Pienaarspoort station- theft	<i>Break in during May 2017. 3 cameras need to be re-installed. 1 x Dome camera to be replaced. CIT Monitor needs to be replaced. Access door to ticket office noe bricked up, need to replace access control equipment. Intercom needs to be replaced with cable. 3 x PIR's need to be replaced. 3 x smoke detectors and 1 x BGU needs to be replaced. 2 x speakers with cable need to be replaced. This will lead to additional costs.</i>

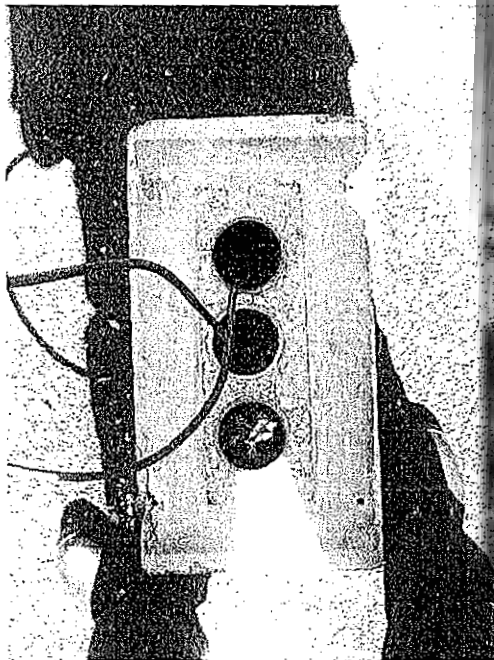
ISAMS – PHOTOS OF THEFT AND VANDALISM



Telecoms Kiosks forceful entry



Equipment room vandalised

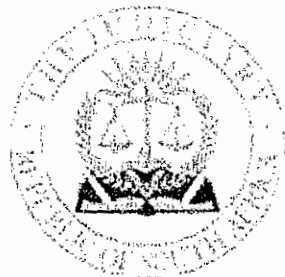


Telecoms Kiosks stolen



Cameras and help points stolen

" MINISTER C "



OFFICE OF THE DEPUTY JUDGE PRESIDENT A P LEDWABA
HIGH COURT OF SOUTH AFRICA, GAUTENG PROVINCIAL DIVISION, PRETORIA

Gauteng High Court Building, Cnr. Madiba (Vermeulen) & Paul Kruger Str, Room 7.15, Seventh Floor
Tel. (012) 315 7572– Fax. (012) 315 7600 – Direct Fax. 0864085021 – E-mail: MTroskie@judiciary.org.za

13 MARCH 2018

TO: **VAN DER MERWE ATTORNEYS**
Email: simone@vvdmass.co.za
Your Ref: Mr vd Merwe/st/S493/23
Our Ref: 11318/18 & 14332/18/DJP LEDWABA/MT

TO: **WERKSMANS ATTORNEYS**
Email: bhotz@werksmans.com
Your Ref: Mr B Hotz/SARC0001.789/J Gobetz
Our Ref: 11318/18 & 14332/18/DJP LEDWABA/MT

Dear Sir / Madam

RE: **SPECIAL MOTION: SIYANGENA TECHNOLOGIES (PTY) LTD / PRASA**
CASE NO: 11318/18
PRASA / SIYANGENA TECHNOLOGIES (PTY) LTD
CASE NO: 14332/18

1. The above matter refer.
2. The matter is hereby set down as a special motion on **27, 28 & 29 JUNE 2018**. You are directed to serve and file the notice of set down together with a copy of this letter attached to it within **7 (seven) days** after receipt hereof, failing which the allocated date(s) of hearing will lapse and the date may be allocated to other litigants who applied for a special motion date. The notice of set down must be filed at the office of the Deputy Judge President, 7th Floor, Room 7.15, High Court Building.
3. I further direct that:

URGENT APPLICATION – CASE NO: 11318/18
(SIYANGENA - APPLICANT / PRASA & OTHERS – RESPONDENTS)

- 3.1 The respondents should file its answering affidavit by no later than **2 MAY 2018**.
- 3.2 The applicant should file its replying affidavit by no later than **18 MAY 2018**.
- 3.3 The applicant should file its heads of argument and practice note by no later than **28 MAY 2018**
- 3.4 The respondents should file its heads of argument and practice note by no later than **4 JUNE 2018**.

REVIEW APPLICATION – CASE NO: 14332/18
(PRASA & OTHERS – APPLICANT / SIYANGENA – RESPONDENT)

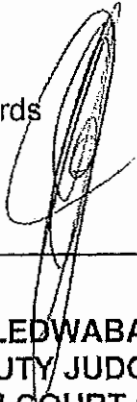
- 3.5 The respondent should file its opposing affidavit by no later than **3 APRIL 2018**.
- 3.6 The applicants should file its replying affidavit by no later than **2 MAY 2018**.
- 3.7 The applicants should file its heads of argument and practice note by no later than **28 MAY 2018**.
- 3.8 The respondent should file its heads of argument and practice note by no later than **4 JUNE 2018**.
4. For proper administration and allocation of special motions, the Applicant should deliver the court file duly indexed and paginated to my office not later than **28 MAY 2018** and the parties should also send via email (MTroskie@judiciary.org.za)

to my office a **Joint Practice Note and Chronology** by no later than **6 JUNE 2018** containing the following:

- Names of the parties and the case number
 - Names and telephone numbers of all counsel in the Motion
 - Nature of the motion
 - Issues to be determined in the application
 - Relief sought at the hearing by the party on whose behalf counsel is appearing
 - An estimate of the probable duration of the application
 - Number of pages in the application and whether or not all papers need to be read and if not, which portion need not be read
5. **All queries and/or communications concerning the hearing of this matter must be directed to my office in writing. All documents and the court file must be filed at the office of the Deputy Judge President on the 7th floor, High Court.**
6. It remains the duty of the **all legal representatives** to ensure that the court file has been properly indexed and paginated in time and that all documents have been filed accordingly as directed at the office of the Deputy Judge President, High Court Pretoria, 7th Floor, Room 7.15.
7. Should it, for any reasons, transpire that this matter will not proceed on the given date; you are directed to inform the Office of the Deputy Judge President, immediately.
8. None availability of counsel representing any of the parties shall simply not be allowed as a reason for the matter not to proceed on the date of hearing arranged with my office.
9. **Should the above directive not be complied with, the matter may not be allocated to a Judge and the allocated dates will be utilized for other deserving cases.**

4/11/20
17/11/20

Regards



**A P LEDWABA
DEPUTY JUDGE PRESIDENT
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**



van der Merwe
&
Associates Incorporated

COPY
COPY

"TB6"

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

Director / Direkteur:
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Associates/Associate
Ilze Mattheus (B.Com, LLB,
LLM)

Assisted by / Bygestaan deur:
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simone@vdmass.co.za

Our Ref: **MR GT VD MERWE/st/S493/24**

Your Ref: **HONOURABLE MINISTER FIKILE MBALULA**

27/06/2019

The Minister of Transport
The Honourable Minister F Mbalula
National Department of Transport
159 Forum Building
Cnr Bosman & Struben Streets
Pretoria

BY HAND
Zintle Groepe


28/06/2019

The Minister of Finance
The Honourable Mr Tito Titus Mboweni
40 Church Street
Old Reserve Bank Building
2nd Floor
Pretoria



The Rail Safety Regulator of South Africa
Chairperson: Dr Nomusa Zethu Qunta
Lake Beuna Vista Building
1 Gordon Hood Avenue
Centurion

BY HAND


28/06/19

The Honourable Minister of Finance,
The Honourable Minister of Transport,
The Transport Safety Regulator,

**NOTICE OF POTENTIAL AND SUBSTANTIAL LOSS TO PRASA ASSETS:
ISAMS – TENDER NUMBERS SG/GATES/003/2009 AND HO/FM-
CRES/142/09/2013**

1. We refer to the abovementioned matter and confirm that we act on behalf of **Siyangena Technologies (Pty) Ltd** ("our client").
2. We have directed previous correspondence to the Honourable Minister of Transport, then the Honourable Minister Blade Nzimande. For your convenience and for purposes of future reference we append hereto a complete copy of the letter directed to *inter alia* the Honourable Minister of Transport (then Minister Blade Nzimande) dated **12 April 2019**, delivered at the offices of the Minister of Transport, National Treasury and the Rail Safety Regulator of South Africa as **Annexure "ST1"**.
3. In our aforesaid letter we, specifically, refrained from dealing with any legal disputes between **our client** and **PRASA**. The aforesaid is the subject of litigation in the High Court in Pretoria and we are confident that the courts will adjudicate the aforesaid matter considering all the relevant circumstances, facts and developments. We are similarly confident that the hundreds of millions of rands spent by PRASA to "*investigate*" our client and to refuse payment will be found to be a fruitless and wasteful expenditure, same to be dealt with in accordance with the provisions of the PFMA and other applicable legislation/regulations.

4. Although we delivered **Annexure "ST1"** to your predecessor it might not have (necessarily) been brought to your attention upon your appointment as Minister of Transport.
5. We, for your convenience, record that **our client** is owed an amount of approximately **R3.5 billion for work done** (undisputed even on the version of **PRASA**) and that **our client** is still on site.
6. **Our client** will vacate various sites (various train stations throughout the country) by **30 June 2019**.
7. The purpose of our previous correspondence was to forewarn the Department of Transport and the Department of Treasury (and of course the Rail Safety Regulator) of the consequences of **our client** leaving the various sites (contractually) at the **end of June 2019 without a proper handover and/or a contingency plan for PRASA**.
8. We have, unfortunately, not received any feedback on the aforesaid letter and since the of **end June 2019** is now imminent we followed our client's instruction to dispatch this further letter to record **our client's** position.
9. May we, for the record, incorporate the contents of our previous letter herein and beg for urgent Intervention and/or assistance **as to secure assets worth billions of rands necessary to conduct the normal and day to day activities of PRASA**.
10. In conclusion we wish the Honourable Minister Fikile Mbalula a prosperous and successful term(s) as Minister of Transport whilst we congratulate you on your appointment. To the extent possible I advance a personal note of support and record that my offices are willing and able to assist

you should you require any support, information or further feedback now or in future.

Kind regards.



Gert van der Merwe

VAN DER MERWE & ASSOCIATES

Handwritten: Jacobs - 12/Apr 2019

**COPY
COPY**



van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

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Assisted by / Bygestaan deur:
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legal2@vdmass.co.za

Our Ref: **MR GT VD MERWE/yvd/S493/24**

Your Ref: **HONOURABLE MINISTER DR BLADE NZIMANDE**

12/04/2019

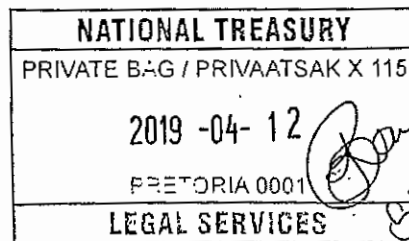
The Minister of Transport
The Honourable Minister B Nzimande
National Department of Transport
159 Forum Building
Cnr Bosman & Struben Streets
Pretoria



BY HAND

Handwritten: SILINDILE MNCUBE
MNCUBE
12/04/2019

The Minister of Finance
The Honourable Mr Tito Titus Mboweni
40 Church Street
Old Reserve Bank Building
2nd Floor
Pretoria



BY HAND

Handwritten: [Signature]

The Rail Safety Regulator of South Africa
Lake Beuna Vista Building
1 Gordon Hood Avenue
Ceturion

BY HAND

Handwritten: 12/04/2019

The Honourable Minister of Finance,
The Honourable Minister of Transport,
The Transport Safety Regulator,

EARLY WARNING OF POTENTIAL AND SUBSTANTIAL LOSS TO PRASA ASSETS: ISAMS – TENDER NUMBERS SG/GATES/003/2009 AND HO/FM-CRES/142/09/2013

1. We refer to the abovementioned matter and wish to confirm that we act on behalf of **Siyangena Technologies (Pty) Ltd.**
2. We have directed correspondence to the Honourable Minister of Transport on previous occasions, same not embroidered on in this letter.
3. We direct this formal notice to the Office of the Honourable Minister of Transport, the Offices of the Honourable Minister of Finance and a copy to the Transport Safety Regulator in order to ensure that our client complied with **its obligation to alert all possible stakeholders** of the pending and imminent threat of severe and substantial loss to PRASA, on its own version, in shambles at present.
4. We beg you to consider this correspondence in the light its intended *i.e.* a positive and proactive effort to alert your offices in advance of possible severe consequences for PRASA and, eventually, commuters you serve.
5. We do not intend to encumber you with a complicated history or the pending court case with PRASA and for that reason **we refrain from dealing with any of the legal disputes in this letter.** You, therefore, **need not interfere in any court process.** That is not the purpose of this letter. Let us record that, whatever the court decides, will not have

an effect or influence on the early warning we issue herewith. The court case between our client and PRASA will, in any event, only be heard in **September 2019**.

6. It is common cause and not disputed that our client rendered goods and services to the value of billions of Rands under the aforesaid tenders. It is, however, disputed (by PRASA) that payment is due to our client but **that is irrelevant for purposes of this letter**.
7. It is not disputed that our client is still on site and, until **30 June 2019**, in control of the expensive and highly technical security/camera system installed under the ISAMS project.
8. On or about **16 May 2016** PRASA informed our client that it intends to suspend all work under the tenders pending a review application (currently the subject of litigation).
9. Our client successfully approached the court on an urgent basis and on **27 May 2016** obtained a court order of which a copy is appended hereto as **Annexure "A"** to which you are kindly referred.
10. In anticipation of the aforesaid urgent application we directed a letter to the attorneys of PRASA as early as **9 December 2015**, a copy thereof appended hereto for your kind (but serious) consideration. The aforesaid letter is appended hereto as **Annexure "B"** and we need to emphasise and repeat the severe consequences of PRASA's failure to appreciate suspension of the works **in the absence of a contingency plan**. We incorporate the contents of **Annexure "B"** herein.

11. On **17 May 2016** a similar letter was dispatched to the attorneys acting on behalf of PRASA (in order to prevent our client from approaching the court on an urgent basis), a copy of the aforesaid letter appended hereto as **Annexure "C"** also dealing in detail with the consequences of an ill-conceived termination/suspension of our client's presence at the sites.
12. With the aforesaid in mind **the court interdicted PRASA** to prevent our client from having access to these sites.
13. The contractual obligation on our client to be on site and to render goods/services will lapse on **30 June 2019**.
14. As a consequence of and in compliance with our client's continued commitment to the safety of commuters (and to save the taxpayer money), a formal letter was directed to Dr Nkosinathi Sishi on **1 April 2019**. We append the aforesaid letter and its annexures hereto as **Annexure "D"**. The contents thereof is similarly incorporated herein as if repeated.
15. We wish to emphasise, again, the references made to the possible (and actually inevitable) consequences for PRASA at the end of **June 2019** and we also refer to the status report clearly advising the reader of the work conducted and completed by our client.
16. Since the Department of Treasury became involved in the affairs of the aforesaid tender(s) on a previous occasion (and did not make any adverse findings against our client) and since the Department of Treasury is, eventually, the institution ultimately responsible for payment of the amount due to our client (and/or ultimately the responsible institution for any loss or damages sustained by PRASA). our client copied the

Department of Treasury with the letter appended hereto as **Annexure "D"**.

7. In response the Department of Treasury requested our client via email on **5 April 2019** (under the hand of Mr Nhlanhla Vilakazi) to inform/advise it of the role it has to play in this matter. For that reason we have decided to, rather, direct this letter to the Minister of Finance and to ensure that there is a full and comprehensive record of the fact that PRASA does not seem to appreciate the consequences of allowing our client to vacate the sites as at **30 June 2019** without a contingency plan.
18. It is, by now, common cause that the Presidency has noted its concern with the (lack of) services rendered by PRASA to commuters. We understand the media to report that the President supports **any effort to protect and enhance the services rendered** (or due to be rendered) by PRASA to the taxpayer and commuters.
19. This letter is also served on the Office of the Rail Safety Regulator. As far as we are concerned the Regulator has to be aware of the imminent and/or potential consequences which will, in our view, render PRASA **completely unable to render safe services to commuters as from 1 July 2019**.
20. From what we understand PRASA told a parliamentary committee that it has a "*rescue plan*" which will receive full attention once the court has directed PRASA on the pending court case and the outcome thereof. The aforesaid "*rescue plan*" falls on its face under circumstances where the court case will only be heard in **September 2019** whilst our client will leave the site (under contract) in **June 2019**. Kindly be mindful of the aforesaid timeframe.

We have now done our best to make it clear that the purpose of this letter is not to request you to intervene in pending court matters or to exercise any influence in the matter currently in dispute with PRASA. Our client will look after itself and will pursue its court proceedings as it has done over the past few years.

22. The purpose of this letter is to alert the powers that be to the fact that commuters will suffer irreparable harm if a contingency plan is not put into place well in advance of **30 June 2019**.
23. With the aforesaid in mind we deliver this letter to the relevant authorities and request your kind assistance.
24. Our offices and our client remain willing to assist you should you require any support, information or further feedback.

Kind regards.


Gert van der Merwe
VAN DER MERWE & ASSOCIATES



27/5
"A"
CASE NO: 40077/2016

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

PRETORIA 27 MAY 2016

BEFORE THE HONOURABLE MADAM JUSTICE TLHAPI

In the matter between:

SIYANGENA TECHNOLOGIES (PTY) LTD

APPLICANT

AND

PASSENGER RAIL AGENCY OF SOUTH AFRICA

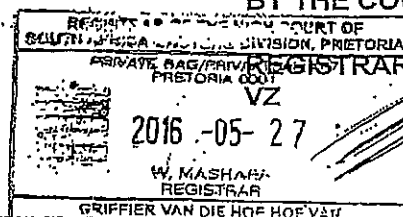
RESPONDENT

HAVING read the documents filed of record, heard counsel and considered the matter:

IT IS ORDERED THAT:

1. This application be heard as an urgent application and that the necessary condonation be granted to the applicant in term of Rule 6(12) of the Uniform Rules of Court in respect of the non-compliance with the prescribed time limit and forms;
2. The respondent be interdicted from preventing the applicant's duly authorised employees and/or representatives to access the various railway stations to which the applicant had access to prior to 17 May 2016 allow the applicant's employees and/or contractors and/or subcontractors to perform its obligations in terms of the agreements concluded with the respondent and currently the subject of review pending the determination and finalisation of the aforesaid application for review.
3. The respondent be interdicted from preventing the representatives of the applicant to gain access to the railway stations of the respondent to which the applicant had access prior to 17 May 2016 in order to do maintenance or repairs on the equipment supplied and installed by the applicant in terms of the agreements concluded with the respondent and to allow the applicant's representatives to ensure that the guarantees, warranties and manufacturers specification maintenance be conducted on a daily basis and as required from time to time pending the finalisation of the main application under case number 7839/2016;
4. The respondent is to pay the costs of this application which includes costs of two counsels.

Attorney: VAN DER MERWE & ASS





van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

Simon
Mattheus 70
part prod of
company

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Associate/Assosiaat
Ilze Loots (LLB)

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
**Simon*
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Park, 144 Katherine Street,
Sandton

Tel: 011 542 2000
Fax/Faks: 086 603 4356

Our Ref: MR GT VD MERWE/st/S493

Your Ref:

09-12-2015

Werksmans Attorneys

URGENT

BY FAX: 011 535 8645
cmanaka@werksmans.com

Dear Sir/Madam,

SIYANGENA TECHNOLOGIES (PTY) LTD / PRASA

We refer to the abovementioned matter and in particular your letter dated 7 December 2015 pursuant where to you refused to partake in the arbitration proceedings before retired Judge Goldstein on 7 December 2015.

On a proper reading of your letter dated 7 December 2015 it is difficult to understand what your instructions are with regard to the agreements concluded between our client and PRASA.

In numbered paragraph 3 of your letter you assume that we are aware of "various allegations relating to the invalidity of the award of the tenders". This is not correct. We heard rumours about many things but this is not unique to any particular tender. Rumours are always rumours and they will remain rumours (and allegations) until they have been tested by a competent court pursuant where to the necessary relief must be granted.

Until today we have not been furnished with one single piece of evidence or substantiating facts which could remotely convince us that these allegations are anything more than rumours by disgruntled individuals and/or businesses, same currently supported by a political agenda evident from what your client is currently doing.

TDA

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"B"

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What concerns us far more is the fact that your client seems not to understand the actual consequences of its uncertainty regarding the agreements concluded with our client.

Our client is owed hundreds of millions of rands by your client and our client has, despite the default and breach committed by your client, continued to execute the work in terms of the agreements with punctuality and with no interruption.

Whether your client's view on the invalidity of the agreement is correct or flawed becomes of an academic question when we submit that our client is entitled under certain circumstances to halt any further work in terms of the agreement until our client is paid. Even, therefore, under circumstances where your client is correct (which is denied) that the agreement should be invalidated and set aside our client will in any event not have to conduct any further work as there is no obligation to do so.

It is this point that your client seems to misunderstand and, with respect, not comprehend as far as the consequences thereof are concerned.

If our client decides to accept your client's repudiation of the agreement (or accept your client's view that the agreements are invalid and should be set aside) the following will be the immediate consequences on our client's termination of the works:

1. There will be unavailability of the Public Address systems which is a requirement of the Rail Safety Regulator and a condition of your client's operating license.
2. Where speed gates' glass is broken either through vandalism and/or by accident it creates an access control and ticket verification issue which your client will not be able to address without our client's assistance.
3. There will be loss of CCTV viewing abilities from the control rooms which protection services are used for crowd control and day to day safety on the stations.
4. If the CCTV system goes offline your client will be unable to recover video footage for incidents of theft, insurance or accuracy and data capturing. It will cause a severe lack of safety which can cause injury and death by users of the railway system.
5. Where the Access Control is activated your client may under certain circumstances not have access to certain areas and, worse, not be able to lock down on these areas.
6. Fire alarms are currently relayed back to the control room causing severe difficulties given your client's inability to address any real issues when they surface with the system.

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7. Our client maintains the air conditioners to the equipment rooms and control rooms in order to ensure that the equipment remains reliable and operative. If these fail the extremely expensive and sensitive equipment will overheat and your client will run the risk that the equipment will be damaged beyond repair and it will not be covered by the warranties and insurance as a result of the fact that the temperature of these control rooms need to be maintained as a condition for the warranty.
8. Your client has absolutely no understanding of the system itself, the required maintenance and the repercussions of your client's failure to maintain and run the system. The net effect will be that there will be a total shutdown which your client will not be able to reactivate and it will therefore mean that your client's decision not to pay our client (or to invalidate the agreements) will cause the whole exercise to become a wasteful and fruitless expenditure.

It was in light of the aforesaid obvious and expected consequences that our client maintained its view that the agreements are to be honoured and complied with.

There are hundreds of millions of rands due to our client but even more money is needed to execute under the agreements and our client has no desire to finance your client's projects.

We are of the view that your client should now take a conscious and firm decision as to whether your client is still of the view that our client is not entitled to payment and, secondly, what your client intends to do should our client decide to withhold any further goods or services as a result of your client's failure to make payment. Our prediction is that it will cost your client much more to recover and repair the chaos from a shutdown than to pay our client what is due in terms of the agreements. We must further advise our client upon receipt of your formal feedback and for that reason we, in no uncertain terms, need you to indicate what your client's views are on further services and goods to be rendered, not only in terms of the agreements but also in terms of the warranties and maintenance obligations.

Kindly furnish us with your formal feedback before close of business on 10 December 2015 in order for us to advise our client.

Kindly note that all our client's rights are reserved.

Regards

Gert van der Merwe

VAN DER MERWE & ASSOCIATES

160

Simone

From: Simone <simone@vdmass.co.za>
Sent: Thursday, December 10, 2015 11:48 AM
To: 'snoerane@werksmans.com'
Subject: FW: S493 / SIYANGENA
Attachments: S493 WERKSMANS 5.doc

Importance: High

From: Simone [<mailto:simone@vdmass.co.za>]
Sent: Wednesday, December 09, 2015 5:51 PM
To: 'cmanaka@werksmans.com'
Subject: S493 / SIYANGENA
Importance: High

Simone Taljaard

Legal Secretary for

Gert van der Merwe

VAN DER MERWE & ASSOCIATES

Tel: 087 654 0209

Fax: (012) 343 5435

E-mail: simone@vdmass.co.za

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van der Merwe
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161
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Associate/Assosiaát

Ilanie Loots (LLB)

Assisted by / Bygestaan deur:

Ilze van der Merwe (LLB)

*Stephan Deetlefs (LLB)

Ilze Mattheus (B.Com, LLB,

LLM)

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simone@vdmass.co.za

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Park, 144 Katherine Street,

Sandton

Tel: 011 542 2000

Fax/Faks: 086 603 4356

Our Ref: MR GT VD MERWE/st/S493

Your Ref: ~ MR C MANAKA/MS S
MOERANE/SARC0001.581/#4082596V1

17-05-2016

URGENT

Werksmans Attorneys

BY FAX: 011 535 8645
cmanaka@werksmans.com
smoerane@werksmans.com

Dear Sir/Madam,

URGENT APPLICATION ON 24 MAY 2016: SIYANGENA TECHNOLOGIES (PTY) LTD / PRASA – ATTEMPTED SUSPENSION OF WORKS

We refer to the abovementioned matter.

Earlier today and at about 14h00 our client received a letter signed by Mr Nathi Khena, the acting GCEO of PRASA directing our client that all works currently undertaken by our client pursuant to the agreements which are the subject of review will be suspended and our client was called upon to remove all personnel currently deployed to PRASA from the sites.

It is of imperative importance that we contextualise your client's most recent manoeuvre to cause our client irreparable harm and prejudice.

Since December 2015 we have literally nagged you to revert to us regarding your client's election on whether works should be suspended or not. We did not do so in order for your client to make an election to which our client would subject itself but simply to understand on what basis your client continued to instruct our client to

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act in accordance with the agreements whilst, simultaneously therewith, relying on an ill-conceived application for review.

It took you not less than 5(five) months to respond via your client with a letter calling on immediate suspension of works.

The irony in your client's notice of suspension is that your client seems to understand the fact that there is an application for review of the awarded tenders and despite the fact that your client should have been advised that the tenders will remain valid and enforceable until a court has decided otherwise your client unilaterally repudiates the terms of these agreements with your client's notice of suspension.

The notice of suspension seems to be a further indication of your client's inability to understand the consequences of the notice. It is obvious that the notice was issued since your client received our client's opposing papers last week. The papers clearly deal with your client's inability to take a decision but the notice of suspension is, at best, an effort to remedy your client's unlawful and inappropriate conduct.

Our client has firmly indicated that it does not accept your client's attempt to repudiate the agreements and it is therefore refuted.

As a result of the aforesaid we wish to record the following:

1. It is common cause and not in dispute that your client has continuously instructed our client (even until this morning) to continue with work in terms of the tenders.
2. Your client knew since December 2015 that it had to indicate whether further works need to continue since our client conducted work to an approximate value of R400 000 000.00 (Four hundred million rand) since December 2015.
3. Our client is factually and physically in "possession" of the sites since our client is conducting work on a daily basis.
4. It is not disputed that our client has not been paid for services rendered and our client will rely on its lien prior to affording your client the opportunity to suspend works. This means that your client must furnish security to the value of at least

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R1.3 billion which amount needs to be paid into our trust account where it will be held pending the finalisation of the review application.

5. Your client does not seem to understand the consequences of the notice. If our client was inclined to suspend works and leave the sites it would obviously cause the warrantees and guarantees as well as the maintenance agreement to lapse and the estimated value/damage (for the tax payer) will be approximately R500 000 000.00 (Five hundred million rand).
6. Our client will not suspend works or leave the sites unless your client, in addition to what we have said hereinabove, indemnify our client against any and all claims resulting from your client's failure to address issues such as warrantees, guarantees, maintenance and upkeep.
7. The consequences of suspending works and causing our client not to have access to the sites will be catastrophically for commuters and the tax payer in general. We have elaborated on this in previous letters and we incorporate same herewith.
8. There is absolutely no prejudice for your client in allowing our client to retain control and to have access to the sites until the review application has been resolved and finalised. Our client's version is clear in the opposing papers and we submit that the notice was hatched since your client realised the predicament it found itself in.

The aforesaid is not an exhaustive version of our client's views because we had to direct this letter under severe urgent circumstances.

We record that your Mrs Sarah Moerane phoned the writer earlier today to confirm payment in the amount of R1 600 000.00 (One million six hundred thousand rand) into our trust account where your client refused to make payment of a previous invoice rendered by our client and the court ordered your client to make payment. We expect a similar order in terms of the current unpaid invoices but until then it is not up to your client to prevent our client's personnel and staff to gain access to the sites.

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Should we not receive your confirmation that our client will be allowed to have access to the sites and to continue in terms of the agreements by 10h00 tomorrow morning we will append this letter to an urgent application which will be launched in the High Court of Pretoria to be heard on 24 May 2016 in terms whereof we will ask the court for, *inter alia*, interdicting you from preventing our client to have access to the sites.

We conclude this letter to state that we are of the view that your client's conduct is vexatious, malicious and politically motivated.

As a result of the aforesaid we will request the court to grant a costs order against the directors of your client's Board in order to ensure that the tax payer is not encumbered as a result of your client's ill-conceived and erratic decisions. We obviously reserve our client's rights *in toto* including the right to embroid on the facts raised herein.

Your failure to respond to this letter by 10h00 tomorrow morning will cause us to assume that you have instructions not to adhere to our client's reasonable requests.

Regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES



"D"

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VAT: 474023392

1 April 2019

DR NKOSINATHI SISHI
ACTING GROUP CHIEF EXECUTIVE OFFICER
PASSENGER RAIL AGENCY OF SOUTH AFRICA
UMJANTSHI
66 JORRISEN ST,
BRAAMFONTEIN,
CITY OF JOHANNESBURG,
GAUTENG,

RE: HO-FM-CRES-142-09-2013 (ISAMS PHASE 2) – CONTRACT ENDING

Dear Sir/Madam

We would hereby like to remind you that the above-mentioned contract as well as the addendum to extend the maintenance for the Phase 1 of the contract will both be ending on 30 June 2019. Could you please advise, considering the ongoing litigation, what process you would like to follow during the close out of this project and who will be responsible to facilitate this from PRASA's side.

The following items need to be addressed and finalised to achieve a successful handover

- Handover to PRASA maintenance staff;
- Handover of all keys, etc. to PRASA staff;
- Finalisation of Final Account;
- Completion of any outstanding Asset Verification;
- Arranging for collection and transfer of all materials currently stored on PRASA's behalf;
- Any additional training etc. which may be required in terms of the contract;
- Handover of all contractual documents including as-built drawings, designs, line diagrams and schematics (Once litigation process is complete).

We would like to re-iterate that after the 30th of June:

- There will be no more preventative maintenance carried out on the installation by Siyangena;
- There will be no more corrective maintenance and/or call outs responded to;
- PRASA will become responsible for the management and maintaining of the ISAMS systems as well as the safeguarding of our installed equipment until fully paid.

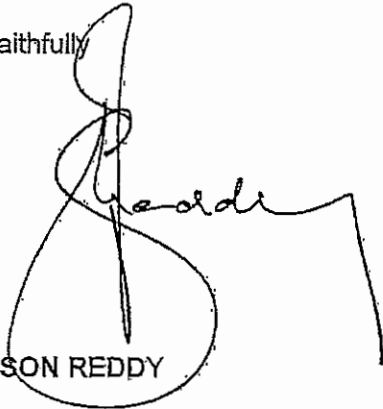
For ease of reference we have attached the following to this letter for your perusal

- Latest monthly report indicating all progress to date. As can be seen, the percentage completion of the project is 98.33%. The balance can at present not be completed due to either theft and/or vandalism. If we are given the go ahead to complete the installation, and are able to do so prior to 30 June, the contractual rates in the BOQ will be applicable but if not, we will have to quote you per individual site to complete/reinstate the works.
- Your specific attention is drawn to the theft and vandalism section of the report, pages 39-51, Siyangena will continue to monitor any thefts and vandalism up until the 30th of June. Thereafter it is PRASA's responsibility to ensure they check the installation and make the necessary police reports in the case of theft and vandalism, which Siyangena has made to date.
- We've also attached the latest statement of all outstanding monies due to Siyangena and would like to point out that over the last month alone the interest on the outstanding monies was in excess of R42 million.

We would like to assure you that Siyangena's resources are ready to proceed with the close out of the project as soon as you've advised who from PRASA's side will be responsible and what process is to be followed.

We urgently await your reponse on this matter.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Pragason Reddy', written over a circular stamp.

PRAGASON REDDY

CHIEF EXECUTIVE OFFICER



Combined Project Status Report For ISAMS Project

March 2019





Document Control

Document Information

Information	
Document Id	ISAMS-GEN-06-PSR
Document Owner	Alvin Wilsnach
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Document History

Version	Issue Date	Changes
1.0	1/04/2019	Combined Status Report, Outstanding Items and Theft Reports into one report

Document Approvals

Role	Name	Signature	Date
Technical Director	Chris Metelerkamp		1-04-2019
Project Manager	Various		1-04-2019
Quality Manager	Rui Ferreira		1-04-2019
Procurement Manager	Paul Ferreira		1-04-2019
Communications Manager	Alvin Wilsnach		1-04-2019
Project Director	Alvin Wilsnach		1-04-2019



Document Guide

What is a Project Status Report?

We at Siyangena use a Project Status Report as a document to formally communicate the status of the ISAMS project to the project stakeholders, on a regular basis.

The purpose of the CPSR is to:

- Ensure that all stakeholders are regularly informed on the progress of the project, as well as any important risks and issues for attention
- Raise to Project Executive items for immediate action or resolution
- Provide a single view of the progress of the project to date.

The Project Status Report describes the status of the:

- Current Project Status per Phase
- Outstanding Installation Items
- Details of Installed Components
- Percentage Complete per Component and Installation Types
- Financial Progress and Status of Payments
- Theft and Vandalism Related Issues

When we use a Project Status Report

The Combined Project Status Report will be issued on a monthly basis, throughout the Project. Only summarized information which is pertinent is included. For more detailed information, reference can be made to the site diaries, weekly site meeting and fortnightly regional technical meetings.

Project Status Report

PROJECT DETAILS			
Project Name:	ISAMS	Report Recipients:	Nosipho Kondlo
Project Id:	SG/GATES/003/2009		Kaparo Molefi
	HO/FM-CRES/142/09/2013		Reggie Kisten
Project Sponsor:	PRASA	Prepared by:	Alvin Wilsnach
Project Manager:	Alvin Wilsnach	Preparation Date:	1 April 2019
		Report Period:	April 2011 – Current
Project Description: Supply, install, commission and maintain Public Address, Speed Gate, Fire Detection, Electronic Display Boards, Help Points, CCTV and Access Control Systems at various stations in the nation-wide priority corridors.			



1 EXECUTIVE OVERVIEW

Siyangena Technologies was appointed in 2011 to execute Phase 1 under project number SG/GATES/003/2009 for the rollout of Public Address, Speed Gate, Fire Detection, Electronic Display Boards, Help Points, CCTV and Access Control Systems at various stations nationwide.

This project was complimented with the issue of a variation order, Phase 1 Extension, as part of the contract to rollout the same technologies to further stations in the Gauteng Priority corridors.

After an open tender Siyangena Technologies again won the tender to execute Phase 2 under project number HO/FM-CRES/142/09/2013 for the rollout of Public Address, Speed Gate, Fire Detection, Electronic Display Boards, Help Points, CCTV and Access Control Systems in the nationwide priority corridors.

As part of the negotiations during the appointment of the Siyangena Technologies for Phase 2, Siyangena were requested to submit a proposal for the extension of the maintenance for all stations installed as part of Phase 1 to end concurrent with the Phase 2 project ending 30 June 2019. These included stations where Siyangena had during the 2010 World Cup Rollout installed the ISAMS Bouquet. An addendum to the contract was signed and Siyangena was appointed to continue maintaining and guaranteeing the equipment at these stations until June 2019.

This report details the status of these various phases including completion status, financial status, outstanding items, theft and vandalism status as well as the challengers faced and delays on the project



2 CURRENT PROJECT STATUS

2.1 ISAMS Phase 1

2.1.1 Summary

SUMMARY	
Date of Contract Start:	1 April 2011
Date of Contract End:	31 March 2016
Number of Stations:	71
Project Progress:	99.74% (Refer to detailed breakdown)
Contract Amount:	R 1 959 642 352.99
Invoiced to Date:	R 2 016 554 374.56 (Refer to breakdown)
Paid to Date:	R 1 898 957 045.99
Balance Outstanding:	R 117 579 328.57
Status of Installation:	Installation completed on all 71 stations. Certain items are still outstanding but cannot be completed and have been omitted from the contract and not claimed for under the agreed final account

2.1.2 Outstanding / Omitted Items

OUTSTANDING / OMITTED ITEMS

- | | |
|--|---|
| 1. Fibre Backbone to Southern Gauteng Region | The stations in the Southern Gauteng Region have been commissioned in a stand-alone basis as there is currently no fibre backbone available to relay the CCTV Footage, Access Control Information and alarms back to the control room at Park Station unlike all the other regions. |
| 2. Speedgates to Kapteinsklip (WCR) | Due to the site constraints this was omitted from the scope of the contract |
| 3. Speedgates to Salt River Change Over Platform (WCR) | Although this was a request from the region for this to be added from the contract, final approval could not be garnered and was therefore omitted from the scope of the contract |
| 4. Speedgates to Longdale Southern Access Platform (SGR) | Speedgates were installed adjacent to the Ticket office but due to the lack of land on the southern end, the speedgate installation to this platform was omitted from the scope of the contract |



5. Speedgates to Centre Platform at Olifantsfontein (SGR) Speedgates were installed adjacent to the Ticket office but due to the lack of approval from the RSR for a speed gate building on the centre platform this building was omitted from the scope of the contract
6. Speedgates to Mzimohlope (SGR) Speedgates could not be installed adjacent to the Ticket office and had to be installed on the platform but due to the lack of approval from the RSR for these speed gate buildings on the platforms these were omitted from the scope of the contract

2.1.3 Status Report

Status of ISAMS Installation – Phase 1

ITEM	SGR	NGR	WCR	KZN	OVERALL
Installation * (Excl EDB's)	100.00%	100.00%	100.00%	100.00%	100.00%
Installation * (Incl EDB's)	100.00%	100.00%	100.00%	100.00%	100.00%
Standalone Pre- Commissioning	100.00%	100.00%	100.00%	100.00%	100.00%
Installation Handover (Excl EDB's)	100.00%	100.00%	100.00%	100.00%	100.00%
Functional Handover	100.00%	100.00%	100.00%	100.00%	100.00%
Final Commissioning Excluding EDB's, HP & PA	100.00%	100.00%	100.00%	100.00%	100.00%
Fibre Link to Control Room	3.85%	100.00%	100.00%	100.00%	75.96%
Asset Verification	100.00%	100.00%	100.00%	100.00%	100.00%
OVERALL	98.89%	100.00%	100.00%	100.00%	99.74%



2.1.4 Scope of Services Rendered

SCOPE OF SERVICES RENDERED – SOUTHERN GAUTENG REGION (Phase 1)

Stations	ISAMS Elements								
	Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Civil Infrastructure	Control Centre
Naledi	x	Done	Done	x	x	Done	Done	Done	x
Merafe	Done	Done	Done	Done	Done	Done	Done	Done	x
Inhlabane	Done	Done	Done	Done	Done	Done	Done	Done	x
Ikwezi	x	Done	Done	x	x	Done	Done	Done	x
Dube	Done	Done	Done	Done	Done	Done	Done	Done	x
New Canada	x	Done	Done	x	x	Done	Done	Done	x
Langlaagte	x	Done	Done	x	x	Done	Done	Done	x
Braamfontein	x	Done	Done	x	x	Done	Done	Done	x
Park Station	x	Done	Done	x	x	Done	Done	Done	Done
Elandsfontein	x	Done	Done	x	x	Done	Done	Done	x
Isando	x	x	x	x	x	x	x	Done	x
Olifantsfontein	Done	Done	Done	Done	Done	Done	Done	Done	x
Nancefield	Done	Done	Done	Done	Done	Done	Done	Done	x
Kliptown	Done	Done	Done	Done	Done	Done	Done	Done	x
Tshiwelo	Done	Done	Done	Done	Done	Done	Done	Done	x
Mlamlankunzi	Done	Done	Done	Done	Done	Done	Done	Done	x
Midway	Done	Done	Done	Done	Done	Done	Done	Done	x
Kaalfontein	Done	Done	Done	Done	Done	Done	Done	Done	x
Mzimhlope	Done	x	Done	Done	Done	Done	Done	Done	x
Phomolong	Done	Done	Done	Done	Done	Done	Done	Done	x
Longdale	Done	Done	Done	x	x	Done	Done	Done	x
Doornfontein	x	Done	Done	x	x	Done	Done	Done	x
Orlando	x	x	Done	x	x	Done	Done	Done	x
Rhodesfield	x	x	Done	x	x	Done	Done	Done	x
Phefeni	Done	Done	Done	Done	Done	Done	Done	Done	x
Mayfair	Done	Done	Done	Done	Done	Done	Done	Done	x

X – Denotes exclusion from the scope of the contract



SCOPE OF SERVICES RENDERED – NORTHERN GAUTENG REGION (Phase 1)

Stations	ISAMS Elements								
	Public Adress	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Civil Infrastructure	Control Centre
Pretoria	Done	Done	Done	Done	Done	Done	Done	Done	done
Hercules	Done	Done	Done	Done	Done	Done	Done	Done	x
Mountain View	Done	Done	Done	Done	Done	Done	Done	Done	x
Pretoria North	x	Done	Done	x	x	Done	Done	Done	x
Wintersnest	Done	Done	Done	Done	Done	Done	Done	Done	x
Akasiaboom	Done	Done	Done	Done	Done	Done	Done	Done	x
Centurion	Done	Done	Done	Done	Done	Done	Done	Done	x
Atteridgeville	Done	Done	Done	Done	Done	Done	Done	Done	x
Silverton	Done	Done	Done	Done	Done	Done	Done	Done	x
Bosmanstraat	Done	Done	Done	Done	Done	Done	Done	Done	x
Saulsville	Done	Done	Done	x	x	Done	Done	Done	x
Kopanong	x	Done	Done	Done	Done	Done	Done	Done	x
Soshanguve	Done	Done	Done	Done	Done	Done	Done	Done	x
Denneboom	Done	Done	Done	Done	Done	Done	Done	Done	x
Eerste Fabrieke	x	Done	Done	x	x	Done	Done	Done	x
Piensaarspoort	x	x	x	x	x	x	x	Done	x

X – Denotes exclusion from the scope of the contract



SCOPE OF SERVICES RENDERED – WESTERN CAPE REGION (Phase 1)

Stations	ISAMS Elements								
	Public Adress	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Civil Infrastructure	Control Centre
Chris Hanl	Done	Done	Done	Done	Done	Done	Done	Done	x
Kuyasa	Done	Done	Done	Done	Done	Done	Done	Done	x
Khayelitsha	Done	Done	Done	x	x	Done	Done	Done	x
Nonqubela	Done	Done	Done	Done	Done	Done	Done	Done	x
Nolungile	Done	Done	Done	Done	Done	Done	Done	Done	x
Mandalay	Done	Done	Done	Done	Done	Done	Done	Done	x
Stock Road	Done	Done	Done	Done	Done	Done	Done	Done	x
Mitchelsplain	Done	Done	Done	Done	Done	Done	Done	Done	x
Kapteinskliip	Done	x	Done	Done	Done	Done	Done	Done	x
Nyanga	Done	Done	Done	Done	Done	Done	Done	Done	x
Heideveld	Done	Done	Done	Done	Done	Done	Done	Done	x
Bonteheuwel	Done	Done	Done	Done	Done	Done	Done	Done	x
Maitland	x	Done	Done	Done	Done	Done	Done	Done	x
Netreg	Done	Done	Done	Done	Done	Done	Done	Done	x
Salt River	x	Done	Done	x	x	Done	Done	Done	x
Cape Town	x	Done	x	x	x	x	x	x	Done

X – Denotes exclusion from the scope of the contract



SCOPE OF SERVICES RENDERED – KWAZULU NATAL REGION (Phase 1)

Stations	ISAMS Elements								
	Public Adress	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Civil Infrastructure	Control Centre
Kwamashu	Done	Done	Done	Done	Done	Done	Done	Done	x
Thembalihle	Done	Done	Done	Done	Done	Done	Done	Done	x
Duffs Road	x	Done	Done	Done	Done	Done	Done	Done	x
Isipingo	x	Done	Done	Done	Done	Done	Done	Done	x
Lindokuhle	x	Done	Done	Done	Done	Done	Done	Done	x
Umlazi	x	Done	Done	x	x	Done	Done	Done	x
Kwa-Mnyandu	Done	Done	Done	Done	Done	Done	Done	Done	x
Zwelethu	x	Done	Done	Done	Done	Done	Done	Done	x
Reunion	x	Done	Done	x	x	Done	Done	Done	x
Merebank	Done	Done	Done	Done	Done	Done	Done	Done	x
Clairwood	x	Done	Done	Done	Done	Done	Done	Done	x
Durban	Done	Done	Done	Done	Done	Done	Done	Done	Done
Rosburgh	x	Done	Done	x	x	Done	Done	Done	x
Umbilo	Done	Done	Done	Done	Done	Done	Done	Done	x
Congella	Done	Done	Done	Done	Done	Done	Done	Done	x
Montclair	x	Done	Done	Done	Done	Done	Done	Done	x

X – Denotes exclusion from the scope of the contract



2.1.5 Financial Progress

Listed below are all the invoices since the inception of the project

Invoice	Date	Total invoice including Vat	Type	Outstanding Balance
Paid Invoices				
PRAS 5-01	05-Apr-11	R 285 000 000.00	Progress	R -
ST11212	21-Jun-11	R 25 724 974.67	Progress	R -
ST19012	20-Jul-11	R 25 724 974.67	Progress	R -
ST30612	28-Aug-11	R 25 724 974.67	Progress	R -
ST31212	20-Sep-11	R 25 724 974.67	Progress	R -
ST39912	12-Oct-11	R 25 724 974.67	Progress	R -
ST40712	11-Nov-11	R 25 724 974.67	Progress	R -
ST51512	22-Nov-11	R 641 250.00	Progress	R -
ST52112	12-Dec-11	R 25 724 974.67	Progress	R -
ST52312	12-Jan-12	R 25 724 974.67	Progress	R -
ST02413	12-Feb-12	R 25 724 974.67	Progress	R -
ST90812	13-Feb-12	R 25 724 974.67	Progress	R -
ST09213	15-Apr-12	R 27 734 496.99	Progress	R -
ST15013	14-May-12	R 27 734 496.99	Progress	R -
ST55813	30-Aug-12	R 428 142 272.64	Progress	R -
ST00613	30-Nov-12	R 73 795 284.12	Progress	R -
ST00214	04-Mar-13	R 323 107 972.60	Progress	R -
ST00614	25-Mar-13	R 243 459 347.16	Progress	R -
ST04714	03-Sep-13	R 146 100 502.68	Progress	R -
ST05014	02-Oct-13	R 85 991 676.11	Progress	R -
Total Paid		R 1 898 957 045.99		
Outstanding Invoices				
ST01016	31-Oct-15	R 51 311 720.90	Progress	R 51 311 720.90
ST03617	09-Feb-17	R 20 620 395.86	Final Account	R 71 932 116.76
		R 37 832 620.03	Interest on ST01016	R 109 764 736.79
		R 7 832 591.78	Interest on ST03617	R117 597 328.57
Total Outstanding		R 117 579 328.57		
Invoiced to Date		R 2 016 554 374.56		



2.2 ISAMS Phase 1 Extension

2.2.1 Summary

SUMMARY	
Date of Contract Start:	September 2013
Date of Contract End:	31 March 2016
Number of Stations:	12
Project Progress:	100% (Refer to detailed breakdown)
Contract Amount:	R 342 000 000.00
Invoiced to Date:	R 382 806 610.85 (Refer to breakdown)
Paid to Date:	R 281 905 419.62
Balance Outstanding:	R 100 901 191.23
Status of Installation:	Installation completed on all 12 stations.

2.2.2 Outstanding / Omitted Items

OUTSTANDING / OMMITED ITEMS

- | | |
|--|--|
| 1. Fibre Backbone to Southern Gauteng Region | The stations in the Southern Gauteng Region have been commissioned in a stand-alone basis as there is currently no fibre backbone available to relay the CCTV Footage, Access Control Information and alarms back to the control room at Park Station unlike all the other regions. Additional costs will be applicable for Re-commissioning once fibre backbone is operational. |
| 2. Speedgates to President Station (SGR) | Due to the site constraints this was omitted from the scope of the contract. |
| 3. Speedgates to Koedoespoort Station (NGR) | Due to the site constraints this was omitted from the scope of the contract. |



2.2.3 Status Report

ITEM	OVERALL
Site Audit and Prep of As-Build	100.00%
Procurement	100.00%
Engineering	100.00%
Sign off Drawings	100.00%
Safety File Signoff	100.00%
Site Establishment	100.00%
Installation	100.00%
Standalone Pre- Commissioning	100.00%
Installation Handover	100.00%
OVERALL	100.00%

2.2.4 Scope of Services Rendered

SCOPE OF SERVICES RENDERED – SOUTHERN GAUTENG REGION (Phase 1)

Stations	ISAVS Elements								
	Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Civil Infrastructure	Control Centre
Dunswart	Done	Done	Done	Done	Done	Done	Done	Done	X
Stretford	Done	Done	Done	Done	Done	Done	Done	Done	X
Wonderboom	Done	Done	Done	Done	Done	Done	Done	Done	X
Belle Ombre	Done	Done	Done	Done	Done	Done	Done	Done	X
Van Riebeeck Park	Done	Done	Done	Done	Done	Done	Done	Done	X
Hartebeestspruit	Done	Done	Done	Done	Done	Done	Done	Done	X
Croesus	Done	Done	Done	Done	Done	Done	Done	Done	X
President	Done	x	Done	Done	Done	Done	Done	Done	X
Daspoort	Done	Done	Done	Done	Done	Done	Done	Done	X
Koedoespoort	Done	x	Done	Done	Done	Done	Done	Done	X
Loftus	Done	Done	Done	Done	Done	Done	Done	Done	X
Irene	Done	Done	Done	Done	Done	Done	Done	Done	X

X – Denotes exclusion from the scope of the contract



2.2.5 Financial Progress

Listed below are all the invoices since the inception of the project

Invoice	Date	Total invoice including Vat	Type	Outstanding Balance
Paid Invoices				
ST005414	20-Nov-13	R 94 608 000.00	Progress	R -
ST000915	30-Oct-14	R 92 439 242.89	Progress	R -
ST000216	01-Apr-15	R 94 858 176.73	Progress	R -
Total Paid:		R 281 905 419.62		
Outstanding Invoices				
ST00816	30-Jul-15	R 42 151 022.75	Accrued	R 42 151 022.75
ST00618	31-May-17	R 20 985 730.77	Final Account	R 63 136 753.52
		R 31 106 689.97	Interest on ST00816	R 94 243 443.49
		R 6 657 747.74	Interest on ST00618	R 100 901 191.23
Total Outstanding:		R 100 901 191.23		
Invoiced to Date		R 382 806 610.85		



2.3 ISAMS Phase 2

2.3.1 Summary

SUMMARY	
Date of Contract Start:	1 July 2014
Date of Contract End:	30 June 2019
Number of Stations:	100 (Budget Dependent)
Project Progress:	98.28% (Refer to detailed breakdown)
Contract Amount:	R 2 536 327 633.60
Invoiced to Date:	R 3 058 153 562.19 (Refer to breakdown)
Paid to Date:	R 1 166 228 467.83
Balance Outstanding:	R 1 891 925 094.44
Status of Installation:	Installation completed at 77 stations. Installation ongoing at other stations. Maintenance ongoing at stations upon handover to PRASA.

2.3.2 Outstanding / Omitted Items

OUTSTANDING / OMITTED ITEMS

Southern Gauteng Region

- 1. Fibre Backbone to Southern Gauteng Region**

The stations in the Southern Gauteng Region have been commissioned in a stand-alone basis as there is currently no fibre backbone available to relay the CCTV Footage, Access Control Information and alarms back to the control room at Park Station unlike all the other regions. Additional costs will be applicable for Re-commissioning once fibre backbone is operational.
- 2. Driehoek Station (SGR)**

The installation was in progress at this station for all components. During this installation, this station has experienced cable theft on the platforms therefore incurring delay and as a result, installations were halted. See detailed Vandalism and theft report. Delayed with costs.
- 3. Cleveland Station (SGR)**

The installation was in progress at this station for all components. During this installation, this station has experienced cable theft and manhole damages on the platforms therefore incurring delay and as a result, installations were halted. See detailed Vandalism and theft report. Delayed with costs.



4. Toorong Station (SGR) The installation was in progress at this station for all components except Speedgates which was to be omitted. During commissioning this station has experienced cable theft on the platforms therefore incurring delay and as a result, installations were halted. See detailed Vandalism and theft report. Delayed with costs.
5. Denver Station (SGR) All ISAMS elements are progressively being installed however; delay has been experienced as a result waiting approval for drawing proposal for the ticket office, speed gate building and telecoms equipment room. Delayed with costs.
6. George Gogh Station (SGR) All ISAMS elements were installed and were in the process for local commissioning. During this phase of the project this station experienced vandalism, theft and robbery. This resulted in huge delays resonating from the Telecoms equipment room being broken into and also the ISAMS contractor being exposed to life threatening incident. The contractor was held at gun point. The contractor was request to halt any further installations. See detailed Vandalism and theft report. Delayed with costs.
7. Daveyton Station (SGR) All ISAMS equipment have been progressively installed however experienced delays due to customer services requiring some changes. The installation of the *speed gates is the only outstanding scope* and pending PRASA Rail. Delayed with costs.
8. Middanadale Station (SGR) The ISAMS installation has been completed. During the final commissioning, this station however has experienced five theft incidents where all ISAMS equipment has been stolen. See detailed Vandalism and theft report. Delayed with costs.



Northern Gauteng Region

1. Schutte Street Station (NGR)

Only PA system and CCTV were to be installed at this station. During the commissioning phase, this station experienced radical theft where nine PA system and CCTV poles were stolen and equipment room broken into and equipment stolen. See detailed Vandalism and theft report. Delayed with costs.
2. Barracks Station (NGR)

Only PA system and CCTV were to be installed at this station. During the commissioning phase, this station experienced radical theft where the entire PA system and CCTV installation including cabling was stolen from the platforms. See detailed Vandalism and theft report. Delayed with costs.
3. Technikonrant Station (NGR)

Only PA system and CCTV were to be installed at this station. During the installation phase, this station experienced radical theft and PRASA placed this station on hold. See detailed Vandalism and theft report. Delayed with costs.
4. Pretoria West Station (NGR)

The installation *was in progress* at this station for PA system and CCTV. During this installation, this station has experienced cable theft, air-con thefts and manhole damages on the platforms therefore incurring delay and as a result, installations were halted. See detailed Vandalism and theft report. Delayed with costs.
5. Greenview Station (NGR)

This site has been fully commissioned using generators, however this station cannot be connected back to the control room as there is no permanent power on site. Additional costs will be applicable for Re-commissioning once power is provided.
6. Fountains Station (NGR)

This site has been fully commissioned using generators, however this station cannot be connected back to the control room as there is no permanent power on site. Additional costs will be applicable for Re-commissioning once power is provided.



Western Cape Region

1. Bellville Station (WCR) The installation is complete at this station. The only element that remains outstanding is the speedgates on the platform. This is pending decision from PRASA Rail
2. Lentegeur Station (WCR) The installation at this station is on hold by the region due to NSIP program in progress
3. Esplanade Station (WCR) The Installation at this station is on hold due to NSIP program which is waiting award. The NSIP program timelines for this station is set to be completed in March 2018.
4. Phillipi Station (WCR) The Installation at this station was on hold due to the station modernization project. Installation complete, but no power at the station.
5. Elsies River Station (WCR) The ISAMS installation was in progress however, this station has been exposed to vandalism and theft therefore delaying completion. See detailed Vandalism and theft report. Delayed with costs.
6. Huguenot Station (WCR) The installation at this station was delayed due to challenges in obtaining site access from TFR, we are in receipt of site access but are awaiting final signoff of designs.
7. Mbekweni Station (WCR) The installation at this station is on hold by the region due to NSIP program in progress
8. Brackenfell Station (WCR) The installation at this station was delayed due to challenges in obtaining site access from TFR, we are in receipt of site access but are awaiting final signoff of designs.
9. Stikland Station (WCR) The installation at this station was delayed due to challenges in obtaining site access from TFR however, installation now complete.

Kwazulu Natal Region

1. Berea Station (WCR) The installation is in progress at this station for all elements however we are currently encountering problems with the access to the concourse are where hawkers are present to install the necessary infrastructure and equipment. Delays in September'18 due to protests.
2. Dalbridge Station (WCR) The installation of the speedgates is on hold pending the repair of the station roof damaged during last year's storms.



2.3.3 Status Report

Status of ISAMS Installation – Phase 2

ITEM	SGR	NGR	WCR	KZN	ECR	OVERALL
No of Stations	33	23	32	11	10	109
Safety File Signoff	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%
Site Access Certificate	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%
Procurement	98.12%	99.78%	100.00%	100.00%	HOLD	99.31%
Site Audit and Prep of As-Build	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%
Engineering	99.64%	100.00%	100.00%	100.00%	HOLD	99.89%
Drawings Submitted	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%
Drawings Approved by Region	95.45%	100.00%	100.00%	100.00%	HOLD	98.84%
Site Establishment	100.00%	100.00%	100.00%	100.00%	HOLD	100.00%
Installation	97.86%	99.74%	99.85%	98.33%	HOLD	97.73%
Standalone Pre- Commissioning	80.68%	100.00%	98.89%	96.11%	HOLD	95.96%
Fibre Link to Control Room	0.00%	71.43%	60.41%	100.00%	HOLD	51.02%
Installation Handover	68.18%	85.71%	96.71%	94.44%	HOLD	90.51%
Training	40.91%	93.33%	93.33%	87.50%	HOLD	76.67%
Asset Verification	72.73%	95.24%	100.00%	88.89%	HOLD	90.48%
OVERALL	96.03%	99.57%	99.58%	99.32%		98.33%



2.3.4 Scope of Services Rendered

SCOPE OF SERVICES RENDERED – SOUTHERN GAUTENG REGION (Phase 2)

Stations	ISAMS Elements										
	Pipe and Chamber & Poles	Building Work	Cable Containment	Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Man.	Access Control System	Installation
Oakmoor	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Leralla	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Limindlela	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Tembisa	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Birchleigh	Done	Done	Done	Done	X	Done	Done	Done	Done	Done	Done
Wynnton-Park	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Isando	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Ravensklip	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Knights	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Germiston	Done	Done	Done	Done	Hold	Done	X	X	Done	Done	Done
Driehoek	Done	98.00%	90.00%	35.00%	90.00%	35.00%	35.00%	35.00%	35.00%	35.00%	58.80%
Geldenhuis	Done	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Cleveland	Done	98.00%	80.00%	45.00%	70.00%	70.00%	20.00%	20.00%	60.00%	60.00%	62.30%
Tooronga	Done	Done	Done	Done	X	Done	Done	Done	Done	Done	Done
Denver	Done	Hold	50.00%	0.00%	0.00%	0.00%	Done	Done	0.00%	0.00%	38.89%
George Goch	Done	90.00%	80.00%	80.00%	80.00%	80.00%	90.00%	90.00%	80.00%	80.00%	85.00%
Jeppe	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Grosvenor	Done	Done	Done	Done	X	Done	Done	Done	Done	Done	Done
Daveyton	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Springs	Done	Done	Done	Done	X	Done	Done	Done	Done	Done	Done
Brakpan	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Manoni	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Randfontein	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Krugersdorp	Done	Done	Done	Done	X	Done	Done	Done	Done	Done	Done
Luipaardsvlei	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Roodepoort	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Kwesine	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Pilot	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Lenz	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Midannadale	Done	Done	Done	90.00%	Done	Done	Done	Done	90.00%	Done	98.00%
Residendia	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Houtheuwel	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Vereeniging	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold

X – Denotes exclusion from the scope of the contract



SCOPE OF SERVICES RENDERED – NORTHERN GAUTENG REGION (Phase 2)

Stations	ISAMS Elements										
	Pipe and Chamber & Poles	Building Work	Cable Containment	Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Installation
Sportspark	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Kloofsig	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Greenview	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Pienaarspoort	Done	Done	Done	Done	X	Done	Done	Done	Done	Done	Done
De Wildt	Done	Done	Done	Done	X	Done	Done	Done	Done	Done	Done
Talliardshoop	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Rankuwa	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Rissik	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Medunsa	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Wolmerton	Done	X	Done	Done	X	X	X	X	Done	N/A	Done
Pinedene	Done	Done	Done	Done	X	Done	X	X	Done	Done	Done
Fountains	Done	Done	Done	Done	X	Done	X	X	Done	Done	Done
Barracks	Done	Done	Done	Done	X	Done	X	X	Done	Done	Done
Pretoria West	Done	Done	Done	Done	X	Done	X	X	Done	Done	Done
Schutttestreet	Done	Done	Done	90.00%	X	90.00%	X	X	90.00%	90.00%	94.29%
Mears	Done	Done	Done	Done	X	Done	Done	Done	Done	Done	Done
Technikon Rant	Done	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Walker Street	Done	Done	Done	Done	X	Done	Done	Done	Done	Done	Done
Devenish	Done	Done	Done	Done	X	Done	Done	Done	Done	Done	Done
Mamelodi Gardens	Done	Done	Done	Done	Hold	Done	Done	Done	Done	Done	Done
Waltloo	Done	Done	Done	Done	Hold	Done	Done	Done	Done	Done	Done
Tersterust	Done	Done	Done	Done	Hold	Done	Done	Done	Done	Done	Done

X – Denotes exclusion from the scope of the contract



SCOPE OF SERVICES RENDERED – WESTERN CAPE REGION (Phase 2)

Stations	ISAMS Elements										
	Pipe and Chamber & Poles	Building Work	Cable Containment	Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Installation
Parade Concourse	Done	Done	Done	X	Done	X	X	X	Done	Done	Done
Bellville	Done	Done	Done	Done	Done	Done	Done	X	Done	Done	Done
Pinelands	Done	Done	Done	X	Done	Done	Done	Done	Done	Done	Done
Ndabeni	Done	Done	Done	X	Done	Done	Done	Done	Done	Done	Done
Cape Town Mess	Done	Done	Done	Done	X	X	Done	X	Done	Done	Done
Millippi	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Woodstock	Done	Done	Done	X	Done	Done	Done	Done	Done	Done	Done
Koeberg Road	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Lentegeur	Done	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Ysterplaat	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Mutual	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Esplanade	98.00%	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Kuils River	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Blackheath	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Melton Rose	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Eerste River	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Eikenfontein	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Parow	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Tygerberg	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Elsie's River	Done	Done	85.00%	90.00%	Done	Done	Done	Done	85.00%	Done	96.00%
Vasco	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Goodwood	Done	Done	Done	Done	Hold	Done	Done	Done	Done	Done	Done
Retreat	Done	Hold	Done	Done	Hold	Done	Done	Done	Done	Done	Done
Wynberg	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Fish Hoek	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Huguenot	Done	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Mbekweni	Done	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Kraaifontein	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Thornton	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Brackenfell	Done	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Stikland	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Woltemade	Done	Done	Done	Done	X	X	X	X	X	X	Done

X – Denotes exclusion from the scope of the contract



SCOPE OF SERVICES RENDERED – KWAZULU NATAL REGION (Phase 2)

ISAMS Elements

Stations	Pipe and Chamber & Poles	Building Work	Cable Containment	Public Address	Speed Gates	Fire Detection	Electronic Display Boards	Help Points	CCTV & Mon.	Access Control System	Installation
Dalbridge	Done	Done	Done	Done	Hold	Done	Done	Done	Done	Done	Done
Umgeni	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Temple	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Effingham	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Greenwood Park	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Red Hill	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Uvaca	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done	Done
Berea Road	Done	Done	90.0%	85%	Done	55%	Done	Done	65%	55%	85%
Clairwood	Done	Done	Done	N/A	Done	Done	N/A	N/A	Done	Done	Done
Kenville	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold
Pilgrim	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold	Hold

X – Denotes exclusion from the scope of the contract

2.3.5 Maintenance and Warranty

Maintenance ongoing at all stations upon handover to PRASA.

2.3.5.1 Challenges Faced

CHALLENGES FACED

Southern Gauteng Region

- 1. Fibre Backbone to Southern Gauteng Region**

The stations in the Southern Gauteng Region have been commissioned in a stand-alone basis as there is currently no fibre backbone available to relay the CCTV Footage, Access Control Information and alarms back to the control room at Park Station unlike all the other regions.
- 2. Birchleigh Station**

This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.



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| 3. Grosvenor Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 4. Knights Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 5. Lenz Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 6. Pilot Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 7. Ravensklip Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 8. Springs Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 9. Toorong Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. No power at station. See detailed Vandalism and theft report. |

Northern Gauteng Region

- | | |
|------------------------|---|
| 1. Barracks Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 2. Belle Ombre Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 3. Devenish Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 4. Eersterust Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. No power. |



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| 5. Fountains Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. No power at station. See detailed Vandalism and theft report. |
| 6. GaRankua Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 7. Greenview Station | This station has no power and has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 8. Kloofsig Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 9. Mears Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. No power. |
| 10. Mamelodi Gardens Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 11. Medunsa Station | This station has no power and has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 12. Pienaarspoort Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 13. Sportpark Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 14. Taliaartshoop Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. No power. |
| 15. Walker str Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. No power. |
| 16. Waltloo Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |



Western Cape Region

1. Blackheath Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
2. Eerste Rivier Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
3. Eikenfontein Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
4. Elsie's River Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. Power unstable.
5. Koeberg Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
6. Kuils River Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
7. Kraaifontein Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. Power unstable.
8. Melton Rose Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
9. Mutual Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
10. Ndabeni Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
11. Parrow Station
This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. Power unstable.



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|------------------------|---|
| 12. Philippi Station | This station has no power therefore hampering maintenance operations. EDB boards damaged. |
| 13. Pinelands Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 14. Retreat Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 15. Thornton Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 16. Tygerberg Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. Power unstable. |
| 17. Vasco Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 18. Woltermade Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 19. Woodstock Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. Power unstable. |
| 20. Wynberg Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |

Kwazulu Natal Region

- | | |
|---------------------------|---|
| 1. Greenwood Park Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 2. Dalbridge Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |



3. Temple Station

This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.

2.3.6 List of Stations

Below find a list of stations at which maintenance operations are ongoing as per contract.

LIST OF STATIONS			
Southern Gauteng	Northern Gauteng	Western Cape	KwaZulu Natal
Benoni	De Wildt	Bellville	Avoca
Birchleigh	Devenish	Blackheath	Dalbridge
Brakpan	Eersterust	Cape Town Mess	Effingham
Daveyton	Fountains	Eerste River	Greenwood Park
Germiston	Ga Rankuwa	Eikenfontein	Red Hill
Grosvenor	Greenview	Fish Hoek	Temple
Houtheuwel	Kloofsig	Goodwood	Umgeni
Knights	Mamelodi Gardens	Koeberg Road	
Krugersdorp	Mears	Kuils River	
Kwesine	Medunsa	Kraaifontein	
Lenz	Pienaarspoort	Melton Rose	
Luipaardsvlei	Pinedene	Mutual	
Pilot	Rissik	Ndabeni	
Randfontein	Sportspark	Parade Concourse	
Ravensklip	Talliardshoop	Parow	
Springs	Walker Street	Philippi	
Tooronga	Waltloo	Pinelands	
	Wolmerton	Retreat	
		Stikland	
		Thornton	
		Tygerberg	
		Vasco	
		Woltemade	
		Woodstock	
		Wynberg	
		Ysterplaat	



2.3.7 Financial Progress

Listed below are all the invoices since the inception of the project

Invoicing on Phase 2					
Invoice	Date	Total invoice including Vat	Type	Outstanding Balance	
Paid Invoices					
ST001115	20-Aug-14	R 304 000 025.54	Progress	R	-
ST001715	30-Oct-14	R 339 250 676.60	Progress	R	-
ST001815	29-Dec-14	R 133 512 368.81	Progress	R	-
ST000116	01-Apr-15	R 389 465 396.88	Progress	R	-
Total Paid		R 1 166 228 467.83			
Outstanding Invoices					
ST00916	30-Jul-15	R 215 093 360.43	Progress	R	215 093 360.43
ST01116	02-Dec-15	R 264 685 433.96	Progress	R	479 778 794.39
ST00117	18-Apr-16	R 313 958 747.56	Progress	R	793 737 541.95
ST01417PF	03-Jun-16	R 28 473 002.29	Court Order	R	822 210 544.24
ST01717PF	18-Jul-16	R 78 532 935.98	Progress	R	900 743 480.22
ST03317PF	25-Jan-17	R 208 630 176.46	Progress	R1	109 373 656.68
ST01318PF	15-Aug-17	R 80 490 189.29	Progress	R1	189 863 845.97
ST02318PF	25-Jan-18	R 29 658 156.21	Progress	R1	219 522 002.18
		R 158 734 997.20	Interest on ST00916	R1	378 256 999.38
		R 173 381 498.99	Interest on ST01116	R1	551 638 498.37
		R 177 053 857.74	Interest on ST00117	R1	728 692 356.11
		R 15 197 606.32	Interest on ST01417PF	R1	743 889 962.43
		R 39 646 418.36	Interest on ST01717PF	R1	783 536 380.79
		R 80 335 899.58	Interest on ST03317PF	R1	863 872 280.37
		R 22 264 968.38	Interest on ST01318PF	R1	886 137 248.75
		R 5 787 845.69	Interest on ST02318PF	R1	891 925 094.44
Total Outstanding		R 1 891 925 094.44			
Invoiced to Date		R 3 058 153 562.19			



2.4 Extended Maintenance and Warranty

2.4.1 Summary

SUMMARY	
Date of Contract Start:	1 April 2016
Date of Contract End:	30 June 2019
Number of Stations:	92
Project Progress:	Ongoing on monthly basis
Contract Amount:	R 905 883 450.58
Invoiced to Date:	R 1 319 828 471.13 (Refer to breakdown)
Paid to Date:	R 0
Balance Outstanding:	R 1 319 828 471.13
Status of Installation:	Maintenance is currently ongoing to 92 stations nationwide

2.4.2 Challenges Faced

CHALLENGES FACED

Southern Gauteng Region

- Fibre Backbone to Southern Gauteng Region**

The stations in the Southern Gauteng Region have been commissioned in a stand-alone basis as there is currently no fibre backbone available to relay the CCTV Footage, Access Control Information and alarms back to the control room at Park Station unlike all the other regions.
- Braamfontein Yard**

Our installation was damaged by a contractor carrying out renovations and restructuring. We are currently awaiting approval for our quotation to repair the installation.
- Braamfontein Station**

This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
- Croesus Station**

This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.



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| 5. Doornfontein Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 6. Dube Station | Our installation was damaged by a contractor carrying out renovations and restructuring. We are currently awaiting approval for our quotation to repair the installation. Maintenance of balance of equipment is ongoing. |
| 7. Elandsfontein Station | Our installation was damaged by a contractor carrying out renovations and restructuring. We are currently awaiting approval for our quotation to repair the installation. Maintenance of balance of equipment is ongoing. |
| 8. Ikwezi Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 9. Inhlazane Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 10. Kliptown Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 11. Langlaagte Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 12. Longdale Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 13. Mayfair Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 14. Merafe Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 15. Midway Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |



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| 16. Mlamlankuzi Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 17. Mzimhlope Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 18. Naledi Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 19. Nancefield Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 20. New Canada Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 21. Orlando Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 22. Phefeni Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 23. Phomolong Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 24. President Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 25. Tshiawelo Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 26. Van Riebeeck Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |



Northern Gauteng Region

1. Akasiaboom Station This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. No power.
2. Atteridgeville Station Our installation was damaged by a contractor carrying out renovations and restructuring. We are currently awaiting approval for our quotation to repair the installation. This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
3. Belle Ombre Station This station has been exposed to vandalism and theft therefore hampering maintenance operations. No power at station. See detailed Vandalism and theft report.
4. Bosman Station Our installation was damaged by a contractor carrying out renovations and restructuring. We are currently awaiting approval for our quotation to repair the installation. This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
5. Daspoort Station This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. No power.
6. Hercules Station This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
7. Loftus Station This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
8. Kopanong Station This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
9. Mountain View Station This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report.
10. Saulsville Station Our installation was damaged by a contractor carrying out renovations and restructuring. We are currently awaiting approval for our quotation to repair the installation. Maintenance of balance of equipment is ongoing.



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| 11. Soshanguve Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 12. Wintersnest Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 13. Wolmerton Yard | Our installation was damaged by a contractor carrying out renovations and restructuring. We are currently awaiting approval for our quotation to repair the installation. |
| 14. Wonderboom Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |

Western Cape Region

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| 1. Central Line | The ongoing riots and disturbances on the Central line are hampering the hampering maintenance operations. Although we try to visit each site on a monthly basis this is not always possible. |
| 2. Cape Town Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 3. Bonteheuwel Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 4. Cape Town Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 5. Chris Hani Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. Power unstable. |
| 6. Heideveld Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 7. Kapteinsklip Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |



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| 8. Kuyasa Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. Power unstable. |
| 9. Maitland Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 10. Mandalay Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 11. Mitchellsplain Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 12. Netreg Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 13. Nonqubela Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 14. Nolungile Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. Power unstable. |
| 15. Nyanga Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. Power unstable. |

Kwazulu Natal Region

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| 1. Durban Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |
| 2. Congela Station | This station has had cables damaged on the platform due to construction. Therefore EDB's are not operational and therefore hampering maintenance operations. |
| 3. Umlazi Station | This station has been exposed to vandalism and theft therefore hampering maintenance operations. See detailed Vandalism and theft report. |



List of Stations

Below find a list of stations at which maintenance operations are ongoing as per addendum contract.

LIST OF STATIONS			
Southern Gauteng	Northern Gauteng	Western Cape	Kwazulu Natal
Braamfontein	Akasiaboom	Athlone	Bridge City
Braamfontein Yard	Atteridgeville	Bonteheuwel	Clairwood
Croesus	Belle Ombre	Cape Town	Congella
Doornfontein	Bosmanstraat	Century City	Duffs Road
Dube	Centurion	Chris Hani	Durban
Dunswart	Daspoort	Heideveld	Isipingo
Elandsfontein	Denneboom	Kapteinsklip	Kwamashu
Ikwezi	Eerste Fabrieke	Khayelitsha	Kwa-Mnyandu
Inhlazane	Hartebeestspruit	Kuyasa	Lindokuhle
Kaalfontein	Hercules	Langa	Merebank
Kliptown	Irene	Maitland	Montclair
Langlaagte	Koedoespoort	Mandalay	Moses Mabhida Station
Longdale	Kopanong	Mitchelsplain	Reunion
Mayfair	Loftus	Netreg	Rossburgh
Merafe	Mountain View	Nolungile	Thembaile
Midway	Pretoria	Nonqubela	Umbilo
Mlamlankunzi	Pretoria North#	Nyanga	Umlazi
Mzimhlope	Saulsville	Salt River	Zwelethu
Naledi	Silverton	Stock Road	
Nancefield	Soshanguve		
Nasrec	Wintersnest		
New Canada	Wolmerton Yard		
Olifantsfontein	Wonderboom		
Orlando			
Park Station			
Phefeni			
Phomolong			
President			
Rhodesfield			
Stretford			
Tshiwelo			
Van Riebeeck Park			



2.4.3 Financial Progress

Listed below are all the invoices since the inception of the project

Invoice	Date	Total invoice including Vat	Type	Outstanding Balance
Outstanding Invoices				
ST00717PF	01/04/2016	R 250 035 065.04	Progress	R 250 035 065.04
ST00817PF	01/05/2016	R 11 342 714.56	Progress	R 261 377 779.60
ST00917PF	01/06/2016	R 11 342 714.56	Progress	R 272 720 494.16
ST01517PF	01/07/2016	R 137 288 093.54	Progress	R 410 008 587.70
ST01817PF	01/08/2016	R 11 342 714.56	Progress	R 421 351 302.26
ST01917PF	01/09/2016	R 11 342 714.56	Progress	R 432 694 016.82
ST02017PF	01/10/2016	R 137 288 093.54	Progress	R 569 982 110.36
ST02817PF	01/11/2016	R 11 342 714.56	Progress	R 581 324 824.92
ST03017PF	01/12/2016	R 11 342 714.56	Progress	R 592 667 539.48
ST03217PF	01/01/2017	R 137 288 093.54	Progress	R 729 955 633.02
ST03417PF	01/02/2017	R 11 342 714.56	Progress	R 741 298 347.58
ST03717PF	01/03/2017	R 11 342 714.56	Progress	R 752 641 062.14
ST00118PF	01/04/2017	R 11 747 811.50	Progress	R 764 388 873.64
ST00218PF	01/05/2017	R 11 747 811.50	Progress	R 776 136 685.14
ST00518PF	01/06/2017	R 11 747 811.50	Progress	R 787 884 496.64
ST00818PF	01/07/2017	R 11 747 811.50	Progress	R 799 632 308.14
ST01218PF	01/08/2017	R 11 747 811.50	Progress	R 811 380 119.64
ST01418PF	01/09/2017	R 11 747 811.50	Progress	R 823 127 931.14
ST01718PF	01/10/2017	R 11 747 811.50	Progress	R 834 875 742.64
ST01918PF	01/11/2017	R 11 747 811.50	Progress	R 846 623 554.14
ST02018PF	01/12/2017	R 11 747 811.50	Progress	R 858 371 365.64
ST02118PF	01/01/2018	R 11 747 811.50	Progress	R 870 119 177.14
ST02418PF	01/02/2018	R 11 747 811.50	Progress	R 881 866 988.64
ST02718PF	01/03/2018	R 11 747 811.50	Progress	R 893 614 800.14
ST02818PF	01/04/2018	R 12 268 650.43	Progress	R 905 883 450.57
		R 144 001 792.81	Interest on ST00717PF	R 1 049 885 243.38
		R 6 306 592.96	Interest on ST00817PF	R 1 056 191 836.34
		R 6 076 339.02	Interest on ST00917PF	R 1 062 268 175.36
		R 70 886 378.91	Interest on ST01517PF	R 1 133 154 554.27
		R 5 632 737.79	Interest on ST01817PF	R 1 138 787 292.06
		R 5 412 028.31	Interest on ST01917PF	R 1 144 199 320.37



	R	62 956 041.28	Interest on ST02017PF	R 1 207 155 361.65
	R	4 986 815.16	Interest on ST02817PF	R 1 212 142 176.81
	R	4 782 032.02	Interest on ST03017PF	R 1 216 924 208.83
	R	55 354 430.67	Interest on ST03217PF	R 1 272 278 639.50
	R	4 367 667.20	Interest on ST03417PF	R 1 276 646 306.70
	R	4 184 374.86	Interest on ST03717PF	R 1 280 830 681.56
	R	4 126 472.04	Interest on ST00118PF	R 1 284 957 153.60
	R	3 928 612.48	Interest on ST00218PF	R 1 288 885 766.08
	R	3 727 007.00	Interest on ST00518PF	R 1 292 612 773.08
	R	3 534 624.18	Interest on ST00818PF	R 1 296 147 397.26
	R	3 341 289.53	Interest on ST01218PF	R 1 299 488 686.79
	R	3 152 571.92	Interest on ST01418PF	R 1 302 641 258.71
	R	2 972 427.23	Interest on ST01718PF	R 1 305 613 685.94
	R	2 788 810.66	Interest on ST01918PF	R 1 308 402 496.60
	R	2 613 535.29	Interest on ST02018PF	R 1 311 016 031.89
	R	2 434 881.89	Interest on ST02118PF	R 1 313 450 913.78
	R	2 258 699.11	Interest on ST02418PF	R 1 315 709 612.89
	R	2 101 661.40	Interest on ST02718PF	R 1 317 811 274.29
	R	2 017 196.84	Interest on ST02818PF	R 1 319 828 471.13
Total Outstanding	R	1 319 828 471.13		



3 PROJECT THEFT AND VANDALISM

3.1 ISAMS Phase 1 and Phase 1 Extension Stations

Below find a detailed list of all the theft and vandalism at the Phase 1 and Phase 1 Extension Stations.

Description	Delay	Responsible	Status / Comments
SGR			
<i>Braamfontein Station- Theft</i>	<i>ongoing</i>	PRASA	Cameras were stolen on the 13 July 2015. On 15 Jan 2016, 3 x cameras had been stolen. On 30 & 31 May 2016, 4 x speedgate side panels stolen. Visit in Nov 16 a further 6 x speedgate side panels, 4 x speedgate batteries and 1 x card reader stolen. This will result in additional costs.
<i>Braamfontein Yard- damage</i>	<i>ongoing</i>	PRASA	During month of June 2016. Fibre cable damaged, splice box damaged. This will result in additional costs.
<i>Croesus Station- Theft & Vandalism</i>	<i>ongoing</i>	PRASA	20 March 2017, opened manholes on platforms and cut and stole cables. Therefore the CCTV and PA will no longer function. This will result in additional costs.
<i>Doomfontein Station- Theft & vandalism</i>	<i>ongoing</i>	PRASA	Nov 16 visit, 4 x speedgate chairs damaged and 1 x speedgate dented. 29 Jan'19, Mini kiosk door damaged, all CB's, 1 x 8 port POE switch, 1 x 24VDC PSU, 8x speedgate side panel doors and 6 x batteries stolen. Fibre, power and UTP cable cut and stolen. This will result in additional costs.
<i>Dube Station- Theft</i>	<i>ongoing</i>	PRASA	Glass broken on the filler panels in Aug 2014. Visit in Nov 16, 11 x speedgate side panels, 3 x speedgate batteries and 1 x chair stolen. 1 x speedgate dented and filler panel glass broken. 4 x panic buttons removed due to renovations and equipment dirty due to renovations. Visit in Jan 2017 further 37 x side panel doors stolen, totalling 48 stolen and 7 x chairs stolen totalling 8. Further 9 x speedgate batteries stolen totalling 12 stolen. Pedestrian gate glass broken. This will result in additional costs. Visit 24 Jan 2017 on North side, intercom, panic buttons and intrusion alarm siren vandalised. This will result in additional costs.
<i>Dube Station- Damages due to renovations</i>	<i>ongoing</i>	PRASA	Renovations completed on 16 May 2017 at South Ticket Office damaged equipment and cable. This will lead to additional costs.
<i>Elandsfontein Station- Theft, Damages & Vandalism</i>	<i>ongoing</i>	PRASA	During the 1st week of October 2014, conduit, light and cameras including vandal proof housings were stolen in the subway. On 17 June 2015, a contractor has installed new ceilings and removed the security equipment. Siyangena will have to reinstall the equipment. This will result in additional costs. Visit 10 Jan 2017 1 x speaker front steel cover missing, 1 x JB & 1 x inspection box broken. This will result in additional costs.
<i>Ikwezi – Theft & vandalism</i>	<i>ongoing</i>	PRASA	During week of 20 May 2016, 3 x 8 port switched broken. On 25th Feb 2018, 4 x IR cameras stolen at platform 1&2. This will result in video loss and additional costs.
<i>Ikwezi – Power issue</i>	<i>ongoing</i>	PRASA	During the month of July 2016, all the platform network switches have burnt due to power issues. Visit in Jan 2017 8 x speedgate batteries stolen. This will result in video loss and additional costs until the power issue is rectified.
<i>Ikwezi - rat problem</i>	<i>ongoing</i>	PRASA	Rats have eaten through cables for the 2nd time at Ikwezi, We are replacing cables in November 2014. This will result in delays and additional costs.
<i>Ikwezi Station- Speedgates damage</i>	<i>ongoing</i>	PRASA	The speedgates are being sprayed with a hose pipe when cleaning the floor, this has damaged the electronics and has led to additional costs.



Inhlazane- theft & vandalism	ongoing	PRASA	During week of 20 May 2016, 2 x 8 port switched and 1 x 24 port switch broken. 12 x speedgate batteries stolen. Visit during Nov 16, 5 x speedgate batteries and 1 x door closer stolen. 5 x speedgate locks damaged. Jan 2017 2 x side panel doors stolen. Further 7 x speedgate batteries stolen totaling 12 stolen. On 6 March 2017, theft & vandalism on platforms, power cables stolen that feed the kiosks, speaker cables stolen, Camera UTP cables stolen and 1 x dome camera outside north side ticket office stolen. This will result in and additional costs.
Kliptown Station- Theft & vandalism	ongoing	PRASA	Visit in Nov 16, 8 x speedgate batteries and 4 x chairs stolen. 3 x chairs damaged and 8 x speedgate side panel locks damaged. This will result in additional costs. Visit 10 Jan 2017 all 48 x speedgate side panel doors stolen. Further 4 x speedgate batteries stolen totalling 12 stolen. 11 x transformers and 12 x PSU stolen from speedgates. Platform speaker and power cable stolen, therefore PA and CCTV not operational. Visit 31 July '17, manhole damaged, power, Cat 5 outdoor and speaker cable stolen. This will result in additional costs.
Longdale Station- Theft & vandalism	ongoing	PRASA	Visit in Nov 16, 34 x speedgate side panels 8 x speedgate batteries and 1 x chairs, 3 x speedgate transformers, all speedgate sensors and brackets, 4 x speedgate PSU, door lock, 2 x K32 SD card & battery, 1 x PA speaker and 2 x dome CCTV cameras and basal conduit stolen. 11 x chairs damaged. 13 December 2018, 2 x dome camera cables cut in subway. 3 x dome cameras stolen in subway, 2 x dome cameras stolen from platform 3&4. This will result in additional costs.
Longdale station- Theft	ongoing	PRASA	At last maintenance visit on 14 Jan 2016, 4x IR Cameras had been stolen. Visit in Nov 2016, another 4x IR Cameras had been stolen, totaling 8 stolen. On 1 March 2017 a further 6 x IR cameras stolen from platform 1&2. On 15 Feb 2018, 2 x dome cameras stolen on platform 2&3. This will result in additional costs.
Merafe Station- Theft & vandalism	ongoing	PRASA	Visit in Nov 2016, 4 x speedgate side panels 4 x speedgate batteries, 1 x speedgate transformers & PSU stolen. 4 x speedgate door lock all speedgate wiring damaged. Visit in Jan 2017 further 44 x side panel doors stolen, totalling 48 stolen and 4 x chairs damaged. Further 8 x speedgate batteries stolen totalling 12 stolen. 11 x transformers and 12 x PSU stolen from speedgates. This will result in additional costs. Visit 10 Jan 2017, Platform 1 all manholes were open and all speaker and cameras 7 UTP cables cut. Around 600m of cable stolen. This will result in additional costs.
Mayfair Station- Theft & vandalism	ongoing	PRASA	During March 2017, platform camera power cable and speaker cable stolen and vandalized manholes. PA on platform not operational and no recording is now taking place on the platform. Sept 2017, no power to equipment room, so all systems are off and no recordings taking place. This will lead to additional costs.
Midway Station- Power cable cut	ongoing	PRASA	During mid October 2014, Mandewo Inv Projects cut the platform camera cable in manhole and connected the lights of the platform. Please be advised that no recording is now taking place on the platform. This will lead to additional costs.
Midway station- theft	ongoing	PRASA	During month of June 2016. Power cable to DB stolen. This will result in additional costs. Visit 10 Jan 2017, all UTP, mylar, power and speaker cable cut or stolen. CVT, aircon, KVM monitor and switch stolen. Server vandalised. DB stripped of all circuit breakers and cable. All equipment off in the equipment room. On 14 March 2017, manholes opened on platform and cables stolen. This will result in additional costs.



Mlamlankunzi Station- theft	ongoing	PRASA	Since the power was switched off and station only running on generator power during ticket office hours. At last maintenance visit on 15 April 2016, a total of 32 x IR cameras, 4 speakers and 2 pole brackets have been stolen since May 2015. Visit in Nov 2016, 15 x speedgate side panels 6 x speedgate batteries, 6 x speedgate PSU and 3 x chairs stolen. All speedgate wiring and sensors stolen or damaged. This will lead to loss of recordings and extra costs. Visit 10 Jan 2017 further 9 x speedgate side panel doors stolen totaling 24 stolen. 5 x transformers stolen from speedgates. All power cable stolen or cut, therefore PA and CCTV not operational. Further 6 x IR cameras stolen, totaling 38 stolen. Speaker and power cable stolen, therefore no CCTV or PA operational. This will result in additional costs.
Mzimphlope Station- theft & vandalism	ongoing	PRASA	Visit Nov 2016, all 40 x IR platform cameras stolen. Manhole lid damaged. This will result in no recordings and additional costs to replace equipment.
Naledi - theft	ongoing	PRASA	During week of 20 May 2016. 8 x speedgate batteries stolen. This will result in additional costs. Visit in Nov 2016, 8 x speedgate door locks damaged. Visit in Jan 2017 4 x side panel doors stolen and 4 x chairs damaged. Further 4 x speedgate batteries stolen totaling 12 stolen. The power cable has been cut to the platforms, therefore no PA or CCTV is functional. This will result in additional costs.
Nancefield Station- theft & vandalism	ongoing	PRASA	18 April 2016, 4 x IR platform cameras stolen. This will result in no recordings and additional costs to replace equipment. Visit in Nov 16, 5 x speedgate batteries, 4 x IR cameras. 1 x chairs and 2 x speedgate panel locks damaged. This will result in additional costs. Visit 10 Jan 2017 all 40 x speedgate side panel doors stolen. Further 5 x speedgate batteries stolen totaling 10 stolen. 9 x transformers and 10 x PSU stolen from speedgates. All power cable stolen or cut, therefore PA and CCTV not operational. On 14 March 2017, vandalism & theft on the platforms 1-4 with cables being stolen & manholes vandalised. One 1 x large kiosk door damaged and cables cut. Visit 31 July '17, North side of station vandalised, dome cameras stolen, anti-bandit door, aircon, small equipment rack with switched and network recorders damaged. All cables cut etc This will result in additional costs.
New Canada Station- damage	ongoing	PRASA	On 11 February 2016, Siyangena was informed that the contractor on site while removing the ceiling damaged the cameras. This will result in no recordings and additional costs to replace equipment.
New Canada Station- theft & vandalism	ongoing	PRASA	Visit in Nov 2016, 5 x speedgate side panels 6 x speedgate batteries, all speedgate PSU stolen. All speedgate wiring damaged. This will lead to extra costs. Visit 10 Jan 2017 further 47 x speedgate side panel doors stolen totaling 52 stolen. Further 7 x transformers stolen from speedgates, totaling 12 stolen. This will result in additional costs.
Orlando Station- Theft & vandalism	ongoing	PRASA	Visit in Nov 2016, IR platform camera stolen, 3 x speedgate batteries stolen. 1 x speedgate top glass damaged. This will result in additional costs.
Park Station- Vandalism	ongoing	PRASA	The ticket booths at the speedgates are being damaged by the ticket verifiers sitting on the booth and not the booth chair. Recording made on the 25 June 2015. 28 Jan'19, 5 x speedgate glass broken. This will result in additional costs.
Park Station- damage	ongoing	PRASA	On the 22 July 2015 we discovered that Camera 31 on platform 1&2 was removed by another contractor and just lying on the floor. 13 Nov'17, bypass gate, speedgate glass top, speedgate booth have been damaged. This will result in additional costs.



<i>Phefeni Station- theft</i>	<i>ongoing</i>	PRASA	On 20 Oct 2015, Siyangena noticed that the access door to the speedgate area was stolen. During week of 20 May 2016, 15x cameras damaged and cable cut, 10 x speedgate batteries, This will lead to additional costs. Visit in Nov 2016, 10 x speedgate side panels, 7 x speedgate batteries, all speedgate wiring and sensors stolen, 9 x IR cameras cable, 4 x dome camera cable and EDB cable, 1 x speaker and 1 x chair stolen. 7 x speedgate side panel locks damaged. This will result in additional costs. PA system not working due to damaged and stolen cable. Visit in Jan 2017 further 30 x side panel doors stolen, totaling 40 stolen and 9 x chairs stolen. Further 3 x speedgate batteries stolen totaling 10 stolen. 1 x Platform speaker stolen. UTP, speaker and power cable stolen from platform. On 6 March 2017, theft & vandalism on platforms, power cables stolen that feed the kiosks, speaker cables stolen, Camera UTP cables stolen & fibre cable stolen. Therefore PA and cameras on platform not functional. On 2 October '17, 5x IR cameras, 1 x Dome camera & cable and 1 x horn speaker stolen. This will lead to additional costs.
<i>Phomolong station - Theft</i>	<i>ongoing</i>	PRASA	At last maintenance visit on 11 Jan 2016, Power cables had been stolen between platforms 3&4. Visit in Nov 2016, 5 x speedgate batteries, 2 x speedgate PSU and 1 x chair stolen. 3 x speedgate door lock all speedgate wiring damaged. 18 x Camera cables stolen, power cable stolen. This will result in loss of video and additional costs. Visit in Jan 2017 all 48 x side panel doors stolen and 8 x chairs stolen. Further 7 x speedgate batteries stolen totaling 12 stolen. UTP, speaker and power cable stolen from platform. Therefore PA and cameras on platform not functional. This will lead to additional costs. Visit 10 Jan 2017, Platform manholes all 12 broken, around 3000m power, speaker and UTP cable stolen. About 10m basal pipe stolen. Feb'19, 25 x IR platform cameras and 4 x Dome cameras stolen. This will result in additional costs.
<i>President station- vandalism</i>	<i>ongoing</i>	PRASA	Visit 10 Jan 2017, 2 x IR cameras vandalised on platform 3. This will result in additional costs.
<i>Stredford Station- Theft & vandalism</i>	<i>ongoing</i>	PRASA	There was a break in on the 6 Aug 2015 and the ABD doors were damaged. Visit in Nov 2016, 2 x speedgate booths, 4 x chairs damaged. 13 Nov'17, Workstation Screen & cable damaged due to table counter damaged. 10x speedgate locks damaged. March'19, Platform IR camera 10 was stolen. This will result in additional costs.
<i>Tshiwelo Station- Theft & vandalism</i>	<i>ongoing</i>	PRASA	During the month of September 2014, the rain cover over the ticket office door was stolen. Visit in Nov 2016, 12 x speedgate side panels, all 10 x speedgate batteries, 5 x speedgate transformers & PSU, 1 x dome camera stolen. 8 x speedgate door lock all speedgate wiring, 1 x BGU, 1 x speaker and Intercom damaged. Video Monitor cable cut and Fibre in equipment rack damaged. This will result in additional costs. Visit 10 Jan 2017 further 28 x speedgate side panel doors stolen, totaling 40 stolen. 1 x intrusion keypad and platform power cable stolen. PA and CCTV on platform not working. This will result in additional costs. Visit 27 Jan 2017 power cable on south side stolen, power cable from equipment room to rack in North side stolen. South side, cameras, lights, speakers, intercom, card readers and intrusion keypad vandalized. Visit June 2018, 10 x IR cameras from platform and 1 x dome camera stolen. This will result in additional costs.
<i>Van Riebeeck Station- theft</i>	<i>ongoing</i>	PRASA	March 2018, 6 x IR cameras stolen from platform. This will result in additional costs.
WCR			
<i>Bonteheuwel Station- Security problem</i>	<i>ongoing</i>	PRASA	Experienced a security problem and cable theft which caused delays and additional costs in June and July 2013. Card Reader, Pole with 2 cameras and cable on 30 September 2013. Another two poles were cut down on 16 Oct 2013, a total of 6 cameras 2 speakers with brackets. On 4 May 2014 another 2 cameras stolen and 1 wall bracket. During May 2014 2 cameras were spray painted.



Cape Town Station- Theft & Vandalism	ongoing	PRASA	First fire 20 October 2015 on platform 24 & 9. Second fire 27 December 2015 on platform 14/15. Third fire 14 Feb 2016 on platform 14/15 again. Quotes of the equipment damaged were forwarded to PRASA. The fourth fire 12 June 2017 caused black soot to enter the equipment room. The equipment room had to be shut down to clean equipment to try and prevent the equipment from failing due to the soot. Severe damage done to cable linking platforms and control room and damaging the speedgates. On 15 Feb 2018, 150m power & UTP cable stolen on platform 20/21, Cameras 6,7,8,9 offline. The recent fires occurred on the 21&28 July 2018 on platforms, causing damaged to Camera's, Power cabling, Data Cabling – UTP and Fiber, Field boxes and transmission equipment, P9000. Quotes of the equipment damaged were forwarded to PRASA. Unfortunately, this incident has no CCTV footage due to the previous fires. December 2018, 34 x platform cameras offline due to 750m power and UTP cable stolen. Video footage will not be possible due to cameras offline. Feb'19, platform 24, cameras 6 to 9 offline due to 300m of power cable stolen. Mid Feb'19, platforms 18 to 21, cameras 6 to 9 offline per platform due to 390m of power cable stolen. Operators damaged CCTV Workstation. This will result in additional costs and possible future costs due to equipment failure.
Chris Hani station- damages	ongoing	PRASA	Field Box on platform burnt, cables stolen. No camera recordings can take place. This will lead to additional costs
Heideveld station- theft & vandalism	ongoing	PRASA	Visit in July '17, 2 x dome cameras stolen on B side of station. Feb 2018, Side B speedgates vandalised, 6x small sliding glass, 2x large sliding glass, 2 x large glass broken. 4x dome cameras, conduit, junction boxes burnt and vandalised. This will result in video loss and additional costs.
Kapteinsklop station- theft & vandalism	ongoing	PRASA	7 Sept '16 Pole cut down and 4 x IR cameras stolen. Theft of cables and broken manholes took place. This will lead to additional costs and downtime on CCTV recordings. 28 Feb 2017, noticed, 1 x camera stolen. Visit 15 Jan 2018, aircon, alarm strobe & siren, Dome and platform cameras stolen. 25th Feb 2018, Anti-Bandit door damaged. All distribution DB's for Rack 1 & 2 stolen, Distribution Board supply for racks destroyed and stolen, Recorder 1 to 3 damaged and all HDD's removed, Recorder 4 stolen, KVM Monitor and Selector Switch Stolen, Workstation PC stolen, PA Amplifier Stolen, DOM unit Damaged, K3201 and K3202 Access controllers damaged and batteries stolen, Fire Panel damaged and batteries stolen, 7" Monitor Stolen, Alarm Keypad stolen, All UPS units damaged and battery packs stolen, All Cabling UTP, Surfex and fibre cut and stolen, A full assessment has to be done across the site, all electrical cabling and everything connected was destroyed or stolen. December 2018, 1 x IR platform camera stolen, Mini kiosk damaged, Switch, POE switch, brush panels, fibre patch panels, media converters, fence sensor equipment all stolen. This will result in additional costs.
Kapteinsklop station- power surge damage	ongoing	PRASA	4 July '17 a power surge damaged all equipment on platforms, ticket office and equipment room. This will result in all equipment and cables being replaced at additional costs.
Kuyasa station- theft & vandalism	ongoing	PRASA	December 2018, 1 x IR platform camera stolen, Mini kiosk damaged, Switch, POE switch, brush panels, fibre patch panels, media converters, fence sensor equipment all stolen. This will result in additional costs.
Langa station- vandalism	ongoing	PRASA	20 Sept'16 speedgate glass broken, damages to be confirmed. 29 Jan'19, PTZ housing in main walkway stoned and cracked. This will result in additional costs.
Maitland Station- Theft	ongoing	PRASA	28 Feb 2017, 6x cameras and brackets stolen. In May 2017, 4 x manholes damaged and cable stolen. This will result in additional costs.



Mandalay Station- Theft	ongoing	PRASA	18 Feb 2019, 1 x anti-bandit door vandalised at Ticket Office. This will result in additional costs.
Mitchells Plain Station- Theft	ongoing	PRASA	Theft of cables and broken manholes took place on the 26 June 2015. This will lead to additional costs and downtime on CCTV recordings.
Netreg Station- Theft	ongoing	PRASA	Speedgate panels and internals stolen, camera cables, alarm for intrusion and fire stolen on 25 March 2016. 2 x Ticket verifier booth doors stolen 19 May 2014. Various cable theft incidents, last on 4 April 2016. This will lead to additional costs.
Nolungile Station- Theft & vandalism	ongoing	PRASA	Feb 2018, Booths, chairs and by-pass gate stolen in concourse. Platform cable stolen. No power and no recordings. Rampant rodent infestation. 29 Jan'19, massive voltage spikes have destroyed PA AMP and DOM. This will lead to additional costs.
Nonqubela Station- Theft & vandalism	ongoing	PRASA	PA Cable was stolen on the platforms during June 2014. Siyangena has been requested by PRASA to replace 14 old type manholes with new lockable type. Equipment room door damaged and fibre cable damaged in Aug 2014. Camera and cable theft 15 March 2016. Feb 2018, Aircon, strobe, fire strobe, conduit and cabling to cameras stolen. This will lead to additional costs.
Nyanga Station- Damages	ongoing	PRASA	PRASA staff damaged BGU. This will lead to additional costs
Vandalism at Heideveld, Mitchells Plain & Kapteins klip Kuyasa, stations	ongoing	PRASA	Vandalising mini-kiosks on platforms and manholes. This will lead to delays and additional costs.
NGR			
Akasiaboom Station- theft & vandalism	ongoing	PRASA	During month of June 2016. 8 x IR cameras stolen, 2 x poles damaged & 1 x card reader stolen. Visit June 2018, further power, Camera UTP and speaker cable theft on the platforms. Manhole lids damaged and need replacement. 18 Jan'19, 2 x IR platform cameras stolen. This will result in additional costs.
Akasiaboom – no power	ongoing	PRASA	May 2018, Main power cable to station stolen. No power. ISAMS not operational.
Attridgeville Station- damages	ongoing	PRASA	The ceiling contractor removed our security equipment without informing us. This will lead to loss of CCTV recording and additional costs.
Attridgeville Station- Theft & vandalism	ongoing	PRASA	18 Jan'19, 13 x IR platform cameras and 20 x platform speakers 1 x dome camera and 1 x ceiling light stolen. This will lead to loss of CCTV recording and additional costs.
Belle Ombre Station- theft & vandalism	ongoing	PRASA	23 May 2018, 8 x platform IR cameras stolen. 16 October 2018, further 20 x platform IR cameras stolen. 18 Jan'19, further 16 x IR platform cameras stolen. Total of 44. The EDB was vandalised. March'19, The cabling feeding the western side Speed gate area was stolen. The following will not be functioning, CCTV – cameras B-C068 to B-C078, Access – K3204 – Door5 to Door7, Intrusion – PIR17 to PIR22; RDM11 to RDM20; Panic 12, Fire Detection – Detector 01 to Detector 06; I/O Unit. This will result in additional costs and loss of system functionality.
Bosman Station- theft & vandalism	ongoing	PRASA	During month of Aug 2016. Another PRASA contractor has removed the ceiling in the Ticket office and has damaged and removed ISAMS related equipment. April 2018, 8 x platform IR cameras stolen. This will result in additional costs and loss of system functionality.
Centurion Station- Damage	ongoing	PRASA	On 11 Nov 2015, Siyangena noticed that concrete around an ISAMS manhole had been damaged by PRASA lighting contractor. This will lead to additional costs.
Centurion station- theft & vandalism	ongoing	PRASA	During month of June 2016. 3 x speedgate chairs broken. This will result in video loss and additional costs.
Daspoort Station- theft & vandalism	ongoing	PRASA	March'19, Ticket Office broken into, Ant-bandit door damaged. Equipment stolen from equipment room, aircon unit, KVM Monitor, CVT, 2 x K32 batteries, 2 x Fire Panel batteries, 2 x 6KVA battery backup, Server and cables. April 2018, 21 x IR cameras stolen. Mid March'19, remaining cable in equipment room stolen and Fibre Cable cut, so link to PTA Main is down, therefore CTC communication is down. This will lead to additional costs.



Denneboom Station- damages	ongoing	PRASA	On 15 Oct 2015, Siyangena noticed that the inner door of the access booth has been damaged. 6 July 2018, contractors have removed 2 x speedgate chairs and cubicles. This will lead to additional costs.
Hartbeesspruit, Eerstefabrieke, Mountain View & Belle Ombre station- wasteful expenditure	ongoing	PRASA	During month of June 2016. The recently installed Anti-bandit door with magnetic lock was replaced with another Anti-bandit door with no magnetic lock. Therefore access control to ticket office no longer operates.
Hercules Station- theft & vandalism	ongoing	PRASA	April 2018, 26 x IR cameras stolen. 13 December 2018, further 14 x IR cameras stolen, total 40. This will lead to additional costs.
Hartbeesspruit Station- damages	12 weeks	PRASA	The contractor has damaged the ISAMS installations and removed equipment on 5 Sept 2015 in the concourse building. This will lead to additional costs.
Loftus Station- fibre not connected to control room	ongoing	PRASA	Fibre cable on pole outside Loftus Ticket office on 29 March 2016.
Loftus Station- Theft	ongoing	PRASA	April 2018, 4 x IR platform cameras stolen. This will result in additional costs.
Kopanong Station- theft & vandalism	ongoing	PRASA	Visit 6 July 2018, all manholes lids damaged. 4 x Mini kiosk doors damaged. All cables in manholes cut. Power cable between Main kiosk and mini kiosk stolen. This will result in additional costs.
Mountain View Station- theft & vandalism	ongoing	PRASA	Visit 12 June 2017, 6 x IR platform cameras stolen. May 2018, broke into manholes/paving and cable stolen. 4 x Mini kiosk doors damaged. All cables cut and stolen. This will result in additional costs.
Pretoria Main station- vandalism	ongoing	PRASA	On 23 Sept 2014 several Speedgate glasses were broken and damaged speedgate booths. On 29 Sept 2015 an access door was damaged. On 23 Feb 2016 riot resulted in a train being burnt. All speedgate glass, panels, LED's and chairs were damaged. Speakers were also damaged. March'19 following equipment damaged due to vandalism, 1x Tinted glass panel triangle with access light window – large, 4x Tinted glass panel triangle with access light window – small, 2x Perspex cover for access lights, 3x Speed Gate Glass - Narrow Fixed, 1x Speed Gate Glass - Wide Fixed, 11x Speed Gate Glass – Narrow Sliding, 5x Speed Gate Glass – Wide Sliding, 2x Bypass Gate glass and 8x Booth Glass. This will lead to additional costs.
Pretoria North Station- damages	ongoing	PRASA	On 13 Oct 2015, Siyangena noticed that the Microphones for PA systems have been damaged. On 24 May 2017, 5 x IR cameras, 1 x camera bracket, 4 x speakers and cable damaged due to train on fire. This will lead to additional costs.
Silverton Station- PA system damages	ongoing	PRASA	On 13 Oct 2015, Siyangena noticed that the Microphones for PA systems have been damaged. During month of June 2016. PA DCS microphone broken again by staff. This will lead to additional costs.
Soshanguwe Station- Theft & vandalism	ongoing	PRASA	Roof leaked at the station and water ran onto the speedgate and damaged the electronics. This will lead to delays and additional repair costs. May 2018, 2 x speedgate glass broken. Visit June 2018, camera 7 cable cut. Visit 16 Jan'19, 4x IR cameras stolen. March'19, western side ticket office experienced a break-in. Multiple cables have been stolen. The following will not be functioning, CCTV – cameras B-C001 to B-C007, Access – K3201 – Door1 to Door3; Booth1; Gate1, Intrusion – PIR01 to PIR07; Panic1 to Panic4; Keypad, Fire Detection – Detector 01 to Detector 09; BGU1; Fire Panel and PA – Speaker1 to speaker4. This will lead to additional costs.
Wintersnest Station- theft & vandalism	ongoing	PRASA	On the 26 Aug 2015, our maintenance team discovered that an air conditioner condenser has been stolen. During month of June 2016. 5 x IR cameras stolen, 1 x poles damaged, 1 x pole stolen, 2 x speakers stolen, 2 x card readers stolen, 1 x intercom stolen, 1 x EDB damaged & 2 x speedgate glass broken. 6 July 2018, 8 x manhole lids damaged, power cable feeding kiosks, speaker cable and UTP cable on platforms cut and stolen. 13 December 2018, all cables cut between ticket office and control room. ISAMS system down as a result. This will result in additional costs.



<i>Wonderboom Station- Vandalism & theft.</i>	ongoing	PRASA	On 13 Oct 2015, Siyangena noticed that the Mini Kiosk on the platform have been vandalised. This will lead to additional costs. Visit 26 Jan 2017, kiosk damaged, POE switch, POE injector and power cable stolen. Originally 25 x IR cameras stolen, the latest theft of 16 x IR cameras stolen from platforms 13 April 2017 totalling 41 x IR cameras. 19 May 2017, 2 x door closer, 1 x CIT Monitor, 1 x T- Monitor, and cable stolen from Ticket office. Main Kiosk P2 broken open and all cables cut, 4X Mini Kiosk broken open, 3x POE injectors stolen, 2x 8 Port POE switches stolen, All cabling between poles and Kiosks cut and stolen, All cabling between equipment and platforms stolen, Cabling inside ticket Office cut and stolen. September'18, the equipment room broken into and anti-bandit door, DB board and fire panel damaged, all cabling has been cut and stolen, 1 x Server, 2X 3KVA UPS, 2X 6KVA UPS, 5X Digital Video Recorders, 1X Core Switch, 1X 24 POE Switch, 1X 24 non-POE Switch, 1 X Dorn, 1X AMP, 1X UIM, 1X N-8000, DB circuit breakers, 1X KVM Keyboard and 1 x Monitor all stolen. This will result in additional costs.
KZN			
<i>Wood station- theft</i>	ongoing	PRASA	During September 2018, door to speedgate area stolen. This will result in additional costs.
<i>Duffs Road station- vandalism</i>	ongoing	PRASA	During April 2016 riot resulted in 12 speedgate sliding glass panels were damaged. This will result in additional costs.
<i>Durban station- Theft</i>	ongoing	PRASA	Jan 2017, 400m of speaker cable stolen on from platforms 1 & 7. This will result in additional costs. 28 Feb 2017, further power and comms cable stolen from all platforms except platform 15. On 12 Dec 2017, 4 x IR cameras stolen from platform 15. Feb'19, CTC microphone broken by staff. This will lead to equipment not functioning and additional costs.
<i>KwaMashu and Duff's Road Stations- Riot Damage</i>	ongoing	PRASA	On 28 Jan 2016, Siyangena was informed of a riot with extensive damage to speedgate. Extent of damage still to be determined. This will lead to additional costs.
<i>Reunion station- storm damage</i>	ongoing	PRASA	During October 2017, roof collapsed 8 cameras removed, 3 x cameras and 6 x smoke detectors need to be replaced. This will result in additional costs.
<i>Reunion station- theft</i>	ongoing	PRASA	During December 2017, complete aircon stolen. This will result in additional costs.
<i>Rosburgh station- storm damage</i>	ongoing	PRASA	During October 2017, roof collapsed 6 cameras removed, 6 x smoke detectors and 6 x Speedgate PSU need to be replaced. This will result in additional costs.
<i>Rosburgh station- vandalism</i>	ongoing	PRASA	During April 2016, speedgate sliding glass panel was damaged. This will result in additional costs.
<i>Themballhle station -Vandalism</i>	ongoing	PRASA	The LED light has been stolen on the speedgates and the unit damaged. The front cover of the unit will have to be replaced. This was noticed on the 15 November 2012.
<i>Umlazi station -Vandalism</i>	ongoing	PRASA	Vandalism occurred on the 12 Sept 2108, have not been able to gain access to site yet to determine the damage.



3.2 ISAMS Phase 2

Below find a detailed list of all the theft and vandalism at the Phase 2 Stations. Resulting in delays and additional costs.

Description	Delay	Responsible	Status / Comments
WCR			
Blackheath Station – theft & vandalism	ongoing	PRASA	On 15 June 2017, second Anti- Bandit door destroyed. On 20 August 2018, third Anti- Bandit door destroyed. 20 November 2018, 5 x dome cameras cable cut and offline. 30 Jan'19 Fire Loop Sounder missing, loop cards on fire panel damaged. This will result in additional costs.
Eerste Rivier- Theft & vandalism	ongoing	PRASA	18 Nov 16 equipment room door damaged during attempted break in. visit on 5 Jan 2018, 1 x dome and 2 x platform cameras stolen. This will result in delays and additional costs.
Eikenfontein station- theft	ongoing	PRASA	21Jan'19, 2 x IR platform cameras stolen, 8Feb'19, 4 x IR platform cameras stolen, 9Feb'19, 2 x IR platform cameras stolen. This will result in additional costs.
Es River Station – theft & vandalism	ongoing	PRASA	Oct 16 equipment room door damaged and power tools and hardware stolen. During May 2017, equipment room door broken, all tools stolen. Broke into main Kiosk. Tried to drill out manhole lock. This has led to delays and additional costs.
Koeberg station- theft & vandalism	ongoing	PRASA	30 Aug 2017, 2 x IR platform cameras stolen. 21 Aug 2018, 2 x IR platform cameras, 2 x EDB boards, power cable and EDB cable burnt due to train fire. This will result in additional costs.
Kraaifontein station- theft & vandalism	ongoing	PRASA	Feb'19, 1 x IR platform cameras stolen. This will result in additional costs.
Kuils River station- theft & vandalism	ongoing	PRASA	26 Feb'19, 3 x IR platform camera stolen. This will result in additional costs.
Melton Rose station- theft	ongoing	PRASA	On 23 June 2016, theft of 4 x IR cameras took place. 6 January'19, 1 x IR camera stolen. This will result in delays and additional costs.
Mutual- Theft .	ongoing	PRASA	28 Feb 2017, Speedgates on platform the internals and the side panels stolen. November 2018, platform 9 camera vandalized was repaired and back online. This will result in additional costs.
Ndabeni Station – theft & vandalism	ongoing	PRASA	Visit on 15 Jan 2018, broke into and damaged 5 x manholes and 600m power cable, 350m speaker cable, 150m EDB cable and 540m outdoor UTP cable, main kiosk with all kiosk equipment stolen. This will lead to delays and additional costs.
Parrow station - theft	ongoing	PRASA	Sept '16, 2 x IR cameras stolen. Oct '16, 36 x IR cameras stolen and cables damaged. Thieves were caught with 8x speedgate sensors. This will result in additional costs.
Philippi station- vandalism	ongoing	PRASA	Sept '18, 2 x platform EDB boards damaged. This will result in delays and additional costs.
Pinelands Station – theft & vandalism	ongoing	PRASA	Visit on 16 Jan 2018, broke into and damaged 8 x manholes and 550m power cable, 450m speaker cable, 350m EDB cable and 450m outdoor UTP cable stolen. This will lead to delays and additional costs.
Retreat station- theft	ongoing	PRASA	30 Aug 2017, 2 x IR platform cameras stolen. Visit on 10 Jan 2018, 4 x platform cameras, 2 x dome cameras stolen. This will result in additional costs.
Thornton station- damage	ongoing	PRASA	1 Dec 2016 x 3 x IR cameras and EDB damaged due to Train fire. This will result in additional costs.
Thornton station- theft & vandalism	ongoing	PRASA	Feb 2019 PA cable cut and stolen on platforms, 2 x manholes damaged. This will result in additional costs.
Tygerberg station- theft	ongoing	PRASA	Sept '16, 1 x ceiling & 4 x IR cameras stolen. Oct '16, 2 x IR cameras stolen and 1 x IR camera damaged. This will result in delays and additional costs. 15 Jan '17, 2 x IR cameras stolen. 18 Jan '17, 4 x IR cameras stolen. 8 Aug'17 theft of 1 x speedgate slide panel. This will result in delays and additional costs.



Vasco - Theft	ongoing	PRASA	Before the 26 May 2016, 4 x IR cameras were stolen from the platform, while our site access was revoked. Around 29 March 2017, 4 x IR cameras were stolen from the platform. This will lead to additional costs.
Woltemade - theft & vandalism	ongoing	PRASA	Feb'19, 1 x Dome camera stolen and cable ripped out. This will lead to additional costs.
Woodstock station- theft & vandalism	ongoing	PRASA	Over the weekend of 28th Nov 2015, camera cables and speedgates vandalized. August 2016, camera cables cut and speedgates vandalized. November 2018, platform 7 camera vandalized was repaired and back online. 3 December 2018, 8 cameras offline due to kiosk theft, switch and POE injectors stolen, door and lock vandalized. This will result in additional costs.
Wynberg station- damage & vandalism	ongoing	PRASA	29 January'19, 6x dome cameras damaged due to water due to roof leaking due to vandalism. This will result in additional costs.
Ysterplaat station- vandalism	ongoing	PRASA	December'18, card reader in Mess room vandalized. This will result in additional costs.
NGR			
Barracks - Theft	ongoing	PRASA	17 Aug 2016, 4 x IR cameras, speaker and pole were stolen from the platform. During November 2016, various cables were stolen. Nov '17 1x kiosk door damaged. 1 x kiosk, terminals and plates from poles, 18 x IR cameras and all the cable was stolen. This will lead to delays and additional costs.
Belle Ombre Station – theft & vandalism	ongoing	PRASA	May 2018, 8 x IR Platform cameras stolen. This will lead to additional costs.
Devenish Station – theft & vandalism	ongoing	PRASA	April 2018, 4 x IR Platform cameras stolen. This will lead to additional costs.
Driehoek Station – theft & vandalism	ongoing	PRASA	During second week of June 2017, broke into manholes and 900m power cable, 1000m speaker cable and 1600m outdoor UTP cable stolen. This will lead to delays and additional costs.
Eersterust Station – theft & vandalism	ongoing	PRASA	October 2018, 14 x IR Platform cameras, 2 x platform speakers and 2 x poles stolen. Feb'19 3 x Dome cameras, 3 x IR cameras and 1 x IR camera stolen at equipment room entrance. This will lead to additional costs.
Fountains Station – theft & vandalism	ongoing	PRASA	April 2018, 2 x IR cameras & 4 x platform speakers stolen. 2 x poles removed and left on ground. August 2018, 20 x platform speakers and 14 x poles stolen. October 2018, All manholes opened and damaged. All Power, UTP and EDB Cables stolen. Feb'19 All remaining cable stolen, cable routes in false ceiling damaged, false ceiling tiles and brackets damaged, both anti-bandit door locks damaged. This will lead to additional costs.
Rankua Station – theft & vandalism	ongoing	PRASA	June 2018, further power, Camera UTP and speaker cable theft on the platforms. 4 x IR Platform cameras stolen. May 2018, 1 x platform speakers stolen. Platform speaker, power and camera UTP cables cut and stolen. August 2018, 2 x manholes damaged at equipment room and speedgate building, further cables cut and stolen. 19 Sept'18, equipment room broken into and anti-bandit door and 2 x K32 controllers damaged. Power and mylar cable stolen, 1 x server, 2 x 3KVA UPS, 1 x 6KVA UPS and 2 x K32 batteries stolen. 20 Sept'18, additional cable cut and stolen, Ceiling tiles removed and damaged, Digital recorders damaged and hard drives stolen. This will lead to additional costs.
Greenview Station – theft & vandalism	ongoing	PRASA	In Nov '17 1 x pole with header, 4 x IR cameras & 3 x platform speakers & 1 x building speaker stolen. Feb'19 all Concourse cabling cut and stolen. Speedgates vandalized and glass broken. This will lead to additional costs.
Kloofsig Station – theft & vandalism	ongoing	PRASA	In Oct '18, 16 x Platform stolen. This will lead to additional costs.
Mamelodi gardens Station- theft	ongoing	PRASA	6 Dec 2017, 4 x IR cameras stolen with associated cables. This will result in delays and additional costs. 31 Jan 2017, 4 x IR cameras, 1 x platform speaker with bracket stolen with associated cables. This will result in delays and additional costs.



Mears Station – theft & vandalism	ongoing	PRASA	April 2018, 8 x IR Platform cameras stolen. This will lead to additional costs.
Wiedunsa Station – theft & vandalism	ongoing	PRASA	April 2018, 9x manholes damaged and need replacement. All cables in platform cut and stolen. In Nov '17 the Aircon with compressor stolen. May 2018, 2x 3KVA battery packs, 2x 6KVA battery packs, 4x DMX2400 recorders, 1x Server, 10KVA CVT, Fire Panel batteries, K32 Batteries stolen. Ceiling Tiles damaged. All cables have been cut and some stolen. The equipment room door is damaged and lock will need replacement. This will lead to additional costs.
Piensaarspoort station- theft	ongoing	PRASA	Break in during May 2017. 3 cameras need to be re-installed. 1 x Dome camera to be replaced. CIT Monitor needs to be replaced. Access door to ticket office noe bricked up, need to replace access control equipment. Intercom needs to be replaced with cable. 3 x PIR's need to be replaced. 3 x smoke detectors and 1 x BGU needs to be replaced. 2 x speakers with cable need to be replaced. This will lead to additional costs.
West Station – theft & vandalism	ongoing	PRASA	In June 2017, broke into manholes and cable stolen. In Nov '17 the Anti-bandit door, 2 x kiosk doors & 4 x manhole lids have been damaged. Aircon with compressor, CVT 10KVA, terminals & plates from the poles, 21x IR cameras & 1 x dome camera and all cable stolen. This will lead to delays and additional costs.
Schutte Str Station – theft & vandalism	ongoing	PRASA	Visit 10 July 2017, 9 poles stolen from platform and damaged pole plinths and stole associated cable. Nov '17, 3 x poles stolen, bolt cages and 1 x light damaged. 6 July 2018, 1x 6KVA UPS including battery pack, 1x workstation, 1x recorder, 1x KVM Monitor, 1x UIM, 1x DOM, 1x AMP, 1x 10KVA CVT, 2x card readers and 1x Fire BGU stolen. All cabling cut and stolen. Power DB damaged. Ceiling Tiles damaged, Anti-Bandit door damaged. This will lead to delays and additional costs.
Sportpark Station – theft & vandalism	ongoing	PRASA	In Oct '18, 6 x Platform IR cameras stolen. 17 January'19, further 10 x Platform IR cameras stolen. Total 16. 18 January'19, 3x poles and 5x platform speakers stolen and plinths damaged. This will lead to additional costs.
Taliardshoop station - Theft & vandalism	ongoing	PRASA	May 2018, Kiosk (FNS) damaged. All cables cut. 2 x IR cameras stolen. This will lead to delays and additional costs.
Technikonrant station - Theft & vandalism	ongoing	PRASA	During Aug 2016, of theft and vandalism have occurred. This will lead to delays and additional costs.
Walker str Station- theft & vandalism	ongoing	PRASA	4 December 2018, 2 x IR cameras stolen, about 100m PA cable stolen from poles. During our visit we noticed that all four of our Mini-Kiosks have been welded shut. Due to this welding, the integrity of the powder coating has been compromised. This will lead to the mini-kiosk becoming rusted in the future. This will result in additional costs.
Waltloo Station- theft	ongoing	PRASA	6 Dec 2017, 1 x IR cameras stolen with associated cables. This will result in delays and additional costs. 31 Jan 2017, 2 x platform speaker with bracket stolen with associated cables. This will result in delays and additional costs.
SGR			
Birchleigh Station- theft	ongoing	PRASA	March 2018, 9 x IR cameras stolen from platform. This will result in additional costs.
Cleveland Station – theft & vandalism	ongoing	PRASA	Around middle of June 2017, 6 x manhole lids damaged. Pole plate stolen. 1500m power cable, 1000m speaker cable and 1000m outdoor UTP cable stolen. 1500m fibre optic cable damaged. Visit on 20 September 2017 Main Kiosk damaged, 1 x 5V PSU, 1 x media converter, 1 x CPD, 20x terminal connectors, 1 x fibre patch panel, 1 x 8 port injector, 1x network switch, 1 x victorian pole bracket stolen. This will lead to delays and additional costs.



George Goch Station - Theft	ongoing	PRASA	During November 2016, various cables, tools and generator were stolen. Visit 9 Jan 2017, 6 x IR cameras, 14 x Dome cameras, Optical smoke detectors x 10, LED remote indicator x 2, Sounder x1, Bell x 1, Loop Sounder x 2, Card reader x 6, breakglass unit x 4, Magnet Lock x 3, door closer x 2, Indoor speaker x 5, 360deg infrared x 8, Panic button x 4, Roller Shutter monitor x 6, Anti-bandit door x 1 stolen. UTP, 4pr mylar, speaker & power cable stolen. This will lead to additional costs.
Grosvenor station- theft	ongoing	PRASA	8 Oct 16 equipment room door damaged and CVT and aircon unit and condenser stolen. This will result in delays and additional costs. Visit 9 Jan 2017, equipment room cleaned out. 1 x aircon, 1 x CVT, 2 x 3KVA UPS, 1 x 6KVA UPS, 4 x DVR, 1 x Dome camera, 1 x KVM switch, 1 x KVM monitor, 1 x K32 controller, 2 x card readers, 1 x BGLU, 1 x workstation, 3 x 24 port switch with patch panels, 1 x smoke detector, 1 x DOM, 1 x AMP, 1 x UIM, 1 x manual call point, 2 x siren & strobe, 1 x PSU, 1 x alarm keypad, 1 x 360 PIR, 1 x door JB stolen. All fibre and copper cable to be replaced as it was cut or stolen. False calling and wire trunking damaged. This will lead to additional costs.
Knights Station- power Kiosk	ongoing	PRASA	Power kiosk burnt out, noticed in 2 Dec 2015. Delaying project with additional costs as commissioning delayed.
Knights Station- theft & vandalism	ongoing	PRASA	May 2018, Speaker, camera and EDB cables damaged due to vandalism. April 2018, Platform 1 Main Kiosk door vandalized and 1 x 20A CB stolen. Feb 2017, 1 x Speedgate Monitor and Ticket office Video Monitor was stolen from Ticket Office. This will result in and additional costs.
Lenz Station - attempted break in	ongoing	PRASA	Nov 16 attempted break in on Mini kiosk door that will have to be replaced. This will result in delays and additional costs.
Lenz Station – Theft & Vandalism	ongoing	PRASA	Visit 9 Jan 2017, 140m x power cable, 140m x 12core fibre cable, 370m x outdoor UTP cable stolen. Mini kiosk damaged. This will lead to delays and additional costs.
Middandale Station- Theft -no power	ongoing	PRASA	In Oct 16, power cables stolen at station. This can lead to delays and additional costs.
Middandale Station- theft & vandalism	ongoing	PRASA	In Nov 16, various cables, 2 x 8 port network switched, patch panels stolen at station. Mini kiosk door damaged. This will lead to delays and additional costs. Visit 9 Jan 2017, Mini Kiosk damaged, Distribution panel, CB's, Huawei switch, 8 port injector stolen. Main Kiosk damaged, CPD for EDB, CB's, Huawei switch, 8 port injector, fibre patch panel, brush panel, 2 x 3U trays stolen. UTP, speaker, power & Fibre cable to be replaced on platform. This will lead to additional costs. Visit of 27 Jan 2017, 1 x K32, 1 x N8000, 1 x UIM, 7 x 19 rack doors, 2 x fire panel batteries, 42 x 32Amp, 2 x 20amp, 1 x 16amp CB's stolen. 1 x KVM switch, 3 x 19' racks, 16m cable tray of 150mm, 8 x manholes and associated paving, 10 x cable tray bends, 56m x 12core Fibre cable & 4 x DVR's damaged. 153m x power cable, 726m x outdoor Cat5 cable, 240m x 8pr cable, 108m x speaker cable, 224m x fire cable, 154m x various UTP cable, 146m x 4mm power cable, 30m x 25mm Copex and 22m x 25mm sprage stolen. This can lead to delays and additional costs. Visit 2 Feb 2017, 1x ant-bandit door, 1 x speedgate solid door, 10 x manholes and associated paving, 203m x fibre cable, 5 x speedgates and motors damaged. I/o unit, ceiling speaker, 20 x speedgate panels, 5 x speedgate cables, 5 x speedgate transformers, 5 x speedgate batteries, 1 x complete wide left speedgate stolen. 10m x power cable, ?m x outdoor Cat5 cable, 60m x 2pr cable, 30m x speaker cable, 100m x comms cable stolen. Visit 5 June 2017, a second speedgate was stolen from building 2. This will lead to delays and additional costs.
Pilot – lightning damage	ongoing	PRASA	On 12 Dec '17 the following equipment was replaced due to lightning damage. 10 x IR cameras, 1 x amp, 1 x media converter, 1 x CPD and 4 x EDB boards. This will lead to additional costs.



Pilot –Theft & vandalism	<i>ongoing</i>	PRASA	<i>On 26th Feb 2018: 5x Dome camera outside the ticket office, 3x IR cameras at the entrance, 1x EDB at the concourse, 1x Intercom outside the ticket office door and 2x card readers outside the ticket office were vandalised. TMON screen inside the ticket office stolen. This will lead to additional costs.</i>
Ravensklip station- theft & vandalism	<i>ongoing</i>	PRASA	<i>On 30 June 2016, theft of 2 x IR cameras took place. 9 Jan'19, equipment room lock broken, 5x digital video recorders stolen. This will result in delays and additional costs.</i>
Springs station- theft & vandalism	<i>ongoing</i>	PRASA	<i>On 25 Sept'18, theft of 5 x Digital Recorders and 6x hard drives stolen. Anti-bandit door damaged. This will result in additional costs.</i>
Tooronga Station- theft	<i>ongoing</i>	PRASA	<i>2 August 2017, no power at equipment room. Commissioning delayed due to cable theft. April 2018, Kiosk doors broken open, need to be replaced. 19 July 2018, 36 x IR cameras, 10 x platform speakers, 6 x poles with brackets, 1 x EDB T- Pole and 2 x 2 lline display board stolen. 1450m UTP, 600m 12 core SM fibre, 200m 2.5mm surfix, 1200m speaker cable, 50m 2pr mylar and 150m 8pr mylar cable cut and stolen. This will lead to delays and additional costs.</i>
KZN			
Greenwood Park Station – theft & vandalism	<i>ongoing</i>	PRASA	<i>In Nov '17 1 x lock on equipment room door damaged, CIT and Speedgate monitors were stolen. This will lead to additional costs.</i>
Dalbridge station - theft	<i>ongoing</i>	PRASA	<i>During February 2017, aircon stolen at Dalbrige Station. During March 2017, aircon stolen for the second time. All control equipments switched off for protection of overheating. This will lead systems not functioning and additional costs.</i>
Temple station - theft	<i>ongoing</i>	PRASA	<i>During November 2018, aircon stolen at Temple. This could lead to systems not functioning and additional costs.</i>

Slyangena Technologies (Pty) Ltd P.O. Box 1699 Groenkloof 0027 21 George Storrar Drive Groenkloof 0181					STATEMENT		
Tel: 012-460-8216 Fax: 012-346-5529 VAT Reg.No. 474023392 Reg. No.2005/012239/07					Date	30/4/2019	
					Page	1	
					Account Number	PRASA	
PRASA Cres Passenger Rail Agency of South Africa No.13 Wolmerans Street Braamfontein Johannesburg 2017 VAT Reg. No. 4900110612					Slyangena Technologies (Pty) Ltd P.O. Box 1699 Groenkloof 0027 21 George Storrar Drive Groenkloof 0181		
Account	Date	Page			Account	Date	Page
PRASA	30/4/2019	1			PRASA	30/4/2019	1
Date	Reference	Description	Debit	Credit	Date	Reference	Amount
2/10/2013	ST005014	Tax Invoice - SG/GATES/003/2009	"85'991 676.11		2/10/2013	ST005014	"85'991 676.11 D
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	ST03617PF	Interest charges	"7832 591.76		ST03617PF	"7832 591.76 D
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ST01918PF	Interest charges	"2'788 810.66	ST01918PF	"2'788 810.66 D
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120+ Days	90 Days	60 Days	30 Days	Current	Amount Due:
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Bank of Athens Branch: 410145 Account: 3000001853					Amount Paid: " 0.00
Total Due 3 "430'252 085.37					Comments

E&OE

"TB7"

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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 14332/18

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA Applicant

and

SIYANGENA TECHNOLOGIES (PTY) LTD First Respondent

RETIRED JUSTICE EZRA GOLDSTEIN Second Respondent

RETIRED JUSTICE MEYER JOFFE Third Respondent

and

#UNITEBEHIND Amicus Curiae

NOTICE OF APPLICATION

TAKE NOTICE that the abovementioned applicant intends to make application at 10h00 on Monday 24 February 2020, or so soon as counsel may be heard, for an order in the following terms:

NOM (formatted)/#6704788v1
13022020

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1. The review application, under case number 14332/18, is postponed to dates to be determined by the Deputy-Judge President.
2. The applicant is ordered to pay the wasted costs occasioned by the postponement of the review application.
3. Granting further or other relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **BONGISIZWE MPONDO** will be used in support thereof.

DATED at SANDTON on this the 23rd day of February 2020.



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The Central
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Sandton
Tel: 011 535 8106
Fax: 011 535 8606
E-mail: bhotz@werksmans.com
Reference: B HOTZ/SARC0001.789
c/o BRAZINGTON & McCONNELL ATTORNEYS
424 Hilda Street
Second Floor
Hatfield Mall
Hatfield
Pretoria
Tel: 012 430 4303
Fax: 012 430 7418
Reference: Mr A McConnell

**TO:
REGISTRAR OF THE HIGH COURT
(GAUTENG DIVISION, PRETORIA)**

2

NOM (formatted)/#6704788v1
13022020

3

AND TO:
VAN DER MERWE AND ASSOCIATES
First Respondent's Attorneys
62 Rigel Avenue
Waterkloof
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Reference: GT VD Merwe/ST/S493/23

[SERVICE PER E-MAIL]

AND TO:
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Second Respondent
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elgoldstein@vatit.com

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AND TO:
THE HONOURABLE RETIRED JUSTICE MM JOFFE
Third Respondent
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AND TO:
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Ref: V Movshovich / D Rafferty / J Tembe 3025290
c/o HILLS INCORPORATED ATTORNEYS
835 Jan Shoba Street (Duncan)
Brooklyn
Pretoria
Tel: 087 230 7314
Ref: A Engelbrecht

[SERVICE PER E-MAIL]

3

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 14332/18

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA	Applicant
and	
SIYANGENA TECHNOLOGIES (PTY) LTD	First Respondent
RETIRED JUSTICE EZRA GOLDSTEIN	Second Respondent
RETIRED JUSTICE MEYER JOFFE	Third Respondent
and	
#UNITEBEHIND	Amicus Curiae

FOUNDING AFFIDAVIT – APPLICATION FOR POSTPONEMENT

I, the undersigned,

BONGISIZWE MPONDO

do hereby make oath and say:

1 I am the administrator of the Passenger Rail Agency of South Africa ("PRASA"),
having been appointed as such by the Minister of Transport on 9 December 2019,

BM

with the main task of leading PRASA's turn around strategy. To this end, I am enjoined to run the affairs of PRASA as a *de facto* accounting authority and to perform the role of the accounting officer.

- 2 I depose to this affidavit on behalf of PRASA in accordance with my duties and functions as its administrator.
- 3 The facts contained in this affidavit are, unless the contrary appears from the context, within my personal knowledge and are both true and correct.

PURPOSE OF THIS APPLICATION

- 4 This is an application for the postponement of the review application proceedings enrolled in this Court for hearing on 24 to 27 February 2020 ("the main application"), under case number 14332/18.
- 5 PRASA is the applicant in the main application in which it seeks an order reviewing and setting aside the agreements that were concluded between PRASA and the first respondent ("Siyangena"), relating to the roll out of Integrated Station Access Management System ("ISAMS") at train stations across South Africa. The agreements sought to be reviewed and set aside amount to around R6 billion in value.
- 6 The review application challenges the lawfulness of the contracts that were awarded to Siyangena on the basis of the irregularities and unlawfulness of the process that led to the awarding of such contracts. Such decisions accordingly contravened sections 1(c) of the Constitution, the principle of legality and section 217(1) of the Constitution.

- 7 The Constitution and the rule of law are accordingly implicated in the main application.
- 8 PRASA is, however, not in a position to proceed with the review application on the allocated dates, due to the financial and operational challenges which it has been experiencing. These challenges ultimately resulted in service providers, including the legal representatives who were working on the main application, not being paid on time and thus discontinuing their services to PRASA.

CONTEXT OF THIS APPLICATION

- 9 The Public Protector received a complaint on 17 February 2012 relating to allegations of financial mismanagement, maladministration and tender irregularities at PRASA.
- 10 The Public Protector delivered her draft report, dated 6 February 2015, to the then Group Chief Executive Officer ("GCEO") of PRASA, Mr L Montana, and requested PRASA to respond to the preliminary findings in the draft report. The Public Protector encountered challenges in obtaining a response from PRASA management. As a result, she requested the board of PRASA to intervene in ensuring that PRASA responded to the draft report.
- 11 It was at this stage that PRASA's newly appointed board became aware of some of the irregularities that tainted the ISAMS project. As it subsequently emerged, the Public Protector did not uncover the full extent of the irregularities as she only dealt with the Phase 1 tender as awarded in February 2011. The Public Protector only dealt with the Phase 1 tender which was awarded in February 2011. The

board then appointed Werksmans Attorneys ("Werksmans"), assisted by forensic investigators, to conduct a forensic investigation into various instances of unlawful conduct, corruption, and irregular expenditure, including that that had been identified during the Public Protector's investigation. Werksmans commenced its investigation on 5 August 2015 and thereafter produced a report setting out its findings.

- 12 In the interim, the Public Protector issued her final report titled "*Derailed*", and found that the contract that was awarded to Siyangena was improperly extended (paragraph (x)(1) of the report) on, *inter alia*, the basis that the then GCEO did not have the authority to approve such extensions.
- 13 PRASA, represented by Werksmans, then issued an application to review and set aside the agreements with Siyangena. A review application was instituted in January 2016 but was dismissed on a procedural ground without a determination or consideration of the merits of the application. The main application was then subsequently instituted in March 2018.
- 14 The grounds of review are set out fully in the main application. I thus do not repeat them, save to indicate that I am advised that they are briefly based *inter alia* on the following:
 - 14.1 Siyangena was awarded the pilot project contract without following any procurement process.
 - 14.2 There was no budget allocated for the project.
 - 14.3 In relation to Phase 1:

- 14.3.1 there was no needs assessment for the project;
- 14.3.2 Mr Montana, the former GCEO of PRASA, was not authorised to negotiate and sign the JBCC contracts with Siyangena;
- 14.3.3 the Finance Capital Investment and Procurement Committee ("FCIP") failed to consider whether the procurement processes were followed by previous committees.
- 14.4 In relation to Phase 1 extension:
- 14.4.1 Mr Montana was not authorised to approve the Phase 1 extension for an amount of R 294, 992,460.28 (excluding VAT).
- 14.5 In relation to Phase 2:
- 14.5.1 there was no needs assessment for this project;
- 14.5.2 the tender was not considered by the Corporate Tender and Procurement Committee ("CTPC") or the GCEO after the evaluation of the bids by the Tender Evaluation Team;
- 14.5.3 the FCIP did not consider the tender and, as a result, there are no minutes reflecting consideration of the tender by the FCIP;
- 14.5.4 there are no signed minutes of the board recommending the appointment of Siyangena.
- 14.6 In relation to the Addendum:
- 14.6.1 the addendum did not follow any procurement process;

14.6.2 no procurement committee approved or recommended the addendum.

15 PRASA has been represented in all aspects of the litigation relating to Siyangena for the past three years by a team of attorneys at Werksmans as well as two senior counsel and several junior counsel.

STATUS OF THE AGREEMENTS

16 For reasons set out above, it is apparent that the impugned contracts implicate the rule of law and the requirement for PRASA, as an organ of state, to operate within the confines of the law.

17 It is accordingly necessary for the court to pronounce whether there is a lawful basis for the continued operation and/or implementation of all actions and conduct that emanate from the impugned contracts.

18 On this basis, once the review application was launched, PRASA took no further steps to implement the impugned contracts precisely because of the implications if PRASA's review were to succeed. I.e. the contracts would be set aside and there would be no legal basis for their continued implementation or participation in the implementation of the contracts.

19 In response to the non-implementation of the agreements, Siyangena has now instituted three arbitration proceedings and seeks to enforce the terms of the impugned agreements, including an order directing PRASA to settle invoices in the cumulative amount of just under R2 billion. The arbitration proceedings serve before the second and third respondents.

- 20 In addition and on 13 May 2019, Siyangena issued a letter of demand for payment in the amount of R3 474 461 860.60. The letter of demand was later followed by a notice to refer the dispute to arbitration and sought to stay these arbitration proceedings pending the review application. There are accordingly three pending and one threatened arbitration proceedings arising from the impugned contracts.
- 21 These facts indicate that it is in the interest of justice that the issues raised in the review application be properly ventilated and pronounced upon with finality. If such issues are not properly ventilated, there is a real risk that PRASA will be forced to comply with unlawful agreements and contrary to the Constitution.

PROSECUTION OF THE REVIEW APPLICATION

- 22 Once the review application was launched, PRASA took all the necessary steps to ensure that it was ripe for hearing. The matter was then enrolled for hearing on 5 to 8 March 2019. PRASA's legal team duly filed heads of argument and attended at Court to present argument on PRASA's behalf.
- 23 At the hearing of the matter, the Court *mero motu* noted that PRASA, in its affidavit makes "*allegations of serious misconduct and wrongdoing on the part of certain specifically named employees or members of its board*". It then raised a concern about proceeding in the absence of the implicated persons' version of events. The parties were then invited to make representations on the proposed way forward. Siyangena proposed that the matter be postponed to allow an opportunity for the "*witnesses*" to file affidavits if they so wish. PRASA in turn proposed that the matter be referred to a referee in terms of section 38 of the Superior Courts Act 10 of 2013.

- 24 Having considered the submissions, the Court postponed the main application to a date to be determined by the Judge President. The Court then granted each implicated person the right to intervene as a witness or interested party and to file an affidavit dealing with the issues raised in the affidavits before the court.
- 25 The court order furthermore provided that "*all parties shall then exchange affidavits in accordance with the time frames stated in Rule 6(5)(d)(i)(ii)(iii) and (e)*" of the rules of court. A copy of the Court order is attached as annexure "FA1".
- 26 The Court order was accordingly not clear as to when and how the respective affidavits should be responded to, bearing in mind that they were not answering affidavits in the true sense.
- 27 A case management meeting was then convened by Acting Deputy Judge President Potterill on 3 September 2019. At this meeting, Potterill ADJP directed PRASA to file "*replying affidavits*" on 29 November 2019. She also proceeded to enrol the main application for hearing on 24 to 28 February 2020.
- 28 This meant that Werksmans was required to file "*replying affidavits*" in response to a total of 9 witness affidavits, all of which dealt with different and wide ranging allegations and issues. This task was made even more laborious by the fact that the affidavits deposed to by the implicated persons were accompanied by various annexures without indicating the relevant portions upon which they sought to rely.
- 29 This notwithstanding, PRASA's legal team worked through all the affidavits and filed the replying affidavits within the time periods set by Potterill ADJP.

30 It is thus apparent that save for the unexpected developments at the hearing of 5 to 8 March 2019, PRASA was at all material times ready and willing to proceed with the main application.

MY APPOINTMENT AS ADMINISTRATOR

31 On or about 9 December 2019, the current Minister of Transport ("the Minister") dissolved the interim board of control of PRASA and placed PRASA under administration. He then appointed me as the administrator of PRASA.

32 In explaining the basis for his decision to dissolve the interim board, the Minister indicated that PRASA was in a dire situation, including that:

32.1 During 2015/16 financial year, the Auditor-General had flagged serious governance breaches, particularly in supply chain management. This period was also characterized by dissonance at the highest levels of the organization, characterized by tensions between the board and management.

32.2 The Public Protector also released her report on PRASA titled "*Derailed*", which highlighted serious lapses of corporate governance. As a consequence, the National Treasury instituted a forensic investigation on some of the issues flagged by the Public Protector.

32.3 The downward spiral continued in 2016/17 where PRASA had two boards in a single financial year. The relationship between the then Minister of transport, Minister D Peters, and the board reached an all-time low, resulting

in Minister Peters dismissing the board and replacing it with an interim board in March 2017. The tenure of the interim board was short-lived.

- 32.4 Irregular expenditure in 2016/17 stood at R20.3 billion, which was an increase from 2015/16. The Auditor General reflected that instability in the entity, *"including the board of control, negatively contributed to the decline in the financial management, performance reporting and compliance processes and the overall collapse of the internal controls within the public entity as a result of inadequate and ineffective oversight."* Fruitless and wasteful expenditure reached R184 million.
- 32.5 In 2017/18, PRASA had four boards in a single financial year. This perpetuated the instability. Once again, the audit outcome was a qualified audit opinion. Irregular expenditure now stood at R24.2 billion.
- 32.6 Similarly, fruitless and wasteful expenditure escalated to R1 billion.. Once again, the Auditor-General sharply raised the concern about instability at PRASA.
- 32.7 In April 2018, the next Minister of Transport, Minister B Nzimande, appointed a new interim board for a period of 12 months, with a mandate to turn around the fortunes of PRASA, as it became evident that the downward spiral was continuing without let.
- 33 The Minister informed me at the time of my appointment as administrator that he had also conducted a review on the performance of the board and of the entity

as a whole and arrived at a conclusion that PRASA has deep-rooted challenges that require decisive interventions at leadership and management levels.

- 34 My key priorities as per the Minister's appointment include:
- 34.1 Addressing all matters raised in the Auditor-General's report and ensure that there are no repeat findings.
- 34.2 Accelerating interventions aimed at improving operational performance. A copy of the Minister's media statement in the above regard is attached as "FA2".
- 35 Upon commencement of my duties as administrator, I immediately confirmed that PRASA is in a great financial predicament and is unable to sufficiently sustain the cash-flow necessary to meet its operational expenses. This is caused mainly due to the following:
- 35.1 PRASA generates revenue from the followings sources – (i) rail fares, (ii) bus fares (Autopax), (iii) property leases from stations and (iv) funding from an operating subsidy granted by the Department of Transport.
- 35.2 Broadly speaking, PRASA operates on an annual turnover of approximately R10 billion, with R12 billion worth of expenditure. Over the years, and due to the gross maladministration, corruption and malfeasance that has plagued it, PRASA has incurred very significant expenses that were unbudgeted for.
- 35.3 As a result, it became more difficult for PRASA to meet its indebtedness to various creditors when they became due and payable. The gross corruption and maladministration has led to loss in revenue and inability to generate

income. By way of example, the revenue from rail fares has dropped by a staggering 80% from that made in previous years. Put differently, 80% of the commuters who in the past used PRASA's rail services no longer use those services. Cape Town's Central rail route and Pretoria's Mabopane rail route have been cut. These were traditionally PRASA's biggest revenue generating routes.

35.4 Further, there are security problems at stations. This leads to inefficient, and non-functional, network security services, resulting in greater loss in rail fare revenue.

36 Upon commencement of my duties as administrator, I immediately engaged with the Group Chief Financial Officer, Ms Lesibana Fosu, who had also been recently appointed to assist with the turn around strategy. The GCFO took me through PRASA's financial performance for Quarter 3, which indicated that as at the end of December 2019, PRASA's financial affairs were as follows:

36.1 On average, the entire PRASA Group receives about R687 million per month, comprising of subsidy and revenue generated.

36.2 PRASA's monthly expenses are, on average, about R900 million.

36.3 PRASA's monthly expenditure exceeds its monthly income by almost 25%.

36.4 PRASA presently owes R3.6 billion to its creditors, which increases by an average of R200 million per month as a result of the shortfall of income.

36.5 50% of PRASA's expenses are employee costs. These are fixed.

- 37 The upshot of this is that, for the period ending December 2019, PRASA has operated on a deficit budget. Simply put, it spends money it does not have. By budgeting for a deficit, PRASA simply accumulates expenses. PRASA was thus unable to service its debts as it had a deficit balance.
- 38 A copy of the presentation of the 2019/20 Quarter 3 financial position of PRASA prepared by the GCFO is attached as annexure "FA3".
- 39 In order to address these challenges, strategies aimed at rescuing the ailing PRASA have been implemented. One of the strategies that was introduced was to request permission from National Treasury to convert portions of PRASA's Capital Expenditure ("CAPEX") into Operational Expenditure ("OPEX"), thus assisting with liquidity challenges and to satisfy operational expenses. Before obtaining the conversion from National Treasury, the current revenues were prioritised as follows: (i) first payments are made towards those creditors who have outstanding amounts owed for over 180 days, (ii) then those creditors who have obtained judgment orders against PRASA are prioritised, and lastly (iii) payment is made in respect of all the critical matters to the operation of PRASA, such as employees' salaries and other related overheads.
- 40 The introduction of these criteria was necessary as payments within PRASA were previously sporadic and not well managed. In other words, service providers were paid on an ad-hoc basis without any means of prioritising the most important and high-ranking creditors.

- 41 Once the conversion from CAPEX to OPEX is approved, the criteria will still continue to be applied, but it is envisaged that the process will be faster as funds will be available going forward.
- 42 Without the interventions that have recently been introduced, particularly since my appointment as administrator, there will be no business left in PRASA within the coming 12 months.
- 43 PRASA's liquidity challenges must also be considered within the following context:
- 43.1 In the much publicised judgment of *National Transport Movement v PRASA*, PRASA was ordered to pay employees an amount of R1.8 billion following the dismissal of some 700 employees. A copy of the newspaper article dealing with this matter is attached as annexure "FA4".
- 43.2 Once PRASA's appeals had been exhausted, PRASA was obliged to satisfy this judgment as a matter of urgency and in accordance with the payment priority criteria referred to above. Payment of this judgment debt resulted in PRASA experiencing operational cash-flow problems as there was insufficient money to fund the operations. The situation was dire, to the extent there were imminent threats from municipalities and Eskom to discontinue PRASA's electricity supply at different stations.
- 43.3 This culminated in PRASA having to request funds from different sources of asset base to meet these demands. The GCFO then requested permission from the Department of Transport, for funds to be converted from Capital

Expenditure to Operational Expenditure. The request was signed and endorsed by the former GCEO, Dr Sishi on 2 October 2019. I attach the request as annexure "FA5".

- 43.4 Once approved, the funds were then transferred to PRASA on 7 November 2019. As appears from the letter requesting the conversion of the funds, from the Department of Transport, the creditors' book was at R5.6 billion and it was anticipated that a further request would be made in order to overcome the imminent liquidity challenges that were faced by PRASA. I attach the letter from the Department of Transport as annexure "FA6".
- 43.5 The liquidity challenges were exacerbated by the fact that Autopax, one of PRASA's subsidiaries providing bus services, was unable to pay its employees' salaries in October 2019. PRASA then had to provide Autopax with funds in October 2019 to enable it to pay the salaries. Once it had made this payment, PRASA did not have sufficient funds to pay its suppliers. Autopax's inability to pay salaries has been well documented in various media platforms.
- 43.6 Autopax again failed to pay salaries in November 2019 and asked PRASA to provide it with funds. In this instance, PRASA was not able to provide Autopax with the necessary funds. Autopax's employees were thus not paid on time in November 2019. In December 2019 the 13th cheques of the employees of Autopax were also not paid before Christmas, and were subsequently paid piecemeal. This had dire consequences on Autopax's employees.

44 On 9 January 2020 I issued a letter to PRASA's suppliers and advised them of the dire financial position in which PRASA found itself in and that PRASA was not able to satisfy its debts as and when they became available. I however assured them that we were in the process of addressing this situation. A copy of the letter of 9 January 2020 is attached as annexure "FA7".

45 It has now come to my attention that this letter was not received by Werksmans as one the service providers.

NON PAYMENT OF WERKSMANS ACCOUNTS

46 On 14 January 2020, the Chairperson of Werksmans, Mr David Hertz ("Hertz") addressed an urgent letter to me *inter alia*:

46.1 Raising a concern about PRASA's failure to pay Werksmans' invoices.

46.2 Drawing to my attention that:

46.2.1 notwithstanding the non-payment of their accounts:

46.2.1.1 Werksmans had continued to discharge their ethical duty to both the Court and PRASA, and had defended PRASA in the application for leave to appeal that was heard on Friday, 6 December 2019, relating to the matter now known as the fake "Doctor" Mtimkulu trial;

46.2.1.2 they had ensured that all of the affidavits in the main application were filed in accordance with the prescribed time table;

46.2.2 as a result of the non-payment of Werksmans' invoices, the counsel acting in the Siyangena matter had been released from their respective briefs and would not be in a position to comply with the Deputy Judge President's directive regarding the filing of supplementary heads of argument which would be due on Friday, 17 January 2020;

46.2.3 should PRASA not be represented at the hearing of 24 February 2020, PRASA will be called upon to pay in excess of R6 billion to the very persons and entities who have been identified as the key role players in the corruption frenzy at PRASA which was highlighted both by the Public Protector and in Werksmans' investigations which precipitated PRASA taking this matter to court.

47 Werksmans then filed a notice of withdrawal as attorneys of record. Copies of the Werksmans' letter and the notice of withdrawal are attached as annexures "FA8" and "FA9" respectively.

48 On or about 16 January 2020, I responded to Mr Hertz and advised him that:

"Upon my taking over the affairs of PRASA, I found an organisation that is struggling to meet its operational expenditure requirements as and when they fall due. This, as you will expect, is a debilitating failure that I believe should have been handled differently historically. I have therefore taken steps to immediately deal with this matter to ensure that there is a lasting solution for this crisis.

I have therefore engaged with the Group CFO to see what we can afford in the short term in order to show good faith to you and to assuage the predicament that you find yourselves in with your own suppliers that you have engaged to further the interests of PRASA"

- 49 I then made an undertaking that PRASA would pay all the disbursements which Werksmans had incurred with its suppliers by the end of January 2020 and that the remainder of the fees would be paid by the end of February 2020.
- 50 I furthermore assured Mr Hertz that the main application is very important to PRASA, having regard to PRASA's potential exposure in the arbitration proceedings and the fact that it forms a crucial part of the clean-up campaign that PRASA has been engaged in over the past few years. It would thus not be in the interests of PRASA at all if it were not represented in the proceedings of 24 February 2020. A copy of the letter is attached as annexure "FA10".
- 51 A meeting between PRASA and Werksmans was then convened on 28 January 2020, where I again confirmed that PRASA would be discharging the outstanding indebtedness as agreed and in the manner that was agreed.
- 52 PRASA was however unable to make payment of the outstanding fees by 31 January 2020 as undertaken due to its crushing liquidity challenges.
- 53 The inability to pay was occasioned by the fact that much as PRASA values the main application and fully intends to prosecute it to finality, during the relevant period there were other competing interests which had to be prioritised to ensure that PRASA's interests are protected.
- 54 By the end of January 2020 there were simply no funds immediately available to pay creditors, including Werksmans. The position did, however, ease a little during February 2020.

- 55 On 17 February 2020, PRASA commenced the process of conducting a reconciliation of Werksmans invoices, which was completed on 20 February 2020. Payment was then made to Werksmans on 20 February 2020 and reflected in Werksmans account in the evening of 21 February 2020.
- 56 In brief, PRASA has been facing a crippling liquidity crisis which resulted in the team of counsel being released from the brief and Werksmans filing a notice of withdrawal.
- 57 I have taken steps to ensure that these challenges do not again occur in the future, through the implementation of the payment priority criteria that is now in place. The challenges which made it impossible for PRASA to timeously obtain legal representation for this matter, will not occur again in the future due to the turnaround plan that I have put in place.

SUBMISSIONS

- 58 As apparent from the above, PRASA has at all material times been desirous of prosecuting the main application to finality. It was in a position to do so in March 2019 when the matter was first set down for hearing. On that occasion, the court *mero motu* postponed the matter.
- 59 Subsequently thereto, PRASA, through its legal team, took all the necessary steps to ensure that the main application proceeds as scheduled. The legal team was however unable to continue rendering services beyond January 2020, in circumstances where they were not being paid when their invoices became due.

- 60 The counsel team was released in December 2019. Since January 2020 when I became aware of the risk that PRASA might not be represented in court on 24 February 2020, I have together with the GCFO taken numerous steps to locate the necessary funds. It was only in February 2020 when the reconciliation of the Werksmans invoices was completed that PRASA was able to make the necessary payment to Werksmans.
- 61 By the time the payment was made, the counsel team had already been released from their briefs and understandably had made other commitments. They were no longer available to argue the main application.
- 62 It then became necessary for Werksmans to appoint a new team of counsel .
- 63 I have been advised that the main application runs to over 7000 pages and deals with extremely complex issues of fact and law. It was not feasible at all for the new counsel team to prepare to argue the main application over this weekend.
- 64 The new counsel team could only consult with the GCFO and me during the afternoon of 22 February 2020 and then commence the preparation of this application seeking a postponement.
- 65 In the circumstances, I submit that this application was brought at the earliest opportunity once it became apparent that PRASA would not be in no position to argue the main application on 24 February 2020.

PREJUDICE

- 66 I respectfully submit, in the light of what I have set out above, that PRASA will suffer immense and incurable prejudice if this application is not granted, whereas

Siyangena will not suffer any material prejudice that cannot be cured by an appropriate order in regard to its wasted costs. PRASA hereby tenders Siyangena's wasted costs occasioned by the postponement of the main application.

- 67 The refusal of this application would mean that the issues raised in the main application and which implicate the rule of law are not properly ventilated and adjudicated upon. The issues raised in the main application require the Court to make an informed decision after having heard proper and adequate argument from the respective parties. Without PRASA's submissions, it will then mean that the Court, in effect, will be reliant solely on Siyangena's submissions and thus not be able to obtain a fully informed picture of the relevant issues in this matter.
- 68 In effect, PRASA will be denied the right to be heard, which will likely result in the dismissal of the main application. PRASA will then be forced to honour contracts that were unlawfully and irregularly concluded. A finding in relation to the unlawfulness of the contracts has already been made by the Public Protector.
- 69 Should PRASA be forced to honour what it submits are irregular and unlawful contracts, this will result in contravention of the Constitution and the rule of law. It will also implicate and drain much needed and scarce public funds. This is apparent from the exorbitant amounts which are now claimed by Siyangena in the arbitration proceedings.
- 70 In addition thereto, I submit that it is in the public interest and the interest of justice that a final and proper determination is made in relation to the lawfulness of the impugned contracts before PRASA can be forced to comply with them.

- 71 Any party that insists on proceeding with the main application in PRASA's absence, in the circumstances of this matter will simply be motivated by a desire to beat PRASA to the judicial posts. Such approach, I submit, should be frowned by this honourable Court.
- 72 To the contrary, no actual prejudice will be suffered by Siyangena should this application be granted. Siyangena will still be able to present its case after a delay of a few months.
- 73 The inevitable delay occasioned by the postponement of the main application should be for a relatively short period. This matter is subject to case management by the office of the Deputy Judge President. It can thus be expeditiously allocated as a special motion as has always been the case thus far.
- 74 By granting this application, this Court will ensure that all the issues pertaining to this matter are placed before it and are properly ventilated, thus the interests of justice being served.
- 75 I fully accept that the postponement of the main application will inconvenience the Court and the other parties. For that, I sincerely apologise. I would add however that was no intention on PRASA's part to cause such inconvenience.
- 76 The need for a postponement was caused by matters that are out of PRASA's control. PRASA is working hard to address these challenges and I wish to give this honourable Court my solemn assurance that I will do all in my power to ensure that these challenges will soon be a thing of the past.

77 On this basis, I submit that it is both appropriate and in the interests of justice that the review application proceedings be postponed.

CONFIRMATORY AFFIDAVITS


78 I annex the following affidavits in confirmation of what I have stated above:

78.1 The affidavit of Jeremy Gobetz, marked "FA11".

78.2 The affidavit of Lesibana Fosu, marked "FA12".

CONCLUSION

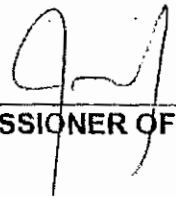
79 For all reasons set out above, I submit that PRASA has made out a case for an order in terms of the Notice of Motion.



BONGISIZWE MPONDO

I certify that this affidavit was signed and sworn to before me at SANDTON on this the 23rd day of February 2020 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath,

considered this oath to be binding on his conscience and uttered the following words:
'I swear that the contents of this affidavit are both true and correct, so help me God.'



COMMISSIONER OF OATHS

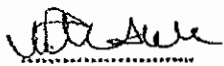
JENNA MORITZ
Practising Attorney RSA
Commissioner of Oaths (ex officio)
145 North Road, Sandown, Sandton

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 14332/18

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
	
<u>8/3/2019</u>	

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Applicant

and

SIYANGENA TECHNOLOGIES (PTY) LTD

First Respondent

RETIRED JUSTICE EZRA GOLDSTEIN

Second Respondent

RETIRED JUSTICE MEYER JOFFEE

Third Respondent

and

#UNITEBEHIND

Amicus Curiae

ORDER

Mothle, Hughes, van der Westhuizen, JJJ

BM

- [1] Before this Full Bench is an application for the review and setting aside of contracts concluded between officials of PRASA, which is the applicant and a service provider, Siyangena, cited as respondent. Siyangena also lodged a counter application. There are also two retired Judges cited as respondents, consequent to the fact that at the time these proceedings were instituted, they were presiding in three separate arbitration proceedings between PRASA and Siyangena. Further, a civil society coalition called #UNITEBEHIND applied to join the proceedings as co-applicant or *amicus curiae* and was admitted as *amicus curiae*.
- [2] In the founding affidavit, PRASA makes allegations of serious misconduct and wrongdoing on the part of certain specifically named employees or members of its board. The allegations relate to their activities and roles in the conclusion of the impugned contracts with Siyangena. None of these employees were joined as parties to these proceedings.
- [3] On scheduled date of the hearing of this application, the Court in chambers raised concern about proceeding in the absence of the implicated person's version of events. It emerged that in fact, one of those implicated employees had prepared an affidavit, apparently with a view to have his version before court. It was further revealed that his attorney had somehow filed such affidavit in the court file, an allegation that was not correct as none of the Judges in this Court had had sight of the alleged affidavit. However, the fact that there was an attempt by one of the implicated employees to have his version heard by this court, supported the concern that the Judges had in having to proceed without an opportunity for them to be heard.
- [4] From the debate in Court on the way forward, there emerged several possibilities. The first raised by the Court was whether the matter should be referred to oral evidence or to trial. Both options had limitations and were not accepted. PRASA proposed an appointment of a referee in

3m on

terms of section 38 of the Superior Courts Act 10 of 2013, in essence to investigate and report on the assessment of the value of the service provided in terms of the contracts. This investigation is proposed to be conducted simultaneous with the need to provide an opportunity to the employees to be heard.

- [5] Siyangena proposed a postponement of the case and to allow an opportunity for the witnesses to file affidavits if they so wish. It objected to the appointment of the referee at this stage of the proceedings. The *amicus curiae* basically supported the view of PRASA.
- [6] The Court retired to deliberate on the various views canvassed and concluded that those specifically named employees or members of the applicant's board are entitled to be advised of the serious allegations of alleged misconduct and wrongdoing and that they have a right to respond and to put their answer or defence before court.
- [7] The Court further realised that until those implicated employees or members of the applicant's board, have been granted an opportunity to decide whether they need to be heard and if necessary to file affidavits, it will not be in the interest of justice for the matter to proceed:

We grant the following order:

- (a) This application and the conditional counter-application is postponed to a date to be determined by the Judge President of this Division for the hearing of the application;
- (b) The following specifically named employees or members of the applicant's board are the following:
- (i) Mr Montana;
 - (ii) Mr Luyanda Gantsho;

BM

- (iii) Mr Sindane;
- (iv) Mr Mbatha;
- (v) Mr Mdluli;
- (vi) Mr Khuzwayo;
- (vii) Mr Bopape;
- (viii) Mr Mohube;
- (ix) Mr Phungula.

(c) The Applicant, through its attorneys, is ordered to serve this order within 10 days from the date of this order, personally upon the persons referred to under (b) above, together with those parts of the founding affidavit and documents relevant to that particular person. In the event personal service cannot be effected, the applicant and its attorney may approach this court in chambers for issue of a substituted service. Proof of service shall be filed on the court file;

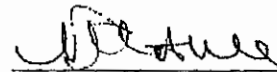
(d) Every one of the persons listed under (b) of this order has the following rights

- (i) the right to intervene in these proceedings as an interested party; or
 - (ii) the right to intervene as a witness and deliver an affidavit, together with or without supporting affidavits and documents, in his or her defence to the alleged wrongdoing;
 - (iii) In the event she or he elects to file an affidavit, such affidavit must confine itself to the issues raised in the
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founding affidavit, answering affidavit or replying affidavit including to any confirmatory or supplementary affidavit or any annexure attached thereto. She or he may attach any relevant documentation in response to the allegation.

- (iv) He or she may elect not to intervene either as a party or as a witness by way of an affidavit and supporting affidavits if so advised;
 - (v) The right to obtain legal representation to assist him or her in making the election and to represent him or her in participating in these proceedings.
- (e) In the event that any of the aforementioned persons elect to intervene in the proceedings, either as a party or as a witness, such person is to notify all the parties on record in writing, of their intention to intervene, whether as a party or as a witness, within 10 court days from the date of the service of this order. From then on all parties shall exchange affidavits in accordance with the time frames stated in Rule 6(5)(d)(i)(ii)(iii) and (e);
- (f) In respect of Mr Montana, service of this order may also be effected on his attorneys, Messrs Saint Attorneys;
- (g) Once all affidavits have been filed, the Court shall issue further directives as to the filing of supplementary heads.
- (h) In the event that the list of persons enumerated in prayer (b) is incomplete or contains persons not implicated in any misconduct or wrongdoing, the parties are invited to make representations in writing to indicate the names of persons to be added or deleted within 3 days of this order.
- (i) The costs of the proceedings and postponement thus far shall be costs in the cause.

DATED AT PRETORIA ON 8 MARCH 2019



S P MOTHLE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA



W HUGHES
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA



C J VAN DER WESTHUIZEN
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA.

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transport
Department
Transport
REPUBLIC OF SOUTH AFRICA



MEDIA STATEMENT

DATE: Monday, 09 December 2019

TO: All Staff

For immediate use

**MEDIA STATEMENT OF THE MINISTER OF TRANSPORT, FIKILE MBALULA,
ON THE OCCASION OF ADDRESSING PRASA MANAGEMENT AND STAFF
ON 9 DECEMBER 2019 AT UMJANTSHI HOUSE, BRAAMFONTEIN**

This morning I addressed the management and employees of PRASA across all its divisions and subsidiaries.

PRASA is an important institution that plays a major role in South Africa's public transport value chain and its impact on the economy cannot be emphasized enough. Each one of the 16 350 employees employed by PRASA has an important job to do, in ensuring that the wheels continue to turn and those who rely on our trains for their livelihoods are not short-changed.

I have no doubt that PRASA is well endowed with men and women who are not only committed to do their best to make sure PRASA succeeds, but who also possess the requisite talent to ensure that we transform the travel experience of our people.

During our first 100 days in office, we spent a lot of time tackling pressing challenges that constrain service delivery. These efforts revealed the fault lines in the Transport agenda and enabled us to re-imagine the role of transport in propelling economic activity, while taking strides in advancing social emancipation. It is precisely these fault lines that prompted us to establish the PRASA War Room, which has helped us gain a better appreciation of the magnitude of challenges facing this entity.

The continued decline of the quality of service PRASA provides to the commuting public requires urgency in the interventions we put in place. The focus of the 6th administration is on accelerated implementation, working with all South Africans. Our interventions here at PRASA are premised on this.

The urgency of addressing PRASA's turn-around cannot be overemphasized,

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and tangible results that people can see must be realized in the shortest possible time.

In the decade of its existence, PRASA has experienced many challenges that became pronounced in the 2015/16 financial year. While the audit outcome was unqualified with emphasis of matter, the AG flagged serious governance breaches, particularly in the supply chain management. Irregular expenditure stood at R4.1 billion alongside fruitless and wasteful expenditure of R541 million. This period was also characterized by dissonance at the highest levels of the organization, characterized by tensions between the Board and management.

The Public Protector also released her report on PRASA titled "Derailed", which highlighted serious lapses of corporate governance. As a consequence, the National Treasury instituted a forensic investigation on some of the issues flagged by the Public Protector.

The Directorate of Priority Crime Investigation ("the Hawks") had also initiated investigations on a number of issues referred by PRASA.

The downward spiral continued in 2016/17 where PRASA had 2 Boards in a single financial year. The relationship between Minister Peters and the Board reached an all-time low, resulting in the Minister dismissing the Board, replacing it with an Interim Board in March 2017, which was short-lived. Over this period PRASA lost 1 355 employees, 26.4% due to natural attrition and 16% resigned. This was the first time PRASA received a qualified audit opinion.

Irregular expenditure stood at R19.6 billion, an increase from 14.8 billion in 2015/16. The AG reflected that instability in the entity, "including the board of control, negatively contributed to the decline in the financial management, performance reporting and compliance processes and the overall collapse of the internal controls within the public entity as a result of inadequate and ineffective oversight." Fruitless and Wasteful expenditure escalated to R181 million.

In 2017/18, PRASA had 4 Boards in a single financial year. This perpetuated the instability. Over this period PRASA lost 1 246 employees, 27% due to natural attrition and 18% resigned. Once again, the audit outcome was a qualified audit opinion. Irregular expenditure stood at R23.4 billion, an increase from R19.6 billion the previous year.

Similarly, fruitless and wasteful expenditure escalated to R1 billion, up from R988 million the previous year. Once again, the Auditor-General sharply raised the concern about instability at PRASA.

Minister Nzimanda appointed an Interim Board in April 2018 for a period of 12 months, with a mandate to turn around the fortunes of PRASA, as it became evident that the downward spiral was continuing without let. A Shareholder Compact was signed with this Board mapping out priorities they were expected to deliver on.

Handwritten signature

When the term expired in March 2019, it was extended by 6 months. At the end of the 6 months, the term was extended by a further 6 months ending on 30 April 2020 or until a new board has been appointed. This was done to enable us to run the process of appointment of a new Board having duly looked into the affairs of PRASA incisively.

Over the last few weeks we have conducted a review on the performance of the Board and of the entity as a whole. This assessment followed the Government Technical Advisory Centre (GTAC) assessment report, compiled after engagements with a number of managers. Based on this report and other considerations, we arrived at a conclusion that PRASA has deep-rooted challenges that require decisive interventions at leadership and management levels.

Merely replacing an interim Board with a permanent Board will not address the deep-rooted fault lines at PRASA. The GTAC report highlights the dysfunctionality of PRASA and records non-compliance with financial prescripts that warrant immediate action and intervention, in addition to the initial intervention of the War Room.

The Auditor General (AGSA) in its Management report for the 2018/19 financial year raised critical issues on governance, which included a finding that PRASA did not take effective and appropriate steps to prevent irregular and fruitless and wasteful expenditure, as required by law. The majority of the irregular, fruitless and wasteful expenditure disclosed in the financial statements was caused by non-compliance with supply chain management prescripts, as well as payments made, where the value derived could not be justified.

The AG also highlighted in the report that there has been no progress in addressing the significant deficiencies noted over the oversight by the accounting authority and senior management regarding financial and performance reporting, compliance and related internal controls. This is evident from the regressed audit outcomes.

There is no doubt that the Board is responsible for the systems of internal control. These are designed to provide reasonable, assurance as to the reliability of the annual financial statements, to adequately safeguard, verify and maintain accountability of assets, and to prevent and detect material misstatement and loss.

Since the interim Board's appointment, the affairs of the entity have not improved but have regressed instead as evidenced by the disclaimer, following two financial years of stagnant audit outcomes position of "qualified with findings".

Having considered all these issues and other aspects of the AG's report, the delivery against the signed Shareholders Compact, the PFMA and King IV code, I arrived at a conclusion that a more incisive intervention that enables quick turn-

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around times in decision-making with a view to stabilise operational performance is more urgent than an appointment of a permanent Board. This view was supported and agreed to by Cabinet.

I have therefore decided to dissolve the Interim Board and place PRASA under administration with immediate effect. The Administrator will run the affairs of PRASA as a de facto Board of Control as envisaged in the PRASA founding law and as an Accounting Authority in terms of the PFMA.

In order to enable swift and rapid decision-making as well as build management capacity to decisively manage turn-around interventions, the secondment of the Acting Group CEO, Dr Sishi, is withdrawn with immediate effect. The role of the Group CEO will be integrated into the role of the Administrator as an integral part of the intervention. Thank you Dr Sishi for your contribution and efforts in addressing challenges at PRASA.

This intervention will continue for 12 months, after which a permanent Board will be appointed to run the affairs of PRASA. We will ensure that the process to recruit a permanent Board is initiated at least 6 months into the tenure of the Administrator to ensure a seamless transition at the end of the intervention.

I am pleased to announce the appointment of Mr Bongisizwe Mpondo as the newly-appointed Administrator of the Passenger Rail Agency of South Africa, with immediate effect.

I have no doubt that Mr Mpondo has the right credentials to tackle the challenge of turning around PRASA, address its operational deficiencies and tackle intractable challenges confronting its Divisions and Subsidiaries. In the coming days, we will be concluding a Service Level Agreement, which will outline in detail the terms of reference for his engagement. Among the Administrator's key priorities are the following:

- Addressing all matters raised in the Auditor-General's report and ensure that there are no repeat findings.
- Accelerating interventions aimed at improving operational performance.
- Expedite implementation of the modernisation programme, with priority focus on fencing, signalling, perway and station upgrades.
- Security interventions across all corridors.
- Urgently developing capacity to manage PRASA's capital programme, working with other state entities in the short term.
- Build capacity to support interventions aimed at recovering the system by establishing requisite supplier panels through competitive bidding or other means permissible.

- Attend to issues that require engagement with Transnet in order to unlock blockages that negatively affect operations.
- Ensure effective consequences management and provide support to investigations currently underway by law enforcement authorities.
- Undertake a review of PRASA's organisational design and business model.

Mr Mpondo is an entrepreneur who has an extensive record in corporate governance and working with public institutions to improve operational efficiencies. He has served on the Boards of many public entities which include

- East London Industrial Development Zone (IDZ)
- South African Express
- South African Airways
- Cross-Border Road Transport Agency

He has published many papers and articles covering topics as diverse as freight logistics, aviation, cost of increased demand for transportation, land use and sustainable development. He has led a diverse range of projects that include project management for the Department of Transport for the 2010 World Cup, serving as a transaction advisor for the Housing Development Agency and many others.

Mr Mpondo will put together relevant teams with the requisite skills and capacity to support him in the undertaking of his work.

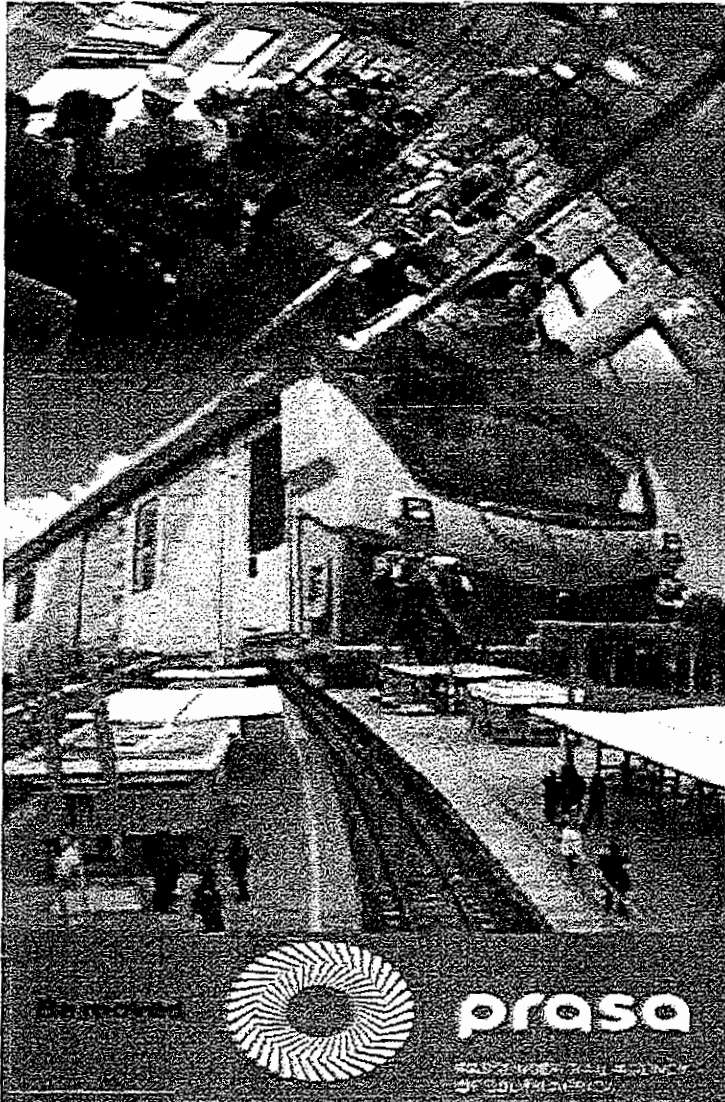
Issued by:

Fikile Mbalula

Minister of Transport

More information: Ayanda Allie Paine

074 823 7979



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PASSENGER RAIL AGENCY
OF SOUTH AFRICA


**Presentation of
2018/19 Annual Financial Statements**

26 September 2019

Shosholozu Meyl



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Content

- A Perspective on Financial Performance Q3



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-A Perspective on Financial Performance Q3

Income						
	Actual 9Mnths R'000	Budget 9 Mnths R'000	%Variance	Budget 2019/20 R'000	Forecast 2019/20 R'000	%Variance
Total Income	6,180,982	6,900,658	10%	9,140,482	8,244,783	10%
Total Expenditure	8,172,412	9,209,845	11%	12,222,250	10,935,749	79%
Cost Coverage	76%	75%		74%	75%	
Uncovered Costs (Living above means)?	24%	25%		26%	25%	

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A Perspective on Financial Performance Q3

Key Expenditure					
	Actual 9 Mnths R'000	% of Total Expenditure	Budget 2019/20 R'000	Forecast 2019/20 R'000	%Variance
Employee Cost	4,117,026	50%	5,732,526	5,496,376	
Overtime	325,261	4%	237,912	433,945	
Energy	737,747	9%	1,108,232	1,001,337	
Maintenance	205,949	3%	482,172	379,588	
Security	530,476	6%	703,187	639,835	
Municipality Cost	350,070	4%	462,815	481,727	

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A Perspective on Financial Performance Q3**Peak Availability Plus Commitments at Current Euro Rate**

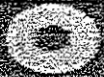
Average Income per mnth	R687M
Average Expenses per mnth	R908M
Accounts Receivables	R310M
Accounts Payables	R3,6bn



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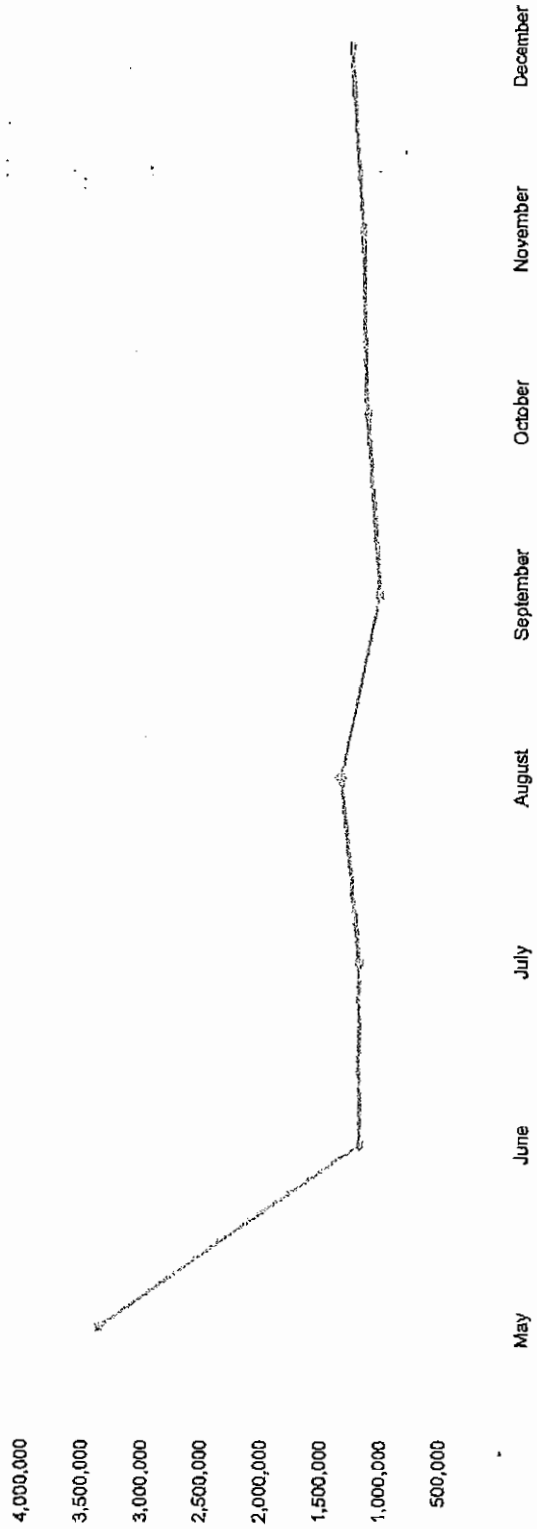
A Perspective on Financial Performance Q3

- Work in Progress (WIP) is another area needing close attention,
- It impacts on CAPEX spending which intends to improve PRASA's service offering.
- Processes and targets needs to be put in place to address long outstanding WIP and accelerating CAPEX spending.



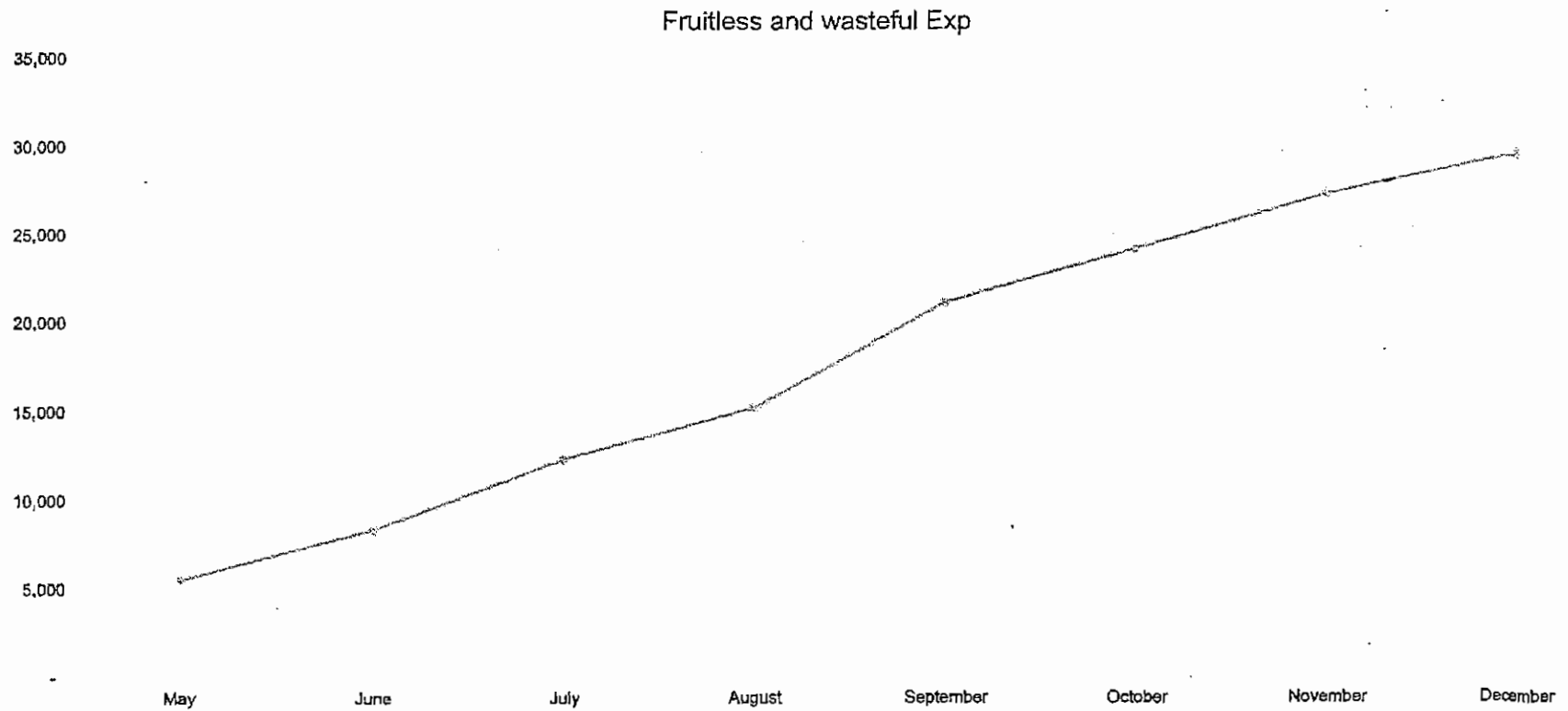
A Perspective on Financial Performance Q3

Irregular Expenditure

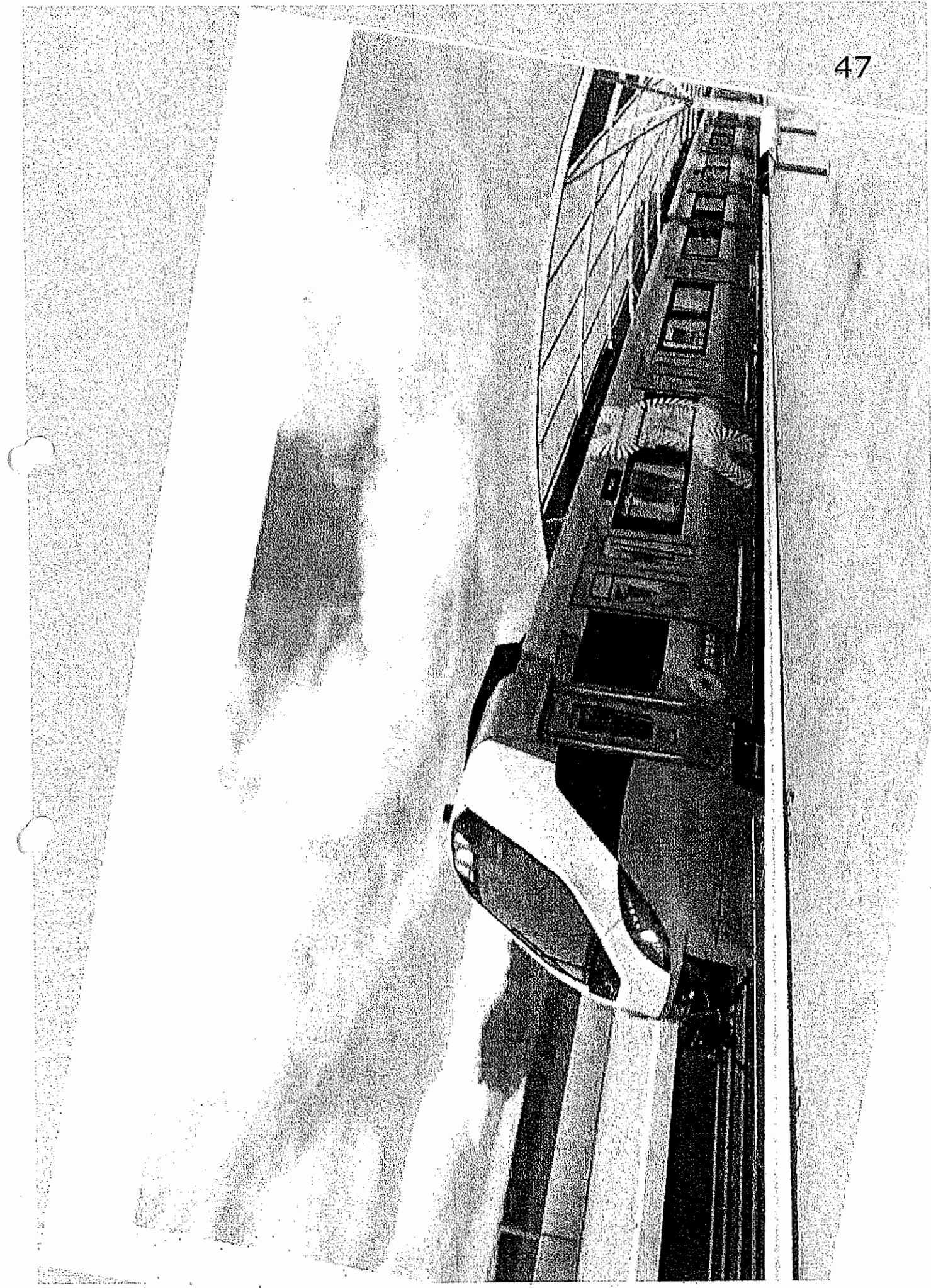


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A Perspective on Financial Performance Q3



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SOUTH AFRICA

Prasa to fork out R1bn in backpay as it reinstates 700 dismissed workers

28 February 2018 - 06:00
BY ERNEST MABUZA



The Labour Appeal Court found the dismissal of workers to be procedurally and substantively unfair.

Image: Sizwe Ndungane

The cost to reinstate the 700 workers who were fired by the Passenger Rail of South Africa (Prasa) after a protected strike five years ago will amount to over R1-billion.

Two weeks ago, the Constitutional Court dismissed an appeal by Prasa which had sought to appeal against a Labour Appeal Court judgment last year ordering the reinstatement of the workers.

The workers, belonging to the National Transport Movement, were dismissed after Prasa accused them of burning trains worth about R42m during the strike.

Prasa had sent workers notices asking them to make representations why they should not be fired for a number of incidents at stations and depots during January 2013.

Ernest

While the Labour Court found that the dismissals were justified, the Labour Appeal Court found their dismissal to be procedurally and substantively unfair.

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It ordered Prasa to reinstate them retrospectively to the date of dismissal.

An appeal by Prasa to the Supreme Court of Appeal was dismissed last month.

Prasa said it would fully comply with the judgment to reinstate all the workers.

"PRASA has, as a result started planning for the reinstatement of the employees along with the re-training for train drivers in order to renew their train driver licences which must be renewed every six months."

Prasa said all employees would be re-instated with full pay as of the day the judgement was made and all would receive their lump sum back pay minus the statutory deductions such as unemployment insurance and pension funds.

"The collective cost to company is approximately R1-billion. PRASA will engage in dialogue with both the unions and the affected employees on the details of the reinstatements."

NTM spokesman Ronnie Ramothina said workers were in negotiation with the employer on when to return to work.

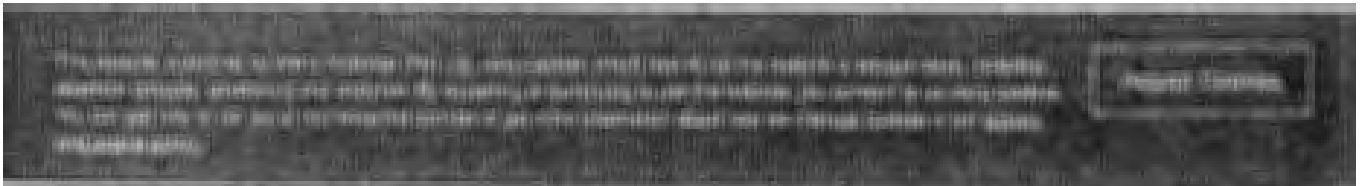
He said workers spent just over five years waiting for the case to run its full course.

Ramothina said this period had been hard for the workers.

"Some lost everything, including their houses. Some had their children kicked out from schools," Ramothina said.

He said of the workers who were dismissed, 45 had died and 700 remained.

- TimesLIVE



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prasa

Public Transport
South Africa

PRASA HOUSE
1840 Burnell Street
Hatfield
Pretoria

Private Bag X101
Braamfontein, 2017
T: +27 12 748 7000

02 October 2019

Mr Alec Moemi
Director General
Department of Transport
159 Forum Building
Cnr. Bosman & Struben Street
PRETORIA
0001

REQUEST FOR THE DIRECTOR GENERAL TO SUPPORT PRASA'S REQUEST TO TRANSFER FUNDS FROM CAPITAL EXPENDITURE (CAPEX) BUDGET TO OPERATING EXPENDITURE (OPEX) BUDGET

Dear Mr. Moemi

Background

PRASA's operating activities are funded from operational subsidy (received from National Department of Transport annually) and own generated revenue which is mainly from Fare Revenue. Over time PRASA has been experiencing decline in Fare Revenue which resulted in PRASA not being able to meet its operational obligations amounting to around R5.7bn.

Deliberation

PRASA request the Director General of the National Department of Transport to support its request to transfer some of the CAPEX budget into OPEX budget to support operational activities. PRASA needs to settle the following expenditure urgently:

1. NTM members- The payment is as a result of a court ruling against PRASA for its employees who belonged to NTM and the court declared their dismissed illegally;
2. ESKOM- relating to Traction Energy service which is critical in supplying electricity to PRASA's trains; and
3. Municipalities services- for various services supplied by municipalities to all PRASA's buildings across the country.

Members of the Board of Control
X Kweyama (Chairperson), S Ntshaluba,
L Wassie, J Schreiner, B Mthembu, D Tshepo,
X George, R Khan, P Selai, E Nchabeleng

Group Chief Executive Officer
Dr. N Sishi
Acting Group Company Secretary
M Thabelho

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To date the amount required to meet the above obligations is R1 652 305 929.

We are in the process of identifying the "2nd phase" of mission critical expenses from the total of R5.6 BN and also determining how much PRASA can pay out of its own generated revenue and subsidy which will provide close to accurate figures on how much should be transferred from CAPEX to OPEX budget.

Conclusion

Request the following:

- For The Director General to support initial PRASA's request to transfer funds from CAPEX to OPEX for an amount of R1 652 305 929; and
- Support PRASA to submit the other tranches of mission critical expenses on an agreed upon internal (i.e. BI-weekly or monthly) until the backlog is cleared.

Yours Sincerely



Dr. Nkosinathi Sishi

ACTING GROUP CHIEF EXECUTIVE OFFICER

PASSENGER RAIL AGENCY OF SOUTH AFRICA



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

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Private Bag X115, Pretoria, 0001 Tel: (+27 12) 315 5111 Fax (+27 12) 315 5423

Enquiries: Dumebl Ubogu File Ref.: 9/2/8/3/7/1 Tel: 012 315 5077 Fax: 012 315 5463 Email: Dumebl.ubogu@treasury.gov.za

Mr A Moemi
Director-General
National Department of Transport
Private Bag X193
Pretoria
0001

Dear Mr Moemi

VOTE 35: DEPARTMENT OF TRANSPORT: PASSENGER RAIL AGENCY OF SOUTH AFRICA: REQUEST FOR NATIONAL TREASURY APPROVAL TO SHIFT FUNDS FROM CAPITAL TRANSFERS TO CURRENT TRANSFERS

Operating expenses incurred daily should be expensed and appropriately budgeted for. It is important that funds that are required to run the entity's operations are sufficiently understood. Failing to expense day-to-day costs of operations for six months is symptomatic of poor planning and budgeting.

Given the precarious position the Passenger Rail Agency of South Africa (PRASA) finds itself in, in terms Treasury Regulation 6.3.1, your request to un-earmark R387.2 million from the transfer to the (PRASA) for signalling and R1.3 billion from general overhauls for Metrorail is approved. I understand that this will allow PRASA to pay the following outstanding debt:

- Municipalities: R347.9 million
- ESKOM: R204.4 million
- Court settlement on the illegal dismissal of employees: R1.1 billion

Section 51 of the Public Finance Management Act requires that the PRASA Board of Control manages its revenue, expenditure, assets and liabilities in an efficient and effective manner. It also requires that the Board prevents, amongst others fruitless and wasteful expenditure and losses resulting from failure to comply with the policies of the entity.

I trust that appropriate steps are being taken by the PRASA board to remedy the current situation it finds itself in.

Kind regards

Dr Rendani Randela
Acting Deputy Director-General: Public Finance

Date: 7/11/2019

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Dr. B. Sigwenso
Administrator

09/01/2020



prasa

PUBLIC SERVICE
CORPORATION

PRASA HOUSE
1845 Burnett Street
Johannesburg
PRASA
Pretoria 0001
T: +27 12 712 7811

Dear PRASA Suppliers

I am writing this letter to you as a valued stakeholder that is critical to the business of PRASA. PRASA recognizes and acknowledges the services you have rendered and delivered to the business. Sadly, PRASA finds itself currently in a position wherein it cannot meet its financial obligations; in the main due to cash flow issues that PRASA is working on. We are committed to expeditiously resolving this matter and restore the good relationship that we have with you.

As we forge ahead in restoring PRASA to an effective and efficient business, we request your patience.

Once again, I apologize on behalf of the business for the inconvenience caused by non-payment of the monies due to you.

Yours sincerely,

Mr. Bongisizwe Mpondo
Administrator

Date: 09/01/2020

Administrator
B. Mpondo

Acting Group Company Secretary
M. Thebebe

Bm
M

**DELIVERED BY EMAIL**

The Administrator of PRASA
Mr Bongisizwe Mpondo
Email: Bongisizwe.mpondo@prasa.com

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96 Rivonia Road
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www.werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr D Hertz/lf/SARC0001.786/#6625911v2
DIRECT PHONE: +27 11 535 8283
DIRECT FAX: +27 11 535 8683
EMAIL ADDRESS: dhertz@werksmans.com

23 February 2020

URGENT

Dear Mr Mpondo

PRASA'S FAILURE TO DISCHARGE INDEBTEDNESS IN BREACH OF TREASURY REGULATIONS AND INSTRUCTIONS IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT

- 1 The above matter and the letter addressed to you by Werksmans' Head of Litigation, Mr Manaka, on 20 November 2019 refers and is attached for your ease of reference ("our letter").
- 2 It is of grave concern that notwithstanding the dire urgency of the matter traversed in our letter, we have not received an acknowledgement of receipt, let alone a substantive response thereto. Werksmans has not received any formal communication from PRASA since being placed under administration.
- 3 It is with regret that I, as the Chairman of Werksmans, am compelled to address this correspondence to you in the context of what has been a mutually beneficial and highly successful working relationship which Werksmans and PRASA have enjoyed over many years.
- 4 As at the date hereof, PRASA's outstanding indebtedness (in excess of 180 days) in respect of the various matters being conducted by various partners within this firm, is in excess of some R19 million. Included in this amount are numerous disbursement charges for the respective counsel (both senior and junior) whose services have been retained in these matters.
- 5 PRASA's failure to discharge our invoices for services rendered on the express instruction of PRASA either in compliance with the statutory requirements of the PFMA or at all is unlawful. It is all the more disheartening viewed in the context of the fact that Werksmans has continued to achieve tremendous success in PRASA's fight against corruption aggregating to in excess of

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham C Andropoulos JKOF Antunes DA Artelro T Bata LM Becker JD Behr AR Berman MNM Bhengu Z Bliden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kalimeyer A Kenny R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Meiring H Michael SM Moerane C Moraitis PM Mosebo KO Motsiwan NPA Motsiri A Ngidi JJ Niemand BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidia LK Silberman S Sinden DE Slingo JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron PW Tindle SA Tom JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk JJ van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies Consultant DH Rabin

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R4 billion thusfar. Notwithstanding the non-payment of our invoices, but in discharge of our ethical duty to both the court and our client, we were successful in defeating the fake "Doctor" Mtinkulu's application for leave to appeal on Friday, 6 December 2019, with costs. We have also ensured that all of the affidavits in the Siyangena matter were filed in accordance with the prescribed time table. **As you are aware, this matter involves in excess of R6 billion which PRASA is being called upon to pay pursuant to the conclusion of contracts tainted by corruption.** This matter has been set down for hearing by the Deputy Judge President before three judges on 24 February 2020 to 27 February 2020.

- 6 We draw to your attention that as a result of the non-payment of our invoices, the counsel acting in the Siyangena matter have been released from their respective briefs. Consequently, we will not be in a position to comply with the Deputy Judge President's directive regarding the filing of supplementary heads of argument which are due on Friday, 17 January 2020. The disastrous effect of this will be that the Siyangena matter will not proceed on an opposed basis on the allocated dates with the result that PRASA's application will in all likelihood be dismissed by default. Ultimately, PRASA will be called upon to pay in excess of R6 billion to the very persons and entities who have been identified as the key role players in the corruption frenzy at PRASA which was highlighted both by the former Public Protector and in Werksmans' investigations which precipitated PRASA taking this matter to court.
- 7 It bears mentioning that the principal role player behind Swifambo, Mr Auswell Mashaba, has launched an application against the Master, the Joint Liquidators and PRASA to set aside the liquidation process thusfar undertaken. A failure by PRASA to oppose this application may result in PRASA losing an interim dividend of approximately R80 million.
- 8 Regrettably, and in discharge of our ethical duties, we have no alternative but to file notices of withdrawal as attorneys of record in all of the PRASA matters presently being handled by Werksmans.
- 9 There are several hundred matters being handled out of our Western Cape offices which will be affected by our unavoidable decision to withdraw as PRASA's attorneys of record. In one of these matters there is a full bench appeal set down for hearing on 29 January 2020 where PRASA will no longer be represented. The claims in these matters (relating to our Western Cape offices) aggregate to approximately R1 billion for which PRASA remains exposed in circumstances where it will no longer be legally represented. Similarly in these matters Werksmans has incurred disbursements for counsel who Werksmans is obliged to pay and has paid. Werksmans has not been reimbursed by PRASA in respect of these disbursements. The briefs for these counsel have similarly been withdrawn to avoid any further costs being incurred.
- 10 Whilst Werksmans remains committed to representing PRASA in all matters, we simply cannot continue to do so in circumstances where our accounts are not discharged with scant regard to the devastating financial impact this has on the numerous professionals who have dedicated themselves to successfully representing PRASA over the years.
- 11 Unless **ALL** of our accounts which are already overdue, owing and payable are discharged within 5 days from date hereof, we will also regrettably have to institute appropriate proceedings against PRASA for the recovery of all amounts owing. Werksmans will exercise its *lien* over all files pending payment.
- 12 We require your **urgent** reply hereto. In the interim, Werksmans' rights remain strictly reserved.

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- 13 This letter is copied to the President of the Republic of South Africa, the Minister of Transport, the Minister of Finance and the Director General of National Treasury, all of whom have an interest in the matter referred to above.

Yours sincerely

DAVID HERTZ

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

- c.c. The President of the Republic of South Africa
President Cyril Ramaphosa
Email: bonqanik@presidency.gov.za
geofrey@presidency.gov.za
angeline@presidency.gov.za
sello@presidency.gov.za
- c.c. The Minister of Transport
Mr Fikile Mbalula
Email: GroepeZ@dot.gov.za
- c.c. Minister of Finance
Mr T Mboweni
Email: Tito.Mboweni@treasury.gov.za
- c.c. Director General of National Treasury
MD Mogajane
Email: Dondo.Mogajane@treasury.gov.za
- c.c. Japhtalna Lesibana Fosu
GCFO
Email: Lesibana.Fosu@prasa.com
- c.c. Martha Ngoye
Email: martha.ngoye@prasa.com
- c.c. Fani Dingiswayo
Email: fani.dingiswayo@prasa.com
- c.c. Tokollo Mahlake
Email: tokollo.mahlake@prasa.com
- c.c. Hurbert Makhubela
Email: hmakhubela@prasa.com
- c.c. Mark Horne
Email: mhorne@prasa.com
- c.c. Vicky Cairncross
Email: vcairncr@metrorail.co.za
- c.c. Richard Walker
Email: richard.walker@prasa.com

3
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" FA 9 "

57

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 14332/2018

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA Applicant

And

SIYANGENA TECHNOLOGIES (PTY) LTD First Respondent

RETIRED JUSTICE EZRA GOLDSTEIN Second Respondent

RETIRED JUSTICE MEYER JOFFE Third Respondent

And

#UNITEBEHIND *Amicus Curiae*

NOTICE OF WITHDRAWAL AS ATTORNEYS OF RECORD

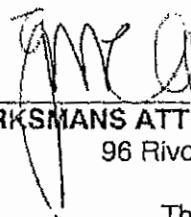
BE PLEASED TO TAKE NOTICE that WERKSMANS INCORPORATED do hereby withdraw as the Applicant's attorneys of record in this matter.

BE PLEASED TO TAKE FURTHER NOTICE that the last known address of the Applicant is:

BM

Prasa House
1040 Burnett Street
Hatfield
Pretoria

DATED at SANDTON on this the 14th day of JANUARY 2020.



WERKSMANS ATTORNEYS
96 Rivonia Road
11th Floor
The Central
Sandown
Sandton
Tel: 011 535 8106
Fax: 011 535 8606
E-mail: bhotz@werksmans.com
Reference: B HOTZ/SARC0001.789
c/o BRAZINGTON & McCONNELL ATTORNEYS
424 Hilda Street
Second Floor
Hatfield Mall
Hatfield
Pretoria
Tel: 012 430 4303
Fax: 012 430 7418
Reference: Mr A McConnell

TO:
REGISTRAR OF THE HIGH COURT
(GAUTENG DIVISION, PRETORIA)

AND TO:
VAN DE MERWE AND ASSOCIATES
First Respondent's Attorneys
62 Rigel Avenue
Waterkloof
Pretoria
Tel: 087 654 0209
E-mail: simone@vdmass.co.za
Reference: GT VD Merwe/ST/S493/23

3m

AND TO:
THE HONOURABLE RETIRED JUSTICE E GOLDSTEIN
Second Respondent
E-mail: saulgold@global.co.za / AltaB@vatit.com
elgoldstein@vatit.com

[SERVICE PER E-MAIL]

AND TO:
THE HONOURABLE RETIRED JUSTICE MM JOFFE
Third Respondent
E-mail: mmj@mwebbiz.co.za

[SERVICE PER E-MAIL]

AND TO:
WEBBER WENTZEL
Amicus Curiae's Attorneys
90 Rivonia Road
Sandton 2196
Tel: 011 530 5867
Fax: 011 530 6867
Email: vlad.movshovich@webberwentzel.com
Ref: V Movshovich / D Rafferty / J Tembe 3025290
c/o HILLS INCORPORATED ATTORNEYS
835 Jan Shoba Street (Duncan)
Brooklyn
Pretoria
Tel: 087 230 7314
Ref: A Engelbrecht

AND TO:
PASSENGER RAIL AGENCY OF SOUTH AFRICA
Applicant
Prasa House
1040 Burnett Street
Hatfield
Pretoria
Private Bag x101
Braamfontein
2017
Telephone: 012 748 7000
E-mail: info@prasa.com / fani.dingiswayo@prasa.com /
martha.ngoye@prasa.com
[SERVICE PER HAND, REGISTERED POST AND E-MAIL]

AM
Bjm

Office of **Mr. B Mpondo**
Administrator

" FA160

www.prasa.com



PRASA HOUSE
1040 Burokati Street
Halfway
Pretoria

Private Bdg X191
Braamfontein, 2017
Tz+27 12 768 7010

The Chairman of Werksmans Attorneys
Mr. David Hertz

lfourie@werksmans.com

Dear Mr. Hertz,

WERKSMANS INVOICES

I am in receipt of your letter dated 14 January 2020 and have noted the contents thereof.

Upon my taking over the affairs of PRASA, I found an organization that is struggling to meet its operational expenditure requirements as and when they fall due. This, as you will expect, is a debilitating failure that I believe should have been handled differently historically. I have therefore taken steps to immediately deal with this matter to ensure that there is a lasting solution for this crisis.

I have therefore engaged with the Group CFO to see what we can afford in the short term in order to show good faith to you and to assuage the predicament that you find yourselves in with your own suppliers that you have engaged to further the interests of PRASA. The Group CFO has assured me that in the next pay run (month-end) we will be in a position to pay all the disbursements that you have incurred with your suppliers in the matters that you are seized with. We will make payment of the remainder of the fees by the end of February 2020.

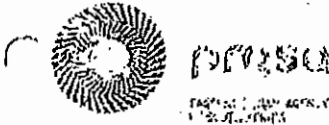
Administrator
B. Mpondo

Acting Group Company Secretary
M. Thöpothe

AM

AM

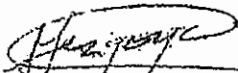
61



I wish to assure you that PRASA values the relationship that it has had with your firm over the years which relationship has been crucial in the clean-up campaign that PRASA has been engaged in over the past few years. The matter of Siyangena is very important to us and I have been advised by PRASA's Group Legal Services that PRASA has good prospects of success in it and that a number of PRASA employees who were implicated in the irregularities, fraud and corruption that led to the award of the contracts to Siyangena have been dealt with by PRASA. It would therefore not be in the best interests of PRASA for the matter not to proceed in February 2020. We also urge you to ensure that the appeal that is set down for 29 January 2020 also be saved to ensure that the rights of PRASA are protected.

Please urgently advise me if the above proposal is acceptable to you. Please do not hesitate to contact my office.

Yours sincerely


BONGISIZWE MPONDO
ADMINISTRATOR
DATE: 16/01/2020

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62

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 14332/18

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA Applicant

and

SIYANGENA TECHNOLOGIES (PTY) LTD First Respondent

RETIRED JUSTICE EZRA GOLDSTEIN Second Respondent

RETIRED JUSTICE MEYER JOFFE Third Respondent

and


#UNITEBEHIND Amicus Curiae

CONFIRMATORY AFFIDAVIT

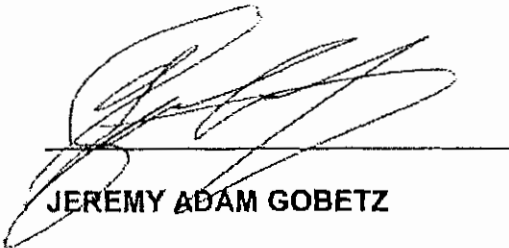
I, the undersigned,

JEREMY ADAM GOBETZ

do hereby make oath and say:

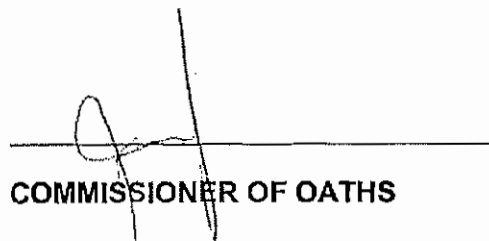

1 of 1
BM

- 1 I am a duly admitted attorney of the above honourable Court and a director of Werksmans Attorneys ("Werksmans") of the Central, 96 Rivonia Road, Sandown, Sandton, the Applicant's attorneys of record. I am also the attorney responsible for this matter.
- 2 The facts herein contained are within my personal knowledge and to the best of my belief both true and correct.
- 3 I have read the founding affidavit deposed to by BONGISIZWE MPONDO and confirm as true and correct the allegations contained therein insofar as they relate to the forensic investigation that was conducted by PRASA, the institution of the review applications and the prosecution of the main application.



JEREMY ADAM GOBETZ

I certify that this affidavit was signed and sworn to before me at Sandton on this the 23rd day of FEBRUARY 2020, by the deponent after he declared that he knew and understood the contents of this declaration, that he had no objection to taking the prescribed oath and has taken the prescribed oath which he considered binding on his conscience, having complied with regulations contained in Government Notice R1258 of 21 July 1972, as amended.



COMMISSIONER OF OATHS

JENNA MORITZ
Practising Attorney RSA
Commissioner of Oaths (ex officio)
145 North Road, Sandown, Sandton

"FA 12"
64

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 14332/18

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA Applicant

and

SIYANGENA TECHNOLOGIES (PTY) LTD First Respondent

RETIRED JUSTICE EZRA GOLDSTEIN Second Respondent

RETIRED JUSTICE MEYER JOFFE Third Respondent

and

#UNITEBEHIND Amicus Curiae

CONFIRMATORY AFFIDAVIT

I, the undersigned,

LESIBANA FOSU

do hereby make oath and say:

Sm 1
LJF

- 1 I am an adult female, employed by the applicant as its Group Chief Financial Officer ("GCFO").
- 2 The facts herein contained are within my personal knowledge and to the best of my belief both true and correct.
- 3 I have read the founding affidavit deposed to by BONGISIZWE MPONDO and I confirm as true and correct the allegations contained therein insofar as they relate to me. In particular, I confirm what is stated in paragraphs 36 to 43, paragraphs 54 and 55 and paragraph 60 of his affidavit.



LESIBANA FOSU

I certify that this affidavit was signed and sworn to before me at Sandton on this the 23rd day of FEBRUARY 2020, by the deponent after he declared that he knew and understood the contents of this declaration, that he had no objection to taking the prescribed oath and has taken the prescribed oath which he considered binding on his conscience, having complied with regulations contained in Government Notice R1258 of 21 July 1972, as amended.



COMMISSIONER OF OATHS

JENNA MORITZ
Practising Attorney RSA
Commissioner of Oaths (ex officio)
145 North Road, Sandown, Sandton

VAN DER MERWE
& ASSOCIATES

88A

☎ 087 654 0209
☎ 012 343 5435
✉ 62 RIGEL
AVENUE
WATERKLOOF
GT VD
MERWE/st

66

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA] *"TDS"*

CASE NUMBER: 14332/2018

In the matter between:

*Served
in court
22 @
10h00
24/2*

PASSENGER RAIL AGENCY OF SOUTH AFRICA **APPLICANT**

and

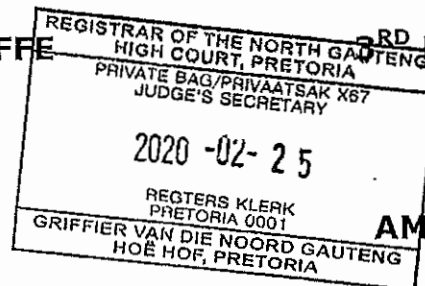
SIYANGENA TECHNOLOGIES (PTY) LTD **1ST RESPONDENT**

RETIRED JUSTICE EZRA GOLDSTEIN **2ND RESPONDENT**

RETIRED JUSTICE MEYER JOFFE **3RD RESPONDENT**

and

#UNITEBEHIND **AMICUS CURIAE**




NOTICE OF INTENTION TO OPPOSE

KINDLY TAKE NOTICE that the First Respondent (**Siyangena Technologies (Pty) Ltd**) hereby serves its notice of intention to oppose the application launched by the Applicant under the aforesaid case number and enrolled for 24 February 2020.

KINDLY TAKE NOTICE FURTHER that the aforesaid First Respondent hereby appoints the address for service of all notices, pleadings and/or papers in this matter, the address of the attorneys as set out hereunder.

SIGNED AT PRETORIA ON THIS THE 24th DAY OF FEBRUARY 2020.

67


 VAN DER MERWE & ASSOCIATES
 ATTORNEYS FOR THE FIRST RESPONDENT
 62 RIGEL AVENUE
 WATERKLOOF
 PRETORIA
 TEL: 012 343 5432
 FAX: 012 343 5435
 REF.: GT VD MERWE/st/S583
 EMAIL: simone@vdmass.co.za

TO:

THE REGISTRAR OF THE HIGH COURT,
 PRETORIA

AND TO:

WEBBER WENTZEL
 ATTORNEYS FOR THE AMICUS CURIAE
 90 RIVONIA ROAD
 SANDTON
 2196
 TEL: 011 530 5867
 EMAIL: vlad.movshovich@webberwentzel.com
 REF: V MOVSHOVICH/ D RAFFERTY/N QWABE
 C/O HILLS INCORPORATED ATTORNEYS
 OFFICE B313, 1ST FLOOR
 PARKDEV BUILDING
 BROOKLYN BRIDGE OFFICE PARK
 570 FEHRSEN STREET
 BROOKLYN
 PRETORIA
 TEL: 087 944 1800
 REF: A ENGELBRECHT

*Served on
 Mr. Movshovich
 in Court (4E)
 on 24 February
 2020 @
 10h00.*

AND TO:

WERKSMANS ATTORNEYS
 ATTORNEYS FOR THE FIRST RESPONDENT
 THE CENTRAL
 98 RIVONIA ROAD
 SANDTON
 EMAIL: bhotz@werksmans.com

*Served on
 Mr. Bernard
 Hotz in
 Court (4E) on
 24 February 2020 @
 10h00.*

igobetz@werksmans.com
smoerane@werksmans.com

REF: SARC0001.789/J GOBETZ
C/O BRAZINGTON & MCCONNELL
424 HILDA STREET
2ND FLOOR, HATFIELD MALL
HATFIELD
REF: MR A MCCONNELL

70

TO:

THE REGISTRAR OF THE HIGH COURT,
PRETORIA

AND TO:

WEBBER WENTZEL
ATTORNEYS FOR THE AMICUS CURIAE
90 RIVONIA ROAD
SANDTON
2196
TEL: 011 530 5867
EMAIL: vlad.movshovich@webberwentzel.com
REF: V MOVSHOVICH/ D RAFFERTY/N QWABE
C/O HILLS INCORPORATED ATTORNEYS
OFFICE B313, 1ST FLOOR
PARKDEV BUILDING
BROOKLYN BRIDGE OFFICE PARK
570 FEHRSEN STREET
BROOKLYN
PRETORIA
TEL: 087 944 1800
REF: A ENGELBRECHT

Sent on
Mr Vlad
Movshovich
in Court (4E)
on 24 February
2020
@ 10h00

AND TO:

WERKSMANS ATTORNEYS
ATTORNEYS FOR THE FIRST RESPONDENT
THE CENTRAL
98 RIVONIA ROAD
SANDTON
EMAIL: bhotz@werksmans.com
jgobetz@werksmans.com
smoerane@werksmans.com
REF: SARC0001.789/J GOBETZ
C/O BRAZINGTON & MCCONNELL
424 HILDA STREET
2ND FLOOR, HATFIELD MALL
HATFIELD
REF: MR A MCCONNELL

71

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No.: 14332/18

In the matter between

PASSENGER RAIL AGENCY OF SOUTH AFRICA Applicant

and

SIYANGENA TECHNOLOGIES (PTY) LTD First Respondent

RETIRED JUSTICE EZRA GOLDSTEIN Second Respondent

RETIRED JUSTICE MEYER JOFFE Third Respondent

and

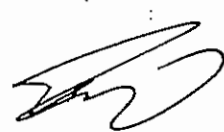
#UNITEBEHIND *Amicus Curiae*

**OPPOSING AFFIDAVIT : APPLICANT'S APPLICATION FOR
POSTPONEMENT (DATED 23 FEBRUARY 2020)**

I, the undersigned,

THOMAS ANDREAS DUBEK

hereby declare under oath as follows:

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72

- 1 I am a major male and the Chief Financial Officer of Siyangena Technologies (Pty) Ltd ("Siyangena"), the First Respondent in an application for a postponement by PRASA served on our attorneys of record via email on **23 February 2020 at approximately 18h30.**

- 2 Siyangena will oppose the application for a postponement on, *inter alia*, the basis that the application:
 - 2.1 is *mala fide* and an abuse of process;

 - 2.2 will cause severe and irreparable harm to Siyangena.

- 3 As a result of the fact that the main application serves before court today, **24 February 2020**, and since the application for a postponement was served at 18h30 on a Sunday evening (without any prior notice to anybody) I am, unfortunately, limited with obvious time constraints.

- 4 The *amicus curiae*, #Unitebehind, recently served an application to stay the proceedings pending the determination of an application to review the appointment of PRASA's Administrator, the same person who is now the deponent in an application for postponement ironically supported by #Unitebehind.



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- 5 From what I understand #Unitebehind will not persist with the application to stay proceedings but will support PRASA's postponement application.
- 6 The narrative advocated by PRASA and #Unitebehind is that the hearing of the main application "*will result in PRASA having to pay Siyangena R6 billion*".
- 7 This narrative was supported through the media over the past few days. I append hereto a screenshot of what seems to be a "*post*" by a one Mr Pieter Louis Myburgh who has been "*covering*" the story. I append the aforesaid as **Annexure "POST1"**.
- 8 It is obvious that the aforesaid journalist (and many others like him) is simply uninformed and ill-advised.
- 9 The application launched by PRASA is an application for review of certain agreements concluded between PRASA and Siyangena. The same issue served before court on a previous occasion and the payment pursuant to goods and services rendered by Siyangena is an issue subject to arbitration before the Honourable Retired Judges Goldstein and Joffe. The amount of payment, with respect, nothing to do with the main application as the media (and now the application for postponement) suggests.

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- 10 There is no prospect that the Court will order that PRASA must pay R6 billion to Siyangena. That is not the issue in these proceedings.
- 11 I want to emphasise that PRASA's blatant failure to pursue the application has a clear history and I take the liberty of incorporating what I have said in an opposing affidavit to the application of #Unitebehind herein. I append the aforesaid affidavit as **Annexure "POST2"** and beg the Court's indulgence to incorporate the contents thereof herein as if repeated.
- 12 Included as a bold statement in the narrative driven under the guidance of certain journalists (and in a letter of Mr David Hertz from Werksmans to which I will refer to hereinunder) is that Siyangena will be paid under circumstances where there was a "*corrupt relationship*". This is *not* what PRASA has pleaded in these proceedings.

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- 13 It was widely reported that Werksmans invoiced PRASA in excess of **R300 million** to "*conduct investigations*". I will, in due course, pursue legal action and recourse under circumstances where I believe PRASA and/or Werksmans abused enforcement structures and authorities to obtain personal and private information only to leak same to the media under false pretences and inaccurate factual assumptions. I will not deal with the aforesaid in this affidavit save to record that the Court (and the parties) **is confined to the thousands of papers filed in the application**. I submit that it is, with respect, dishonest to pursue and drive a narrative of corrupt conduct by Siyangena or any of its directors and/or representatives in order to justify a postponement, when this is *not* the basis for PRASA's review application.
- 14 To illustrate the aforesaid I refer to recent communication received from Carte Blanche showing a sudden interest in the matter when Werksmans withdrew as attorneys of record.
- 15 Carte Blanche applied to the Deputy Judge President to film the proceedings.

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- 16 Carte Blanche is represented by Webber Wentzel Attorneys, the attorneys for #Unitebehind.
- 17 Siyangena did not oppose the request to film the proceedings but the intention behind the request is questioned.

THE REASON ADVANCED FOR POSTPONEMENT

- 18 In the affidavit of Mr Mpondo he, in essence, argues that the reason for the postponement was the non-payment and subsequent withdrawal of Werksmans Attorneys.
- 19 Mr Mpondo does not give context to the actual reason for the postponement.
- 20 Werksmans has been the attorneys of record for PRASA in both arbitration proceedings and in both applications for review (and in the conditional counter-application launched by Siyangena).
- 21 Werksmans have been the attorneys of record **for the past 5(Five) years** as is evident from the schedule prepared by Siyangena and appended to the affidavit filed in opposition to the application to stay launched by #Unitebehind (**Annexure "POST2"** appended hereto).

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- 22 It is widely reported and now known that Werksmans invoiced PRASA over this **period in excess of R300 million** and since the matter was ready to be heard and argued by both parties as early as **March 2019** it is completely inconceivable that non-payment of Werksmans as at **14 January 2020** could have caused the sudden "*unpreparedness*" relied upon by PRASA for this postponement.
- 23 I will, in fact, illustrate that this application for postponement was planned by Werksmans and PRASA **long before this application for a postponement came about.**
- 24 Either Werksmans and/or PRASA "*leaked*" a letter directed by Mr David Hertz (of Werksmans) to PRASA dated **3 February 2020** to the media in order to create media hype and awareness of the non-payment of the last few Werksmans' invoices. I obtained a copy of the letter appended hereto as **Annexure "POST3"** by simply clicking a link on one of the reports in the media. There is, therefore, absolutely no privilege to the said letter which I append hereto.

MB



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25 It is evident from the letter authored by Mr David Hertz that Werksmans, in any event, planned to postpone this application for vastly different reasons than the one suddenly advanced in this application. The postponement was already decided on **28 January 2020** at a meeting between Werksmans and PRASA. I refer the Honourable Court to the following that transpired at the meeting:

"We advised you of the information required to facilitate a substantive approach to the Deputy Judge President as regards a postponement of the hearing of the Siyangena matter and you undertook to let us have same by Friday, 31 January 2020." (Own emphasis)

26 The aforesaid illustrates the severe level of inaccuracy and inconsistency displayed by PRASA in the application for a postponement, and that PRASA has not been candid with the court.

27 It further illustrates the fact that the application for postponement is made in bad faith and with ulterior motives.

28 It is evident from the aforesaid that, as at **28 January 2020**:

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- 28.1 Werksmans was still on brief;
- 28.2 Werksmans advised PRASA that they require information in order to approach the Deputy Judge President for a postponement;
- 28.3 They remained on brief awaiting payment on **31 January 2020.**
- 29 The postponement was, on any possible interpretation of the letter, planned almost a month ago whilst Siyangena was only favoured with an application for the postponement during the late hours of Sunday evening before the matter was due to be heard this morning.
- 30 This conduct is unbecoming of an organ of state such as PRASA.
- 31 The sudden support of #Unitebehind for the application for postponement is equally artificial and without substance.

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32 To illustrate this I pause to mention that on the one hand #Unitebehind argues that the conduct of the Administrator is subject to a pending application for a review of his appointment whilst and that the matter cannot proceed until the review application is finalised; on the other hand, #Unitebehind gladly joins Werksmans and PRASA in the event that the Administrator exercises his discretion in favour of Werksmans. His appointment and his conduct are seemingly not questioned when the outcome favours certain preferred service providers (as long as it is not Siyangena).

PREJUDICE TO SIYANGENA VERSUS PREJUDICE TO PRASA

- 33 There will, with respect, be no prejudice to PRASA if this matter is heard.
- 34 The affidavit of Mr Mpondo is a clear indication of the fact that PRASA cannot pay its service providers. It could not even pay its attorneys.



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- 35 Unlike Werksmans Siyangena is not in a position to apply pressure to force payment and, like Werksmans, Siyangena directed correspondence to various Ministers over a period of time including the Minister of Transport and the Minister of Finance in an effort to resolve this matter without recourse to judicial proceedings. None of them ever bothered to respond to any of the aforesaid letters which I have listed in the schedule appended to **Annexure "POST2"**.
- 36 I, further, incorporate the reasons for prejudice advanced in **Annexure "POST2"** appended hereto.
- 37 PRASA, previously, lost its case against Siyangena and appealed to the Supreme Court of Appeal, and upon having that application for leave to appeal dismissed, then applied to the Judge President for "reconsideration" where its application was evenly dismissed.
- 38 Apart from the fact that the application for a postponement is launched mala fide and premediated, I submit that PRASA will have an opportunity to dispute Siyangena's claims before two experienced retired judges on arbitration.



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- 39 Those proceedings commenced and are pending until this matter is finalised. There is absolutely no prejudice to PRASA if this matter is heard and concluded, even if PRASA is unsuccessful. Nothing prevents PRASA from presenting its defences on arbitration. In this regard I take the liberty of referring the Honourable Court to reference made to inspections held at our attorney's office of the "As-Built" plans. The work was done and PRASA is simply refusing to pay.
- 40 I remind the Honourable Court of the fact that PRASA continued to issue contract instructions to Siyangena and even threaten Siyangena with contractual sanctions if work is not done (whilst disputing the validity of the agreements through their attorneys).
- 41 Siyangena was on site performing work in terms of the impugned contracts at PRASA's specific behest and instruction up until 30 June 2019, when the final contract concluded. That is, further, an indication of PRASA's utmost bad faith.
- 42 There seems to be a tender for costs. The aforesaid tender will have little benefit for either party since it is now common cause that PRASA cannot even pay its own attorneys.



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43 Media articles emphasised PRASA's inability to settle judgement debts and a recent article even indicated that its assets at Park Station were attached due to non-payment of judgment debt. I append a copy of the article hereto as **Annexure "POST4"**.

44 As a consequence I submit that the application for postponement is not only launched in bad faith and mala fide but, in any event, an indication of PRASA's complete and utter inability to conduct its own affairs and pay service providers. It is nothing more than an effort to delay the inevitable.

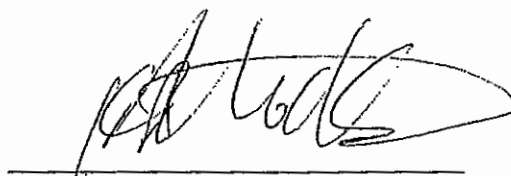
45 I am advised that a postponement is not to be had for the asking and that an applicant for postponement is required to put up a *bona fide* and reasonable explanation for the request for the postponement. PRASA has not done so.

46 I therefore beg the Court to dismiss the application for postponement with costs.



DEPONENT

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Signed and sworn before me at Pretoria on this 24th day
of February 2020 after the Deponent declared that he is
familiar with the contents of this statement and regards the
prescribed oath as binding on his conscience and has no objection
against taking the said prescribed oath.


**COMMISSIONER OF OATHS**

KAIZER BATHUSANG MODIBE
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"POST 1"



Pieter-Louis Myburgh  @PLMyburgh · 1h

Let's make it impossible for @MbalulaFikile to ignore a pending DISASTER at #Prasa - On 24 Feb Siyangena's R3bn claim is in the North Gauteng High Court. This company paid R500m to Zuma buddy Roy Moodley. But Prasa isn't paying its lawyers, so default/unopposed judgment imminent.

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VAN DER MERWE
& ASSOCIATES

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☎ 087 654 0209
☎ 012 343 5435
✉ 62 RIGEL
AVENUE
WATERKLOOF
GT VD
MERWE/st

POST 2
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IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

CASE NUMBER: 14332/2018

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA **APPLICANT**

and

SIYANGENA TECHNOLOGIES (PTY) LTD **1ST RESPONDENT**

RETIRED JUSTICE EZRA GOLDSTEIN **2ND RESPONDENT**

RETIRED JUSTICE MEYER JOFFE **3RD RESPONDENT**

and

#UNITEBEHIND **AMICUS CURIAE**

FILING NOTICE

DOCUMENTS FILED **: FIRST RESPONDENT'S OPPOSING AFFIDAVIT:
AMICUS CURIAE'S URGENT APPLICATION
(DATED 13 FEBRUARY 2020)**

FILED BY **: VAN DER MERWE & ASSOCIATES
ATTORNEYS FOR THE FIRST RESPONDENT
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PRETORIA
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REF.: GT VD MERWE/st/S583/6
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TO:

THE REGISTRAR OF THE HIGH COURT,
PRETORIA

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AND TO:

WEBBER WENTZEL
ATTORNEYS FOR THE AMICUS CURIAE
90 RIVONIA ROAD
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BROOKLYN
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TEL: 087 944 1800
REF: A ENGELBRECHT

AND TO:

PASSENGER RAIL AGENCY OF SOUTH AFRICA
THE APPLICANT
PRASA HOUSE
1040 BURNETT STREET
HATFIELD
PRETORIA

[BY HAND]

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case Nos.: 14332/18, 11314/2018

In the matter between

PASSENGER RAIL AGENCY OF SOUTH AFRICA Applicant

and

SIYANGENA TECHNOLOGIES (PTY) LTD First Respondent

RETIRED JUSTICE EZRA GOLDSTEIN Second Respondent

RETIRED JUSTICE MEYER JOFFE Third Respondent

and

#UNITEBEHIND *Amicus Curiae*

OPPOSING AFFIDAVIT : AMICUS CURIAE'S URGENT APPLICATION (DATED 13 FEBRUARY 2020)

I, the undersigned,

THOMAS ANDREAS DUBEK

hereby declare under oath as follows:

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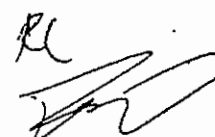

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- 1 I am a major male employee and Chief Financial Officer of Siyangena Technologies (Pty) Ltd. I have deposed to previous affidavits on behalf of Siyangena in these proceedings and remain authorised to do so.
- 2 The contents of this affidavit fall within my personal knowledge and belief and are both true and correct.

SCOPE OF THIS AFFIDAVIT

- 3 This affidavit is filed in answer to the urgent application launched by #UniteBehind, the *amicus curiae* in the above proceedings, seeking a variety of relief, all aimed at postponing the determination of the review application launched by PRASA.
- 4 I do not intend to deal with each paragraph of that affidavit *ad seriatim*, but will deal with the forms of relief requested thematically. Any allegation not specifically admitted should be taken to be denied.



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- 5 Siyangena opposes *any* postponement of the application which has been set down for hearing by a Full Court from 24-28 February 2020. As I demonstrate below, this review application was launched in 2018 and has been beset by a series of delays, all occasioned by PRASA and #UniteBehind, which I catalogue below. Any further delay will result in significant prejudice to Siyangena and will not be in the interests of justice.
- 6 In addition, Siyangena opposes the remainder of the relief sought. There is no basis in law to compel PRASA – an organ of state ably represented by internal legal representatives – to appoint attorneys and persist with the review application. Nor is there any basis in fact to conclude that PRASA has not taken a deliberate decision not to persist in the review application, a decision which is in line with advice that PRASA had received from its own attorneys (Werksmans) who have now withdrawn. For ease of reference, I annex this advice marked "A".

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- 7 Nor is there any basis to second-guess the ruling of the Full Court on 5 March 2019 that #UniteBehind had not met the "*direct and substantial interest*" threshold to justify intervention in the proceedings as an intervening applicant (which was the order #UniteBehind had originally sought), and to limit #UniteBehind's role in these proceedings to that of *amicus curiae*. #UniteBehind's interest in this application has not changed, and the issue is accordingly *res judicata*.
- 8 Although it is not customary to include legal argument in an affidavit, because of the belated filing of this application (just six court days before the hearing and in circumstances where all papers were required to be in by November 2019), I will where appropriate reference legal authority to support the propositions that I make in this affidavit. I do so for the benefit of the Court and request the Court's indulgence in this regard.
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9 In what follows, I deal with the Chronology of events and efforts by Siyangena to have the matter heard without delay; as well as the prejudice to Siyangena should the matter (once again) not proceed on 24 February 2020. I demonstrate that the primary relief sought by #UniteBehind is unsustainable, since the Cape Town review proceedings are unrelated to the present application.

10 Thereafter I deal with the alternative orders sought by #UniteBehind. The approach by #UniteBehind in this regard can only be described as scattergun – seeking no fewer than six alternative orders with the hopes that one of those orders may hit the target. I am advised that this form of pleading is frowned upon.

***CHRONOLOGY OF EVENTS AND EFFORTS BY SIYANGENA TO
HAVE THE MATTER HEARD WITHOUT DELAY***

11 In order to assist the Court in understanding the history of this application, Siyangena's legal team has prepared a document headed "*Chronology of Events and Efforts by Siyangena to have the matter heard without delay*". I annex a copy of the Chronology marked "B".

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12 I do not intend to deal with each event listed therein, but respectfully request that the Chronology be read and incorporated into this affidavit. I do wish to highlight the following features, however:

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- 12.1 Siyangena's attempts to receive payment for the works performed under the impugned PRASA contracts date back to October 2015, when Siyangena launched arbitration proceedings in respect of phase 1 and 2 of the contract.
- 12.2 PRASA's first (abortive) review application was issued in February 2016. It was dismissed with costs on 3 May 2017 (on the basis that PRASA had erroneously sought to rely on the Promotion of Administrative Justice Act 3 of 2000).
- 12.3 Rather than simply launching new review proceedings, PRASA then embarked on a series of applications for leave to appeal, petitions, requests for reconsideration etc. all of which were dismissed with costs. The final SCA order dismissing the application for reconsideration of the refusal of leave to appeal was issued on 7 November 2017.

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- 12.4 Even then, PRASA did not launch new review proceedings (and nor did it pay Siyangena in respect of the work performed).
- 12.5 Thus, in February 2018, Siyangena pre-emptively launched what has now become known as the "*counter application*", seeking payment under the contract even should PRASA's threatened second review application succeed.
- 12.6 In March 2018 (and in response thereto), PRASA launched the second review application – these proceedings (under case number 14332/2018).
- 12.7 All parties recognised the urgency of the application, and the Deputy Judge President enrolled the matter as a Special Motion for 27, 28 and 29 June 2018 – just three months after it was launched.
- 12.8 On 20 April 2018, PRASA launched an application under Rule 30A requesting inspection of the "as-built plans" of various of its stations. On 25 May 2018, Siyangena agreed to grant PRASA such access, and the full set of as-built drawings was delivered to PRASA on 7 June

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2018. PRASA's insistence on the delivery of these documents to it – notwithstanding that they were all *already* in PRASA's possession – was the cause of the first adjournment since PRASA then insisted that it needed a considerable period (more than a month) to peruse the plans that had been provided to it.

12.9 On 25 May 2018, #UniteBehind launched its application to intervene in the application as a Co-Applicant, alternative *amicus curiae*".

12.10 By this time, it had become clear to Siyangena that PRASA appeared to be attempting to delay the finalisation of this application. Accordingly, Siyangena's attorneys addressed a series of correspondence to PRASA's attorneys – Werksmans – alerting them with regard to the delay. I annex a copy of this series of correspondence marked "C".

12.11 A meeting was held at the Office of the Deputy Judge President and on 21 August 2018, the matter was enrolled for 5, 6, 7 and 8 March 2019.

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- 12.12 On 5 March 2019, #UniteBehind was granted leave to intervene as an *amicus curiae* on limited terms. Thereafter, on 8 March 2019, an Order was granted directing PRASA to serve the application on a number of PRASA employees and former employees (referred to as "witnesses") who were to be invited to file affidavits in response to allegations against them. A timetable provided for the filing of replying affidavits in response to those affidavits. This order (and further postponement) was necessitated because PRASA had, in its affidavits, made allegations of fraud and impropriety as regards the witnesses – its present and former employees – but had neither sought instructions from those witnesses, nor provided them with an opportunity to comment or rebut the allegations against them.
- 12.13 Affidavits were filed by 8 witnesses between 29 April 2019 and 16 May 2019.
- 12.14 PRASA did not comply with the Order regarding its replying affidavit, and again sought to drag out the proceedings.

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- 12.15 On 3 September 2019, at a further case management meeting before Judge Poterrill, PRASA was directed to file its replying affidavit to the witness affidavits, and the matter was enrolled as a special motion from 24 to 28 February 2020.
- 12.16 PRASA filed its replying affidavit on 29 November 2019.
- 12.17 This was the last step that Werksmans took in these proceeding.
- 12.18 On 14 January 2020, Werksmans issued notices of withdrawal as attorneys of record in both PRASA's application and Siyangena's counter-application.
- 12.19 On 13 February 2020 (a month later), #UniteBehind issued this application for a postponement and ancillary relief.

#UniteBehind's primary relief – postponement of the application

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13 The clear aim of #UniteBehind's application is to have the application postponed from the hearing dates of 25 February 2020. In this regard, each of the many alternative prayers is directed at adjourning the proceedings. This is clear from para 67 of the affidavit where #UniteBehind states: "In the event that the Court does not grant the interim stay of proceedings, then, irrespective of which of #UniteBehind's other relief the Court is inclined to grant (and even if it is not inclined to grant any relief), #UniteBehind submits that the matter must, in any event, be postponed".

14 #UniteBehind even goes so far to state that, should the relief it seeks not be granted, it needs further time "to enable #UniteBehind to prepare to argue the matter" (para 71.2). There is no basis for this submission. #UniteBehind has been competently represented throughout these proceedings and has known about these hearing dates for months. Full heads of argument have been filed. The suggestion that further time is needed for preparation gives the lie to this entire application, which is squarely aimed at preventing the application from proceeding on Monday 24 February 2020.



15 It is clear from the foregoing chronology that Siyangena has made every effort to have the issues in this application adjudicated without delay. On the contrary, the attitude of PRASA, and now #UniteBehind, has been to delay and obstruct proceedings.

16 The application has been set down for special allocation twice previously:

16.1 the first was delayed because PRASA insisted on access to various as-built drawings. (As an aside, I point out that PRASA's legal team then spent a number of *months* purportedly analysing those drawings, but has at no stage in any affidavit even referred to those drawings. One can infer from this that the as-built drawings did not further PRASA's case; and / or that the request for access was used as a stratagem to delay.)

16.2 the second was delayed because PRASA had failed to serve its application on various interest parties against whom allegations were made, or to provide such persons with an opportunity to respond to those allegations.

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- 17 Now #UniteBehind (who is not even a party to the litigation, but merely an *amicus* or friend of the court) seeks again to delay these important proceedings. The basis for the delay is that PRASA's attorneys have withdrawn.
- 18 Courts are all too familiar with these last-minute postponement applications. In *Take and Save Trading CC v Standard Bank of SA Ltd*, Harms JA said:¹

'One of the oldest tricks in the book is the practice of some legal practitioners, whenever the shoe pinches, to withdraw from the case (and more often than not to reappear at a later stage), or of clients to terminate the mandate (more often than not at the suggestion of the practitioner), to force the court to grant a postponement because the party is then unrepresented. Judicial officers have a duty to the court system, their colleagues, the public and the parties to ensure that this abuse is curbed by, in suitable cases, refusing a postponement. Mere withdrawal by a practitioner or the mere termination of a mandate does not, contrary to popular belief, entitle a party to a postponement as of right.'

- 19 And as the Constitutional Court held in *Lekolwane & another v Minister of Justice and Constitutional Development*:²

¹ *Take and Save Trading CC v Standard Bank of SA Ltd* [2004] ZASCA 1; 2004 (4) SA 1 (SCA) para 3.

² *Lekolwane & another v Minister of Justice and Constitutional Development* [2006] ZACC 19; 2007 (3) BCLR 280 (CC) para 17. See also *National Police Service Union v Minister of Safety and Security* [2000] ZACC 15; 2000 (4) SA 1110 (CC) at 1112C-F.

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'The postponement of a matter set down for hearing on a particular date cannot be claimed as a right. An applicant for a postponement seeks an indulgence from the court. A postponement will not be granted, unless this court is satisfied that it is in the interests of justice to do so. In this respect the application must ordinarily show that there is good cause for the postponement, whether a postponement will be granted is therefore in the discretion of the court. In exercising that discretion, this Court takes into account a number of factors, including (but not limited to) whether the application has been timeously made, whether the explanation given by the applicant for postponement is full and satisfactory, whether there is prejudice to any of the parties, whether the application is opposed and the broader public interest.'

20 An analysis these factors identified by the Constitutional Court overwhelmingly militate against the granting of a postponement in this case.

20.1 The undisputed facts demonstrate that Siyangena was appointed to perform certain work for PRASA; that it performed the work in question and that it continued to receive instructions from PRASA well after this litigation commenced. Yet, PRASA has drawn out its claim for payment for over five years.

20.2 #UniteBehind has brought this application at the last possible moment – just 6 court days before the opposed application which is set down for 5 days before a Full Court and in circumstances where it has known of

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the Administrator's appointment for more than 2 months and of Werksmans' withdrawal for more 1 month (since 14 January 2020).

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20.3 In the premises, this application (if it were to be brought at all) ought to have been brought far sooner, and directly following 14 January 2020. The explanation as to what steps #UniteBehind took during this period is inadequate – it does not provide a reasonable explanation for the inaction covering the full period of the delay – and the urgency in this application is self-created. It falls to be dismissed on this basis alone.

20.4 The prejudice to Siyangena should the postponement be granted is vast: it is owed sums in the billions of rands for work it has performed at the instance of PRASA. It commenced arbitration proceedings in 2015, but these proceedings have been stalled by PRASA for more than five years. In addition to the cash flow difficulties it has experienced, Siyangena is under considerable pressure from SARS to pay tax in respect of the amounts which are the subject of these

proceedings. I annex in this regard marked "D1" and "D2" respectively:

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- 20.4.1 a letter received from SARS's attorneys on 17 February 2020 in which SARS records its concern that the hearing set down for 24 February 2020 "*may not proceed*", and requests an explanation therefor. SARS further agreed to grant Siyangena an extension for compliance until 9 March 2020.
- 20.4.2 Siyangena's attorneys response to SARS dated 18 February 2020 which explains that Siyangena is employing all possible efforts to have the matter heard.
- 20.5 SARS is, justifiably, anxious about any further delay.
- 20.6 The public interest, too, favours the finalisation of this application. For every month that passes, interest increases and this must be funded by the public purse – indeed, given the scope of the debt, the amount in question increases by some R1 million *per day*.

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20.7 Finally, the proper of administration of justice demands that litigants are entitled to finality in their proceedings, and that Courts must turn their face against undue or inordinate delay.³

21 In the premises, the application for a postponement should be rejected.

#UniteBehind's reliance on the Cape Town review proceedings

22 In an effort to overcome the obvious injustice that would be incumbent in any further delay, #UniteBehind attempts in its relief to link the postponement to the finalisation of its own review application filed in the Cape Town High Court under case number 2058/20, (including any appeals) – “*the Cape Town proceedings*”.

23 In the Cape Town proceedings, #UniteBehind contends that the appointment of the Administrator to PRASA in December 2019 was unlawful.

³ See *State Information Technology Agency SOC Limited v Gijima Holdings (Pty) Limited* [2017] ZACC 40; 2018 (2) SA 23 (CC); 2018 (2) BCLR 240 (CC) at para 49.

- 24 That application is purportedly set down for Tuesday 17 March 2020, but I am advised that in the Cape High Court, the matter, if opposed, will likely not be resolved on that date. Rather, a further date will have to be set, which will likely be a few months later. Once judgment is granted and all appeals are finalised (including potentially appeals to the SCA and the Constitutional Court), the matter might take years to finalise.
- 25 Even if #UniteBehind ultimately succeeds in that application, a further period of three months is provided for a Board to be appointed and further time frames provided for decisions to be taken.
- 26 What is clear from an analysis of the Notice of Motion in the Western Cape Review proceedings (p. 49 of the postponement application papers) is that the matter will not be finalised quickly, and probably not this year.
- 27 Thus, to the extent that Siyangena's application is postponed pending the outcome of that decision, Siyangena's application, too, will suffer the same fate – further indefinite postponement, and great prejudice to Siyangena and the public as set out above.

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- 28 Furthermore, there is simply no rational basis to link the two applications, and no basis to contend that the appointment of the Administrator was linked to Werksmans' decision to withdraw.
- 29 It is not the Board of an organ of state that appoints or pays attorneys. #UniteBehind's submission that, if it succeeds in having the Administrator set aside, then PRASA will re-engage Werksmans is conjecture, and devoid of any factual basis.
- 30 On the contrary, there is another equally likely interpretation for the withdrawal of PRASA's attorneys, which is that PRASA has "seen the writing on the wall" in this application, as it were, and has decided to step back from the ring. (Indeed #UniteBehind recognises this possibility at para 20 of its affidavit where it indicates that it is unclear whether PRASA intends to proceed with the litigation at all).
- 31 The attempt to associate these two separate applications, brought in separate courts, with relief which is entirely irrelevant to one another – one relating to historical PRASA contracts and the other relating to the future governance of the organ of state – is unavailing.



32 #UniteBehind makes the allegation at para 18 of its affidavit that on 9 December 2019, the Minister of Transport dismissed the entire PRASA Board of Control. It states further that the entire running of PRASA has been taken over by a "sole Administrator".

33 It is factually not correct that the Administrator acts on his own. As the website screenshot annexed to this affidavit marked "E" demonstrates, the Administrator has appointed a Technical Advisory Team made up of qualified professionals who are prominent experts in Finance, Supply Chain Management, Communications, Legal and Governance, Engineering and Rail Operations. The team has been drawn from Government Departments and other SOEs including the National Treasury, CSIR and business.

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34 #UniteBehind's insinuation that the appointment of Mr Themba Camane as one of the Technical Advisors can be linked to Werksmans' withdrawal as attorneys is unfounded. Indeed, the Technical Advisors were appointed nearly three weeks *after* Werksmans' withdrawal, and Mr Camane himself can have played no role in those proceedings. Indeed, there are many within PRASA – employees and senior management – who support Siyangena's claims. An analysis of the witness affidavits filed in these proceedings makes this clear.

35 #UniteBehind's somewhat vague allegation that "*it appears to be within the Administrator's sole discretion whether PRASA will continue to participate in this litigation*" (para 29 of its affidavit) is similarly without any factual foundation and is #UniteBehind's speculation. Siyangena's attorneys directed numerous letters to the Administrator alerting him of the upcoming hearing and I append hereto marked "F" a bundle of correspondence.

#UniteBehind's attempts to compel PRASA to appoint attorneys



36 The next alternative proposed by #UniteBehind in order to achieve its postponement is an order directing PRASA to "take all steps necessary to, and in fact, appoint and instruct appropriately qualified attorneys as the attorneys of record in this matter" (prayer 2.1). This relief would (so #UniteBehind makes it clear) also necessitate a postponement of the application.

37 This relief is incompetent. Neither #UniteBehind nor this Court has the power to compel a party to adopt any stance in litigation, or to be represented in circumstances where it has chosen not to be.

38 Nor can this Court force a party to proceed to prosecute (or defend) a matter where that entity has adopted a stance that it no longer wishes to involve itself in the litigation.

#UniteBehind's attempts at a second bite at the cherry

39 The next, alternative order proposed by #UniteBehind is that #UniteBehind should be granted leave to intervene as the Second Applicant in these proceedings.

40 This relief is *res judicata* and incompetent.

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- 41 When #UniteBehind sought leave to intervene in these proceedings, it applied (in the main) to be admitted as an intervening party i.e the second applicant. This application was refused, and #UniteBehind was, instead, granted limited rights to intervene as an *amicus*.
- 42 #UniteBehind has presented no new facts which would change the *interest* that it has in the application - which is the applicable test. Accordingly, this issue is *res judicata*. It has already been determined that #UniteBehind does not meet the threshold of a direct and substantial interest in these proceedings. The mere fact that PRASA's attorneys have withdrawn does not change this outcome and it does not affect #UniteBehind's lack of direct interest to do so.
- 43 #UniteBehind relies for its purported right to intervene on the fact that certain PRASA officials had given evidence before the Public Protector and in their affidavits in this application that the impugned contracts with Siyangena were unlawful. But this is the same evidence that it had placed before the Court previously in its application to intervene.

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44 Moreover, since that intervention hearing (on 5 March 2019), the officials in question – the “witnesses” referred to above – have produced affidavits explaining the basis on which the contracts were lawfully entered into and executed. Accordingly, there is even *less* basis to grant #UniteBehind leave to intervene now than there was then.

45 #UniteBehind was invited in the Directive of Poterril J to file supplementary heads of argument dealing with the evidence of the witnesses if it wished to do so. It elected not to do so, and only Siyangena accepted that invitation and filed supplementary heads of argument as contemplated. These witness affidavits are highly damaging to #UniteBehind’s case (and PRASA’s case), and its failure to deal with them (either in supplementary heads of argument or in its affidavit in this postponement application) is telling.

46 There is also the issue of costs, which arises should #UniteBehind be granted leave to intervene as (the sole) Applicant before this Court. Siyangena has expended millions of rands in legal fees in defending PRASA’s now-abandoned applications. If Siyangena succeeds in opposing the review, it expects, in the ordinary course, to recover its costs from PRASA.



47 #UniteBehind states in its own papers that it is a donor-funded organisation with limited resources. As an applicant, it is a straw man.

48 #UniteBehind has not tendered to put up security for Siyangena's costs. This factor should militate strongly against the granting of leave to intervene as an applicant to #UniteBehind at this stage. Such intervention would neither be fair, nor would it be in the interests of justice.

49 Nor has #UniteBehind tendered to pay the wasted costs of any postponement application. This too militates against the granting of the postponement.

The next alternative: "granting #UniteBehind leave to argue the matter from the position of amicus curiae"

50 In prayer 2.3 of the notice of motion, #UniteBehind seeks an alternative prayer that it be granted "leave to argue the matter from the position of amicus curiae".

51 This relief is not understood.

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52 As *amicus curiae*, #UniteBehind has no procedural rights, including the right to adduce evidence, unless they are specifically granted by a court.

53 The Constitutional Court explained the status of an *amicus* in *Hoffman v South African Airways* thus:⁴

"An amicus curiae assists the Court by furnishing information or argument regarding questions of law or fact. An amicus is not a party to litigation, but believes that the Court's decision may affect its interest. The amicus differs from an intervening party, who has a direct interest in the outcome of the litigation and is therefore permitted to participate as a party to the matter. An amicus joins proceedings, as its name suggests, as a friend of the court. It is unlike a party to litigation who is forced into the litigation".

54 Where there is no applicant in review proceedings, the respondent is entitled, as of right, to apply for the application to be dismissed. #UniteBehind seeks to step into the shoes of the applicant. But this is not the role of the *amicus*. Nor is there any basis to permit #UniteBehind to revive PRASA's (abandoned) application – particularly where there may be good reason that PRASA has determined not to persist in the application.

⁴ *Hoffmann v South African Airways* [2000] ZACC 17; 2001 (1) SA 1 (CC); 2000 (11) BCLR 1235 (CC) at para 63.



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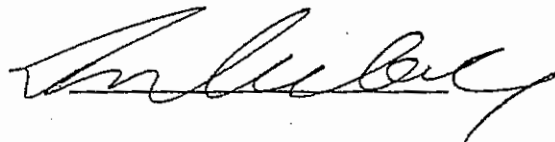
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CONCLUSION

55 The interests of justice demand that, after five years and multiple delays at the instance of PRASA and #UniteBehind, Siyangena is entitled to its day in Court. The public too is entitled to finality in these proceedings – and the cessation of the interest which runs at more than R1 million per day.

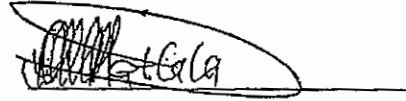
56 In the premises, it is submitted that #UniteBehind's application falls to be dismissed with costs. None of the relief which #UniteBehind seeks is competent or in the interests of justice.

WHEREFORE Siyangena prays that #UniteBehind's application dated **13 February 2020** is dismissed with costs.

**DEPONENT**

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Signed and sworn before me at PRETORIA on this 20 day
of FEBRUARY 2020 after the Deponent declared that he is
familiar with the contents of this statement and regards the
prescribed oath as binding on his conscience and has no objection
against taking the said prescribed oath.



COMMISSIONER OF OATHS

RAMATSOBANE LEBOGANG MATLALA
ATTORNEY / COMMISSIONER OF OATHS
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Ex Parte: PASSENGER RAIL AGENCY OF SOUTH AFRICA ("Consultant")

In re: SIYANGENA TECHNOLOGIES ("Siyangena")

Tender Number SG/GATES/002/2009

Tender Number HO/FM-CRES/142/09/2013

Prepared for: Werksmans Attorneys

Attention: Mr. Corlett Manaka and Ms Sarah Moerane

OPINION

A. *Introduction*

1. We are instructed that

- 1.1. Notwithstanding the opinion already furnished to Consultant, ("first opinion")¹ and the review application launched in the Northern Gauteng High Court under case number: 7839/16 ("review application"), Consultant has continued to demand performance from Siyangena based on the JBCC Agreements concluded between the parties and further Siyangena continues to render such performance pursuant thereto;

¹ Dated 30 November 2015;

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- 1.2. The instructing attorneys have, on numerous occasions, advised Consultant to issue notices to Siyangena to suspend Siyangena's performance or execution of the work at the various sites or stations²;
- 1.3. The instructing attorneys have further advised Consultant to put contingency plans in place to ensure that Consultant's operations are not disrupted once Siyangena's personnel exit the Consultant's various sites;
- 1.4. To date, Consultant has not followed or implemented the aforesaid advice given to it by its legal representatives;
- 1.5. In view of the said scenario, we have therefore been requested to prepare an opinion dealing with the following issues:
- 1.5.1. the impact, if any, of Consultant's continued insistence or persistence in demanding performance from Siyangena based on the JBCC Agreements; and
- 1.5.2. the manner in which Consultant can possibly mitigate such impact to the extent possible.

² We record that we have previously settled the notices of suspension of work by Siyangena;


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2. In this opinion, we deal with the following topics or subheading:
- 2.1. Firstly we deal with the impact, if any, of Consultant's continued insistence or persistence in demanding performance from Siyangena;
- 2.2. Secondly we proceed to deal with steps, if any, that Consultant can take to mitigate such impact; and
- 2.3. Then we conclude to advise Consultant accordingly.
3. Based on the facts presented to us, the convenient starting point is, in our view, to have regard to the impact or the implications of Consultant's continued insistence on performance from Siyangena in terms of the JBCC Agreements concluded between Consultant and Siyangena.
- B. *The implications of Consultant's persistence in seeking performance based on the JBCC Agreements*
4. The Consultant's act of demanding performance (and presumably effecting corresponding payments in favour of Siyangena) in exchange for the performance rendered or tendered (or both) is in, our view, a total disregard of the legal advice already furnished to Consultant, but more importantly has a potential to negatively

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impact the future conduct of the Consultant's pending review application as we point out below.

5. We have already advised that:

5.1. In our view, the JBCC Agreements which were concluded between Consultant and Siyangena are susceptible to being set aside and/or are likely to be found to be invalid in light of the irregularities that have been highlighted in both the opinion and the review application³;

5.2. Consultant was invited, in paragraphs 38.1 to 38.10 of the first opinion, to consider the following factors:

5.2.1. The status of the contract between Consultant and Siyangena until the Court, having jurisdiction, ultimately pronounces on the allegations of corruption and fraud;

5.2.2. The Consultant's desire to (still) access and make use of the equipment which was procured under the agreement which equipment is presently in the hands of Siyangena;

³ See paragraph 34 of the first opinion - we further record that we have had sight of corroborating evidence / facts pointing to instances of irregularity and improper benefit by the officials of PRASA;

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- 5.2.3. The likelihood or potential negative impact of service delivery to members of the public who utilize Consultant's train infrastructure in the event of immediate termination of the agreement;
- 5.2.4. The adverse cost implication, if any, of replacing the Siyangena's equipment with an equipment of a third party;
- 5.2.5. The viability of third party being accredited to install and maintain the equipment concerned in respect of the balance of the JBCC agreements at hand);
- 5.2.6. The processes, procedure and the passage of time involved in securing the necessary accreditation from the owners of the software in the event Consultant takes the view to terminate the agreement or to set aside the award of tender;
- 5.2.7. The disruptions, if any, to be caused between the date of termination of the JBCC agreements between Consultant and Siyangena until a suitable third party is identified and awarded the balance of the JBCC Agreements;

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5.2.8. A reflection on the feasibility or viability, if any, of maintaining an uninterrupted execution of the agreements by Siyangena in favour of Consultant in view of Consultant's express wish or desire to make use of Siyangena's equipment (notwithstanding the serious allegations levelled against Siyangena); and

5.2.9. Any other relevant fact.

6. Regrettably, Consultant has not advised us, of its intention, in regard to the aforesaid issues raised in the first opinion, particularly in regard to Consultant's continued act of accessing and making use of equipment which was procured pursuant to the JBCC Agreements.
7. We further add that the Consultant's conduct is contrary to the *dicta* in *Allpay Consolidated Investments Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency and Others*⁴:

"[25] Once a ground of review under PAJA has been established there is no room for shying away from it. Section 217(1)(a) of the Constitution requires a decision to be declared unlawful..."

⁴ 2014 (1) SA 604 (CC), 614 at para 25;

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8. In our view, the Consultant's continued demand for performance despite the institution of the review application and the averments made therein (of irregularity and improper benefit) may be viewed, by the Court, as shying away from the grounds of review itself.
9. In the event Consultant is to persist to demand performance from Siyangena beyond this juncture, the strength of Consultant's grounds of review may, inevitably, diminish by the time the matter is argued in Court, alternatively the review application may become purely academic or an exercise in futility.
10. We invite Consultant, once more, to clearly decide on the course of action it prefers or intends to embark upon without sending "mixed signals" as both the institution of the review application with a view to, *inter alia*, set aside the JBCC Agreements concerned and the demand of performance by Siyangena and the corresponding payment are mutually destructive and incapable of co-existence. The existence of one approach excludes the existence of the other in its entirety.
11. The nature of the relief sought, in our view, falls outside of the realm of the traditional remedies in the sphere of the law of contract. Hence, the question of demand for performance and the performance by Siyangena and the corresponding payment should be resolved within the review (public law) context.

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12. We have already dealt with the issue of an appropriate remedy in the first opinion and we cannot sufficiently emphasize the importance thereof at the conclusion of the matter. In *Allpay (supra)*⁵ the Court had the following to say in that regard:

[29] In *Steenkamp Moseneke DC* stated:

'It goes without saying that every proper performance of an administrative function would implicate the Constitution and entitle the aggrieved party to appropriate relief. In each case the remedy must fit the injury. The remedy must be fair to those affected by it and yet vindicate effectively the right violated. It must be equitable in the light of the facts, the implicated constitutional principles, if any, and the controlling law. It is nonetheless appropriate to note that ordinarily a breach of administrative justice attracts public-law remedies and not private-law remedies. The purpose of a public-law remedy is to pre-empt or correct or reverse an improper administrative function ... Ultimately the purpose of a public remedy is to afford the prejudiced party administrative justice, to advance efficient and effective public administration

⁵ At paragraph 29.

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compelled by constitutional precepts and at a broader level, to entrench the rule of law."

[30] *Logic, general legal principle, the Constitution and the binding authority of this court all point to a default position that requires the consequences of invalidity to be corrected or reversed where they can no longer be prevented. It is an approach that accords with the rule of law and principle of legality."*

[32] *This corrective principle operates at different levels. First, it must be applied to correct the wrongs that led to the declaration of invalidity in the particular case. This must be done by having due regard to the constitutional principles governing public procurement, as well as the more specific purposes of the Agency Act. Second, in the context of public-procurement matters generally, priority should be given to the public good. This means that the public interest must be assessed not only in relation to the immediate consequences of invalidity - ... - but also in relation to the effect of the order on future procurement ..."*

[33] *The primacy of the public interest in procurement ... must also be taken into account when the rights, responsibilities and obligations*

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of all affected persons are assessed. This means that the enquiry cannot be one-dimensional. It must have a broader range."

13. It may very well be that Consultant may seek to argue that the use or employment of Siyangena's equipment was necessary and therefore just and equitable so that service delivery is not negatively affected by the suspension of works by Siyangena.
14. The Court in *Allpay*⁶ (*supra*) had an opportunity to consider the practicality of a proper remedy within the context of the facts in that matter and the Court said:

"[7] *The key question is whether the implementation of a new system would cost SASSA more than it is currently paying for the service. Because the cost of ordering a fresh tender is the normal consequence of an unlawful tender process, any expenses considerations must be viewed in light of the benefits of a more competitive tender. This underlies the principle of section 217 of the Constitution that fair public tendering leads to more cost-effective solutions."*

"[16] *The public has an interest in having a procedurally correct process, but this must be balanced against the essential need for uninterrupted service delivery in line with the obligations under ss 27 and 28 of the*

⁶ At paragraph 7;

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Constitution. SASSA contended that the contract is too far advanced to be undone, and that it is strongly in the interests of grant beneficiaries that the contract be allowed to run to completion. There has been no finding of fraud or corruption, and little or no loss to the unsuccessful tenderers, who in all likelihood would not have won the tender even under a different process.

17. However, SASSA contended that, if the court were to declare the contract invalid, its declaration should be suspended for three years, until the contract expires. If the court were to set aside the tender before the expiration of the current contract, given the time it would take to run a new tender process, the declaration of invalidity should be suspended for two years, which would allow SASSA sufficient time to take over the administration of the payment system."
15. In our view, Consultant's position and the facts of its case are not similar with the facts in Allpay (*supra*) based on what we have already advised thus far in the initial and in this opinion.
16. Furthermore, we foresee various practical difficulties confronting Consultant should the *status quo* remain. By way of example Consultant is required to apply its mind on:

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- 16.1. What would be the status of the payments made by Consultant to Siyangena after the institution of the review application? - this question would become relevant in the event Consultant may, in future, seek to recover damages against Siyangena. To that end, Consultant is referred to an affidavit deposed to by Mr. Ernst Swanepoel dealing with the shortcomings inherent in the Siyangena installed system and works at the various stations;
- 16.2. The remedies sought in Consultant's notice of motion may be redundant or un-enforceable in view of Consultant's demand for performance and effecting corresponding payments which fly in the face of review application;
- 16.3. It is ultimately the discretion of Court to pronounce on what would be the appropriate remedy based on the facts of the matter⁷ - As at present, it is difficult to reconcile the remedies sought in the notice of motion and the Consultant's demand for performance based on the terms of the JBCC Agreements;

⁷ We have already advised, in the first opinion, that what is an appropriate remedy is a factual enquiry which is dependent on facts of each particular case;

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C. *Proposed steps to mitigate the impact caused by Consultant's aforesaid conduct*

17. In the event Consultant still seeks to pursue the review application and the prayers sought therein, we propose that Consultant should urgently ensure that it has, at its disposal, the necessary (skilled) personnel, equipment and the know how to take over the services that Siyangena presently renders to or in favour of Consultant and by extension to the public at large. Service delivery should not be hampered at all times.

18. Once that has been done, Consultant is further advised to urgently dispatch the notices of suspension of works until Consultant's review application is determined in Court.

19. Ancillary to our advice we further opine that Consultant must make available the following information:

19.1. -A reconciliation of all payments made by Consultant in favour of Siyangena (including the recent payments, if any, after the institution of the review application);

19.2. A written indication whether Consultant, through its Board, intends to make use of the equipment which is presently in the hands of Siyangena;


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19.3. Whether or not Consultant intends to terminate the JBCC Agreements it has with Siyangena; and

19.4. In the event Consultant is intent on terminating all the legal relationships it has with Siyangena, the feasibility of finding a suitable and/or a replacement entity that would be capacitated and accredited to install and maintain the outstanding equipment, thereby executing the balance of the JBCC Agreements.

D. *Conclusion*

16. We have addressed each of the issues on which our opinion and advice are sought. We therefore advise accordingly.

17. In the event any of the issues referred to or dealt with in this opinion remain unclear, kindly don't hesitate to contact the writers hereof.

DATED AT SANDTON ON THIS THE 29TH DAY OF APRIL 2016.


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Vincent Maieka SC

Emmanuel Mokuwa



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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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Case No.: 14332/18

In the matter between

PASSENGER RAIL AGENCY OF SOUTH AFRICA

Applicant

and

SIYANGENA TECHNOLOGIES (PTY) LTD

First Respondent

RETIRED JUSTICE EZRA GOLDSTEIN

Second Respondent

RETIRED JUSTICE MEYER JOFFE

Third Respondent

and

#UNITEBEHIND

Amicus Curiae

CHRONOLOGY OF EVENTS AND EFFORTS BY SIYANGENA TO HAVE
MATTER HEARD WITHOUT DELAY.

	DATE	EVENT
1	12/10/2015	Siyangena launches arbitration proceedings in respect of Phase 1 Contract
2	15/10/2015	Siyangena launches arbitration proceedings in respect of Phase 2 Contract
3	02/02/2016	PRASA launches first review application under case number 7839/2016

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4	29/04/2016	PRASA receives legal opinion from its own counsel alerting PRASA to the continued contract instructions given to Siyangena whilst disputing the agreement
5	16/05/2016	PRASA issues notices of suspension of works to Siyangena
6	19/05/2016	Siyangena institutes an urgent application under case number 4077/2016
7	27/05/2016	Siyangena obtains a court order under case number 4077/2016 interdicting PRASA from refusing Siyangena access to site.
8	03/05/2017	PRASA's first review application dismissed with costs.
9	31/05/2017	Siyangena directs letter to Minister of Transport Joe Maswanganyi to alert the Department of Transport of circumstances.
10	07/07/2017	PRASA's application for leave to appeal is dismissed with costs.
11	21/07/2017	PRASA petitions the Supreme Court of Appeal ("SCA").
12	21/08/2017	Siyangena institutes arbitration proceedings in respect of the Addendum.
13	22/08/2017	PRASA's petition is dismissed by the SCA.
14	01/09/2017	PRASA attorneys inform arbitrator that it replaced its previous counsel with a new set of counsel.
15	05/09/2017	Judge Goldstein enrolls arbitration on Phase 1 for 19 and 20 October 2017. Matter postponed.
16	21/09/2017	PRASA makes application to the President of the SCA to refer the decision to refuse PRASA leave to appeal to the court for reconsideration.
17	07/11/2017	PRASA's reconsideration application is dismissed with costs.
18	19/02/2018	Siyangena launches its urgent application under case number 11314/2018 in absence of any further action taken by PRASA since 7 November 2017.
19	05/03/2018	PRASA launches its second review application under case number 14332/2018.
20	13/03/2018	Receive directive from Deputy Judge President enrolling the matter as Special Motion for 27, 28 and 29 June 2018.
21	13/03/2018	Directive issued by the Deputy Judge President.
22		PRASA attorneys serves notice in terms of Rule 35(12).

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23	26/03/2018	Siyangena launches its Rule 7 urgent application under case number 14332/2018
24	28/03/2018	Siyangena complies with PRASA's Rule 35(12) notice.
25	29/03/2018	PRASA launches its Rule 7 counter application under case number 14332/2018
26	12/04/2018	Meeting at Office of Deputy Judge President.
27	20/04/2018	PRASA launches application under Rule 30 for inspection of As-Built Plans.
28	09/05/2018	Meeting at Office of Deputy Judge President.
29	25/05/2018	#Unitebehind launches its application to intervene.
30	25/05/2018	PRASA's Rule 30 application enrolled for hearing with regards to As-Built Drawings heard and order obtain by agreement in terms of which PRASA is allowed to inspect all As-Built Drawings as per court order.
31	07/06/2018	Siyangena delivers full set of As-Built Drawings to PRASA's attorneys.
32	18/06/2018	PRASA legal team and experts inspect original As-Built Plans as per court order.
33	20/06/2018	Letter to Werksmans confirming compliance by Siyangena with the order dated 25 May 2019.
34		PRASA launches urgent application to interdict Siyangena from proceeding with Arbitration
35	28/06/2018	PRASA attorneys called upon to file opposing affidavit pursuant to compliance by Siyangena of Rule 30 order dated 25 May 2018.
36	29/06/2018	Letter directed to Werksmans Attorneys alerting PRASA's attorneys of delay
37	02/07/2018	Letter directed to Werksmans Attorneys alerting PRASA's attorneys of further delay.
38	21/08/2018	Meeting at Office of the Deputy Judge President.
39	21/08/2018	Directive issued by Deputy Judge President, matter enrolled for 6, 7 and 8 March 2019.
40	05/03/2019	#Unitebehind allowed as Amicus Curiae on limited terms.
41	08/03/2019	Order granted for filing of further affidavits by affected witnesses.

42		<p>Witness affidavits filed on following dates:</p> <p>Mr M Bopape - 29 April 2019;</p> <p>Mr J Sindane - 30 April 2019;</p> <p>Mr L Gantsho - 30 April 2019;</p> <p>Mr S Khuzwayo - 2 May 2019;</p> <p>Mr L Montana - 3 May 2019;</p> <p>Mr C Mbatha - 10 May 2019;</p> <p>Mr J Phungula - 10 May 2019;</p> <p>Mr MZ Mohube - 16 May 2019 .</p>
43	03/09/2019	Case management meeting before Honourable Judge Potterill.
44	09/09/2019	Directive issued by the Deputy Judge President, matter enrolled as Special Motion on 24 to 28 February 2020.
45	29/11/2019	PRASA files its replying affidavit to witness affidavits.
46	30/11/2019	Letter received from PRASA Acting CEO being aware of the pending litigation referencing outstanding accounts.
47	14/01/2020	Werksmans notices of withdrawal as attorneys of record received.
48	21/01/2020	Letter directed to the Administrator of PRASA by Siyangena.
49	22/01/2020	Letter received from Werksmans Attorneys directed to Honourable Judge Potterill advising of Werksmans' prospect of reappointment.
50	24/01/2020	Letter Siyangena attorneys to Werksmans and PRASA Administrator.
51	03/02/2020	Letter Werksmans Attorneys to Administrator of PRASA (circulated in media article referring to a meeting on 28 January 2020 planning a postponement of the hearing (paragraph 8.2 of the letter).
52	04/02/2020	Letter directed to the Administrator of PRASA by Siyangena attorneys alerting PRASA of upcoming hearing.
53	13/02/2020	Letter directed to Judges and PRASA.
54	13/02/2020	Notice of application by Amicus Curiae for stay of proceedings (received via email).

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LIST OF LETTERS DIRECTED TO MINISTERS OF TRANSPORT FROM TIME TO TIME		
1	31/05/2017	Letter directed by Siyangena attorneys to Minister of Transport Mr Joe Maswanganyi.
2	29/11/2017	Letter directed by Siyangena attorneys to Minister of Transport: Mr Joe Maswanganyi.
3	12/04/2018	Letter directed by Siyangena attorneys to Minister of Transport: Dr Blade Nzimande.
4	10/01/2019	Letter directed by Siyangena attorneys to Minister of Transport: Dr Blade Nzimande.
5	12/04/2019	Letter directed by Siyangena attorneys to Minister of Transport: Dr Blade Nzimande.
6	27/06/2019	Letter directed by Siyangena attorneys to Minister of Transport: Mr Fikile Mbalula.

RE


“ ”
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Simone Taljaard

From: Simone Taljaard <simone@vdmass.co.za>
Date: Friday, June 15, 2018 2:53 PM
To: 'Tom Dubek'
Subject: S493/23: SIYANGENA TECHNOLOGIES / PRASA - CASE NUMBER 11314/2018
Attachments: S493.23 WERKSMANS 19.doc; Passenger Rail Agency of South Africa / Siyangena Technologies (Pty) Ltd [WVOV-Litigation.FID394179]
Importance: High

Dear Tom,

Herewith a copy of a letter received from Werksmans as well as our response thereto.

Vriendelike groete/Kind regards

Simone Taljaard
Van der Merwe & Ass Inc
0876540209
62 Rigel Avenue
Waterkloof
Pretoria





van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

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Our Ref: MR GT VD MERWE/st/S493/23
You Ref: MR B HOTZ/J GOBETZ/S MOERANE/
SARC0001.789#5445404v1

URGENT

15/06/2018

Werksmans Attorneys
BHotz@werksmans.com
jgobetz@werksmans.com
SMoerane@werksmans.com

Dear Sirs and Madam,

**SIYANGENA TECHNOLOGIES (PTY) LTD / PRASA
CASE NUMBER: 11314/2018 – ACCESS TO DOCUMENTS IN
TERMS OF COURT ORDER OBTAINED ON 25 MAY 2018**

- 1 We refer to the abovementioned matter as well as your letter dated **14 June 2018**.
- 2 Your letter is misdirected and factually incorrect.
- 3 It is incorrect to submit that the drawings you, apparently, inspected on **5 April 2018** were A3 colour documents. On perusal of your own correspondence you will note that you, in fact, did not pursue any actual efforts to inspect the documents. In addition it is incorrect to state that those

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documents were in an A3 format.

- 4 The copies of the redacted as built plans **are clearly legible**. You are most welcome to indicate **where and to what extent** these copies are, apparently, illegible. We have a similar set of the redacted copies and it will be easy to identify and **reduce your generic complaint** to something with substance when the two sets are compared and you flag the items of concern.
- 5 The whole idea of the redacted copy is to prevent your client from unlawfully (and without paying therefor) utilising the plans (in order to side step your client's payment obligation towards our client).
- 6 It is therefore denied that the set of documents delivered to your correspondent on **7 June 2018** (to which you only responded on **14 June 2018**) did not comply with the requirements and/or provisions of the court order.
- 7 Your client **will be held liable for the costs of the copies** and the unsubstantiated effort to **litigate on a subsidy from our client** is rejected. With this attitude your client has caused us to receive instructions not to provide any further copies of any documents **until and unless all invoices have been paid in advance**.
- 8 In numbered paragraph 4 of your letter you indicate that "*in relation to some stations*" we have not provided you with "*complete sets of the drawings*". No further, better or more accurate indication of the alleged

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non-compliance is furnished despite the fact that those documents were delivered more than a week ago. We deny that you have been furnished with incomplete documents and we reiterate that our client has complied with the court order.

- 9 We take note of the fact that your client's experts are available to commence with the inspection of the unredacted drawings. We will have aforesaid available as from 09h00 on Monday morning, 18 June 2018. We will ensure that the drawings remain available for inspection for the rest of the week, same in line with the provisions of the order.
- 10 As much as you look forward "to receipt of proper and complete copies" of the drawings **your enthusiasm must be limited** to your complete failure to furnish us with any detail to which it is possible to respond.
- 11 It now seems to become more and more evident that your client was far less interested in the contents of these drawings (in any event completely irrelevant for purposes of your client's application or the papers you had to finalise and file months ago) and it seems as if this is just a further manoeuvre **to prevent your client's application from being heard in court.**
- 12 We conclude to record that your client's efforts to frustrate and delay its own "second review" application is noted and will be embroidered on in the papers we will file in due course. In doing so your client hides behind a notice in terms of Rule 35 filed **on your client's application.**

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13 As always all our client's rights remain strictly reserved.

Kind regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES

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Simone Taljaard

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From: Simone Taljaard <simone@vdmass.co.za>
To: 'BHotz@werksmans.com'; 'jgobetz@werksmans.com'; 'SMoerane@werksmans.com'
Subject: S493/23; SIYANGENA TECHNOLOGIES / PRASA CASE NUMBER: 11314/2018
Attachments: S493.23 WERKSMANS 22.doc

Vriendelike groete/Kind regards

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URGENT

20/06/2018

Werksmans Attorneys
BHotz@werksmans.com
jgobetz@werksmans.com
SMoerane@werksmans.com

Dear Sirs and Madam,

SIYANGENA TECHNOLOGIES (PTY) LTD / PRASA
CASE NUMBER: 11314/2018

- 1 We refer to the abovementioned matter as well as your further letters to us dated 19 June 2018.
- 2 The writer was present Monday morning when your experts commenced the inspection of the documents made available in terms of the court order. We went a step further and made a knowledgeable individual (employed by our client) available to guide the experts realising that your previous letters, clearly, did not appreciate the nature and extent of how the copies provided to your

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correspondent had to be read and/or interpreted.

- 3 There was, indeed, a discussion between the writer and your Ms Moerane but the conversation was a friendly **effort by both parties** to make the inspection as **comfortable and palatable as possible** for all, especially under circumstances where we still believe that the "*inspection*" of the "*as built plans*" is but an irrelevant and unnecessary delay of the matter. We will, however, address the aforesaid as and when your client **eventually** serves its long overdue papers.
- 4 There is no agreement as referred to in numbered paragraph 3 of your letter dated 19 June 2018. What we did agree to was that, to the extent that any of the documents provided to the experts (the redacted copies) were rendered useless as a result of the lack of colour, our client will replace the redacted copies with colour copies. As the inspection went along our client's representative, gratuitously, remained present and assisted your client's experts. At present it seems as if those items are limited to some "*layout plans*".
- 5 From the correspondence received from your offices it seems as if there are two remaining issues, the one being a request for **certain colour copies of redacted plans** whilst the other relates to **further documents/copies**.
- 6 As far as the writer could ascertain our client's Mr Wilsnach and your experts will identify the **list of redacted colour copies** required but we have not been furnished with same as of yet. As mentioned, we

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Understand these to be limited to a few identified/identifiable "layout plans".

- 7 The fact is that your experts confirmed that they **are able to work** with the copies at hand, here and there supplemented with notes made from the unredacted documents being the object of inspection.
- 8 On the second issue i.e. the **further documents of which your client requires inspection/copies**, we wish to record that the documentation made available **is the documentation our client can tender for inspection** under Rule 35 and the court order. Our client **does not have any further documents** for purposes of inspection **under your client's Rule 35 notice or the court order.**
- 9 As much as we appreciate that you have a **different purpose** with the inspection (some sort of an expert audit in terms of your mandate we assume) we confirm that **the documents we have made available for inspection** (and of which your client received copies in a redacted format) **are the documents our client can make available under the court order.** To the extent that your experts are unable to complete whatever instruction they have (from those documents) our client's rights remain reserved since the "*as built plans*" are the documents required to be made available under the order. We made available those documents our client has in its possession at this point in time.

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- 10 We conclude this letter to confirm that we will depose to an affidavit should it be necessary in order to confirm that **there are no further as built plans** available for purposes of inspection (than those currently at our offices and available to be inspected).
- 11 We conclude to repeat that your client received the required copies on **7 June 2018** and your client's experts have been afforded full access to all the unredacted as built plans as from the aforesaid date. They have been here every day since Monday.
- 12 Again, **your client's semaphore signalling further delay** is noted and recorded. The thrust of this whole exercise is to enable your client to complete its papers (which had to be done a long time ago) and we look forward to receipt of your client's papers. Further delay and failure to file (for months on end at the expense of the taxpayer) will be at your client's own risk and we will of course deal with the aforesaid in detail in our papers. Your client has an obligation and a duty to act with the required haste and promptness to ventilate and finalise the matter.
- 13 All our client's rights remain reserved. We will now take steps to have a date for the hearing of the matter allocated.

Kind regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES

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Simone Taljaard

From: Simone Taljaard <simone@vdmass.co.za>
Date: Thursday, June 28, 2018 12:43 PM
To: 'BHotz@werksmans.com'; 'Jgobetz@werksmans.com'; 'SMoerane@werksmans.com'
Subject: S493/23 SIYANGENA TECHNOLOGIES (PTY) LTD / PRASA
Attachments: S493.23 WERKSMANS 23.doc

Importance: High

Vriendelike groete/Kind regards

Simone Taljaard
Van der Merwe & Ass Inc
376540209
62 Rigel Avenue
Waterkloof
Pretoria





van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

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147

Director / Direkteur:
Gert van der Merwe (BLC, LLB)

Associates/Assosiate
Ilze Loots (LLB)
Ilze Mattheus (B.Com, LLB,
LLM)

Assisted by / Bygestaan deur:
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Tel: 087 654 0209
Fax/Faks: 012 343 5435
Email/Epos:
simone@vdmass.co.za

Our Ref: MR GT VD MERWE/st/S493/23

You Ref: MR B HOTZ/J GOBETZ/S MOERANE/tmp4
SARC0001.789#5598318v1

URGENT

28/06/2018

Werksmans Attorneys
BHotz@werksmans.com
jgobetz@werksmans.com
SMoerane@werksmans.com

Dear Sirs and Madam,

SIYANGENA TECHNOLOGIES (PTY) LTD / PRASA
CASE NUMBER: 11314/2018

- 1 We refer to the abovementioned matter as well as your letter to us dated 25 June 2018.
- 2 We have requested our client to consider the list of "the further drawings which your experts require".
- 3 Once the "list" was considered we will furnish you with our feedback.
- 4 We, again, repeat that your client's failure to pursue the matter and to persist with all sorts of excuses not to file

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papers will be dealt with in due course.

Kind regards.

— Gert van der Merwe
VAN DER MERWE & ASSOCIATES

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Simone Taljaard

From: Simone Taljaard <simone@vdmass.co.za>
To: 'BHotz@werksmans.com'; 'SMoerane@werksmans.com'; 'jgobetz@werksmans.com'
Subject: S493/23 - SIYANGENA TECHNOLOGIES (PTY) LTD / PRASA
Attachments: S493.23 WERKSMANS 24.doc

Vriendelike groete/Kind regards

Simone Taljaard
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Ilze Mattheus (B.Com, LLB,
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simone@vdmass.co.za

Our Ref: MR GT VD MERWE/st/S493/23

You Ref: MR B HOTZ/J GOBETZ/S MOERANE/tmp4
SARC0001.789#5598318v1

29/06/2018

Werksmans Attorneys
BHotz@werksmans.com
jgobetz@werksmans.com
SMoerane@werksmans.com

Dear Sirs and Madam,

SIYANGENA TECHNOLOGIES (PTY) LTD / PRASA
CASE NUMBER: 11314/2018

- 1 We refer to the abovermentioned matter as well as your letter to us dated 28 June 2018.
- 2 Should you wish for an extension of the time period provided for in the court order you may proceed to approach the court.
- 3 Your client's instruction to frustrate and delay is executed at your client's own peril and you need not remind us of your views as to when the time period provided for in the

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most recent court order commenced.

4 All our client's rights remain strictly reserved.

— Kind regards:

Gert van der Merwe
VAN DER MERWE & ASSOCIATES



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www.vzlr.co.za

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ATTORNEYS PROKUREURS

Van der Merwe and Associates Incorporated

EMAIL: simone@vdmass.co.za

Our Ref: T STEYN/TMC/MAT131479

Your Ref: MR GT VD MERWE/st/F113

17 February 2020

MJA FERREIRA AND OTHERS / SOUTH AFRICAN REVENUE SERVICE

REQUEST FOR EXTENSION UNDER SECTION 46(5) OF THE TAX ADMINISTRATION ACT

1. We acknowledge receipt of your letter of even date.
2. Our client welcomes the fact that your clients have agreed to the proposed dates of which you were advised in our previous letter, save for the date determined for compliance by Siyangena Technologies (Pty) Ltd ("Siyangena").
3. We note that the reason why your client did not agree to providing the requested response in respect of Siyangena by the end of this week, namely 21 February 2020, is its reference to the court case against a defaulting PRASA before a full bench on 24 February 2020, which is according to your letter enrolled for the duration of the whole of next week.
4. It has, however, come to our client's attention that the said hearing may not proceed on 24 February 2020 due to a recent application launched by an *amicus curiae* to stay the proceedings in light of the recent withdrawal of PRASA's attorneys of record. Will you kindly provide us with an update in this regard.

VZLR Inc. Reg. no. 1989/001203/21 Vat No: 4110107887 Directors/Direkteurs: C A van Rensburg B Proc (UP), F B van Biljon B Iuris LLB (UOVS), E Niemand B Comm LLB (UOVS), P Kruger BLC LLB (UP), J C Kriek LLB (NWU), T Kirchner LLB (UP), T Steyn B Comm LLB (UP) LLM (UNISA), J Dickason B Comm LLB (UP) LLM (NWU), J Robbertse B Comm LLB (UP), T W Snyman LLB (NMMU), M van Der Merwe LLB (UOVS), J W Joubert LLB (UNISA) M.Phil (Cum Laude) (UP), J H Rabie B Cons. Sci B Comm LLB (UP), B Singh LLB (UP) LLM (UNISA), T Fari LLB (UJ) LLM (UP), A Janse van Vuuren LLB (UP) Assisted By/Bygestaan Deur: Senior Associates/Senior Assosiate: R Mahomed LLB (NMMU), C du Toit LLB (UP), A van Niekerk B Comm LLB (UP), W Louw LLB (UP) Associates/ Assosiate: N Collett LLB (UP), F K Nong LLB (UL), I G Treurnich LLB (Cum Laude) (UP) Junior Associates/Junior Assosiate: S M Simeon LLB (UNISA), C T Falck B Comm LLB (US), P M Grimbeek LLB (UOVS), J Pillay BA (UKZN) LLB (UNISA), M Labuschagne LLB LLM (UP), V Mabuntana B Comm LLB (UP), P L Kekana LLB (UNISA), J Schubart LLB (UP), J I van Schalkwyk LLB (NWU) LLM (Cum Laude) (UP), L J Maloka LLB (NWU), S K Buthelezi LLB (UP), N Chettiar LLB (UP), M M Radebe LLB (NWU) Consultants/Konsultante: F E Geldenhuys B Iuris LLB (UP), W A van Velden BA LLB (UP), J A van Zyl B Proc (UP), R Coetzee B Proc (UP), O Venter LLB (UNISA), M Dixon LLB (UP), G C Germishuizen B Proc (UNISA), C M du Plooy B Proc (UNISA), F Prozesky BSc LLB (UP), J P H Maree LLB LLM (UP), L du Plooy LLB (UNISA) Albo At/Oak Te: Corner House, 1st Floor/ Vloer 1, 38 Nel Street/Nelstraat 38, Tel: (013) 752 2065, Fax/Faks: (013) 752 2472, P O Box/Postbus 556, Sonpark, 1206. Docex 40, Nelspruit And/En 35 Ferguson Road/Fergusonweg 35, Illova, Sandton, 2196. B-BBEE Status: Level 2 Contributor

RC

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5. As presently advised, and taking all the circumstances of this matter into account, our client is prepared to afford Siyangena a further extension as sought, namely until 9 March 2020.
6. Kindly acknowledge receipt hereof.

VZLR INC

~~Per. Theo Steyn~~

Direct telephone number: 0124359364
E-mail: theo@vzlr.co.za / tanita@vzlr.co.za

RL




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&
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Our Ref: **MR GT VD MERWE/st/F113**

You Ref: **MR T STEYN/TMC/MAT131479**

18 February 2020

URGENT

Van Zyl le Roux Attorneys
jowidene@vzlr.co.za

Dear Theo,

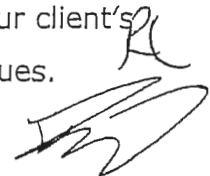
MJA FERREIRA AND OTHERS / SOUTH AFRICAN REVENUE SERVICE (SARS) – REQUEST FOR EXTENSION UNDER SECTION 46(5) OF THE TAX ADMINISTRATION ACT

1. We refer to the abovementioned matter and your letter to us dated **17 February 2020**.
2. We, firstly, thank your client for allowing **Siyangena** to comply with the notice by **9 March 2020**.
3. We note that you have been informed of the events transpiring in **PRASA's** application for the review of the agreements pursuant to which our client insists on payment for work done, executed and certified by **PRASA**.
4. As much as we are curious as to the source of your client's information we will gladly inform you of the

RC
[Signature]

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- developments in this regard. In fact, SARS is invited to have a representative at court on **24 February 2020** in order to witness the efforts we will employ to prevent the **PRASA** application from being delayed and/or postponed and/or stayed.
5. It has always been **Siyangena's** contention that **PRASA's** application for review is bad in law and bad in fact. It has, further, been **Siyangena's** contention that **PRASA** merely issued these applications (the previous application was dismissed with costs not only in the court a quo but also on appeal and on reconsideration in the Supreme Court of Appeal) to delay payment towards our client.
 6. **Siyangena** employed all possible efforts to have the matter heard whilst **PRASA** as the applicant resisted all efforts to ventilate their own case.
 7. On **14 January 2020** the **PRASA** attorneys (Werksmans) withdrew as attorneys of record and we have, since then, directed numerous letters to the Administrator of **PRASA** to alert him to the circumstances and to record that we will not allow the matter to be delayed.
 8. SARS must obviously be concerned in the event of a further delay since our client has always maintained the view that it will pay SARS whatever it may owe SARS at the time of an assessment. It can be no secret that our client will rely on payment from its trade debtors (like **PRASA**) in order to pay SARS if and when amounts fall due. As a consequence we believe that SARS has an indirect interest in having the matter heard seamlessly and it not being delayed.
 9. We have instructed counsel to prepare the necessary papers in order to oppose a stay and/or a postponement of the proceedings.
 10. If you so require a copy of the papers can be served on your offices in order to ensure that your client is continuously made aware of our client's intention to have the matter heard to resolve the outstanding issues.



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Kind regards.

Gert van der Merwe

VAN DER MERWE & ASSOCIATES



PRASA administrator appoints his technical advisory team

05 February 2020

The Passenger Rail Agency of South Africa (PRASA) Administrator, Mr Bongisizwe Mpondo has appointed his panel of Technical Advisors during his 12 months tenure.

"I am happy to announce the appointment of a Technical Advisory Team whose mandate is to assist my office turn the company's fortunes around. PRASA's promise to the customer has deteriorated to unacceptable levels leaving some passengers with no options in certain communities resulting in a drop in passenger train trips over the years" Said Mr Bongisizwe Mpondo, PRASA Administrator.

The South African Government, in particular the Department of Transport (DoT), has provided dedicated support to strengthen the number of State-Owned Entities (SOEs) under its stable through various interventions. PRASA is one of those Institutions that government would not want to see fail. The Department of Transport through Minister Mbalula is pulling all stops to make sure PRASA succeeds and the people of South Africa are provided with affordable, reliable and safe public transport.

The Technical Advisory Team will provide PRASA with critical technical expertise, and support the Administrator's Turn Around Strategy as well as advise the Administrator on a number of other critical aspects.

This team is made up of qualified professionals who are prominent experts in Finance, Supply Chain Management, Community Legal and Governance, Engineering and Rail Operations. The team has been drawn from Government Departments and others including the National Treasury, CSIR and business.

Members of the technical advisory team are:



o Dr. Mathetha Mokonyama - Dr. Mokonyama has been seconded from the Council for Science and Industrial Research (CSIR) to focus on optimising PRASA service design. Dr. Mokonyama holds a degree in civil engineering from the University of the Witwatersrand as well as a Master's and PhD in transportation engineering from the University of Pretoria.

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Mr. Krishna Govender – Mr. Govender is a qualified Chartered Accountant (CA) and will provide thought leadership in financial management of PRASA. Mr. Govender holds a Bachelor of Commerce Honours degree in Accounting from the University of Natal. He will strengthen revenue enhancement of the organisation. He is an expert in finance and economics with over 23 years of experience in accounting and financial management which he gained from various entities in both the public and private sectors. Mr. Govender served on a number of boards in the country.



Mr. Themba Camane – Mr. Camane is no stranger at PRASA and has over 25 years of experience in the fields of engineering, construction, real estate, and project management. He brings a wealth of operations experience to enable the turnaround of R Autopax operations. He holds a BSc Engineering (Civil) from Wits University and a Master of Management in Finance and Inv from Wits Business School. Mr. Camane's focus will be to unlock the operational performance of PRASA, both in Rail and at A



Mr. William Mathebula - Mr. Mathebula has been seconded from National Treasury. Provide expert knowledge and skills in Supply Chain Management. He is an experienced thought leader in Supply Chain Management and a specialist in Public Finance Management Act (PFMA).



A handwritten signature in black ink, appearing to be 'A' followed by a stylized flourish.

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Ms. Phelisa Nkomo – Ms. Nkomo is a thought leader in communication, stakeholder management, performance monitoring & reporting. She has been appointed on a fixed-term contract to improve communication, stakeholder management as well as performance monitoring and reporting at PRASA. She holds an Honours Degree in Economics from the University of Western Post Graduate Diploma in Economics, Advanced Certificate in Community Development and Project Management Israel (Beit Collage).



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Mr. Makhosini Mgitywa - Mr. Mgitywa is a veteran communicator who has been appointed on a fixed-term contract as PRASA spokesperson. Mgitywa is a Strategic Communications and Crisis Management specialist with 25 years' experience in Media, Communication and Public Relations at strategic levels. Prior to joining PRASA he was head of Communication and spokesperson for the Ministry of Human Settlements, Water and Sanitation. He has also been head of Communication and Public Relations at the Department of Public Enterprises and Absa Group. Mgitywa has also been an independent political commentator and considered an expert in political strategy. His expert opinions have been sought by various media including international news channel CNN; channels ENCA, SABC News, Newzroom Afrika, SABC public service radio stations; Talk Radio 702; Power FM; and various and regional newspapers. In this role Mgitywa will oversee the Marketing and Communication function.

"These appointments are a clear demonstration that government is committed to bring stability at PRASA. I would like to thank members of the Technical Advisory Team for accepting the invitation to serve the people of South Africa and, more importantly, serve our most important stakeholder, the commuters. I have no doubt that the Technical Advisory Team will provide the organ with the necessary insights, expert knowledge and recommendations which will ultimately serve to rebuild PRASA as the organ that meets the needs of its commuters" said Mr Mpondo.



<p>prasa PUBLIC TRANSPORT AUTHORITY SOUTH AFRICA</p> <p>Committed to delivering high quality passenger service on sustainable bases</p>	Structure	Links	Downloads	Contacts
	PRASA Rail	Home	Corporate Plan	+27 12 748 7000 info@prasa.com
	PRASA Cres	About	Database Forms	
	PRASA Tech	Tenders	Annual Report	
	Autopax	Media	Job Applications Forms	
Intersite	News			
	Contact			

Handwritten signatures



van der Merwe
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160

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Director / Direkteur:
Gert van der Merwe (BLC, LLB)

Our Ref: MR GT VD MERWE/st/S493

Associates/Assosiate
Ilze Rauch (B.Com, LLB, LLM)

Your Ref: THE PRASA ADMINISTRATOR: MR MPONDO

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
Danie Malan (B.Com, LLB)

21 January 2020

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URGENT

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The Administrator of Passenger
Rail Agency South Africa
Mr Bongisizwe Mpondo
bongisizwe.mpondo@prasa.com

Dear Mr Mpondo,

SIYANGENA TECHNOLOGIES (PTY) LTD / PASSENGER
RAIL AGENCY SOUTH AFRICA AND ANOTHER
CASE NUMBERS: 11314/18 AND 14332/18

1. I represent Siyangena Technologies (Pty) Ltd in a matter enrolled for hearing in the High Court in Pretoria for 24 February 2020.

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2. PRASA was represented by Werksmans Attorneys. I received their notices of withdrawal (on both matters) via email on or about 14 January 2020.
3. In terms of a directive issued under the hand of the Honourable Judge Potterill (acting as Deputy Judge President at the time) PRASA had to file their supplementary heads of argument on 17 January 2020. I did not receive any supplementary heads for or on behalf of PRASA.
4. My client must file its supplementary heads on 27 January 2020 and we intend to do so.
5. On 17 January 2020 I received a copy of a letter from Webber Wentzel Attorneys acting on behalf of the *amicus curiae*, #UniteBehind, informing you of their intention to proceed with the matter and finalise same on 24 February 2020.
6. Since 2015, when we commenced with arbitration proceedings in terms of the agreements concluded with PRASA, we experienced a persistent effort to delay and frustrate the finalisation of the process.
7. You will be well aware of the fact that PRASA unsuccessfully launched an application to review the aforesaid agreements in the High Court and subsequently in the Supreme Court of Appeal.
8. The current application is a further application for review (on the same grounds) and you will appreciate that we are anxious to finalise the issue of payment towards my client for once and for all.
9. At one point in time the PRASA attorneys insisted to inspect the comprehensive "as-built" plans, diagrams, drawings, photos and information at our offices and it took a set of PRASA experts days on end to acquaint themselves with each and every file pertaining to



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each and every station. I personally met these experts and I can confirm that they inspected each of these files.

10. My clear impression was that the experts employed by the PRASA attorneys were satisfied that the work (as alleged by Siyangena) was done in accordance with the requirements.
11. Until date hereof, and despite an undertaking to the contrary, I have not seen a report from the PRASA experts criticising the works executed by my client.
12. In any event, PRASA concedes that the work was done and I, respectfully, submit that the "defence" of ill-tender proceedings (several years back) is artificial and a mere "excuse" not to pay for work factually done by my client. We refer you to the recent Constitutional case law on similar aspects, in particular the well-known case of *SITA vs Gijima*.
13. Our counsel will, in court, show that PRASA continued to furnish my client with daily instructions to execute the work despite the "defence" raised by the PRASA attorneys that the agreements were to be reviewed. On the one hand PRASA continued with daily instructions, site meetings, inspections and reports whilst, on the other hand, the PRASA attorneys insisted that the agreements were void alternatively voidable.
14. In our replying papers we referred to the written opinion received by PRASA from their own senior counsel specifically relevant to this issue illustrating that PRASA conducted itself *contra* the advice received from counsel. For your convenience we will make a full set of papers (or the opinion) available if so required.



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15. My client has, always, maintained the view that the matter is capable of resolution but despite invitations to resolve the matter amicably I was never allowed an opportunity to address you on the true and hard facts.
16. My client remains committed to contribute to a functional and successful railway system to serve commuters and as a responsible corporate citizen my client, herewith, repeats its formal invitation to meet with PRASA and to get the matter resolved.
17. I emphasise that I hold firm instructions from my client to resolve this matter without further delay and you have my formal commitment that I will participate in any *bona fide* effort to finalise the issues in dispute.
18. I must, in addition, emphasise that the absence of such a process will, as a matter of necessity, result in the application being heard on 24 February 2020.
19. We have spent millions of rands (like PRASA) on preparation for the matter and I believe the matter is ripe for hearing thereof.
20. To the extent that the matter has to be heard we are in agreement with the letter of Webber Wentzel and as such I await your very urgent feedback. I assure you of my commitment to be of assistance in order to serve the railway system and commuters prejudiced as a result of the continued and unresolved disputes.
21. Should PRASA wish to file their supplementary heads, despite missing the date in the directive, you are urged to do so by close of business on 23 January 2020. This is another effort by my client to accommodate PRASA.
22. Nothing contained in this letter should be construed as a consent to postpone the hearing of the matter.



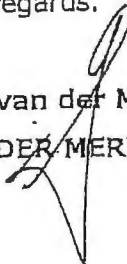
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Kind regards.

Gert van der Merwe

VAN DER MERWE & ASSOCIATES



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Associates/Assosiate
Ilze Ranch (B.Com, LLB, LLM)

Assisted by / Bygestaan deur:
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Danie Malan (B.Com, LLB)

Reg No: 2006/015908/21
VAT/BTW No: 4630239152

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Email/Epos:
sirgone@vdmass.co.za

Our Ref: MR GT VD MERWE/st/S493

Your Ref: THE PRASA ADMINISTRATOR: MR MPONDO

4 February 2020

URGENT

The Administrator of Passenger
Rail Agency South Africa
Mr Bongisizwe Mpondo
bongisizwe.mpondo@prasa.com

Dear Mr Mpondo,

SIYANGENA TECHNOLOGIES (PTY) LTD / PASSENGER
RAIL AGENCY SOUTH AFRICA AND ANOTHER
CASE NUMBERS: 11314/18 AND 14332/18

- I refer to my email to dated 21 January 2020 confirming the fact that I represent Siyangena Technologies (Pty) Ltd.

Re

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2. Until recently PRASA was represented by Werksmans Attorneys (the PRASA attorneys). We received a notice of withdrawal from the PRASA attorneys on 14 January 2020, today 20(Twenty) days ago.
3. In my previous correspondence to you I have alerted you to the fact that the PRASA attorneys failed to comply with the directive issued by the offices of the Deputy Judge President. My client extended its assistance and urged PRASA to file their supplementary heads of argument by close of business on 23 January 2020. The aforesaid was, obviously, to accommodate PRASA and ensure a scenario where PRASA is enabled to comply with the directive. No response was received. My client served and filed its supplementary heads of argument on 27 January 2020.
4. In my previous correspondence I highlighted the fact that PRASA, unsuccessfully, launched an application to review the agreements in terms of which my client insists on arbitration before the two retired judges, Judge Ezra Goldstein and Judge Meyer Joffe. The previous review application was not only dismissed with costs but failed on appeal in the Supreme Court of Appeal.
5. The current application is almost a carbon copy of the previous application with one difference though, PRASA's reliance on a recent Constitutional Court case commonly known as *SITA v Gijima*.
6. My advice to my client is that the consequence of the aforesaid case law will have little effect on the outcome of this matter since it is common cause that:
 - 6.1 PRASA continued to give instructions to my client to execute and perform under the agreement;

RC


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- 6.2 PRASA even threatened my client with contractual penalties whilst it refused to pay my client;
- 6.3 PRASA was warned of the aforesaid in an opinion from their own senior advocate at the time and, despite the aforesaid, continued to issue contract instructions to my client;
- 6.4 My client performed under and in terms of the agreements PRASA now wants to impugn.
7. The fact that the PRASA attorneys withdrew 20(Twenty) days ago creates a fear that the aforesaid withdrawal is a ploy to derail the hearing of the application and force the court's hand to allow a postponement of the matter under circumstances where *"the new attorneys will not be able to acquaint themselves with the facts on short notice"*. The new PRASA attorneys (not appointed for more than 20(Twenty) days) may even argue that a costs order will cure my client's prejudice.
8. We need to record that any such argument will be untrue, inaccurate and, with respect, dishonest.
9. The fact of the matter is that PRASA has spent more than R300 000 000.00 (Three hundred million rand) in legal fees combatting my client's case without success and, in addition, allowed an amount in excess of R1 billion in interest on the amount due to my client. This has been funded by the taxpayer.
10. No costs order can justify or cure the severe prejudice my client will endure in the event of a postponement.



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11. I need to add that this matter has previously been enrolled for hearing in **March 2019** and had to be postponed following the failure of the **PRASA attorneys** to involve and allow certain witnesses and/or individuals to state their version under oath before court. The court allowed those witnesses to file affidavits and almost all those witnesses support my client's version of events.
12. The purpose of this letter is, therefore, to:
 - 12.1 **repeat** the invitation to **PRASA** contained in my previous letter to engage in meaningful discussion with **Siyangena** in order to settle the matter; and
 - 12.2 **record** that **Siyangena** cannot and will not allow the hearing of the matter to be postponed for whatever reason. Any such application for a postponement will be a direct consequence of the conduct (or lack thereof) of **PRASA** which could have been prevented if the matter was dealt with diligently.
13. **We have made our views clear** in dispatching correspondence to the various Ministers of Transport over a period of time. We have a separate file in which we have collated a bundle of correspondence directed to the Ministers from time to time warning of exactly the predicament **PRASA** finds itself in at the moment. Unfortunately we did not receive any feedback on those letters.
14. As a consequence we hope to alert you to the severity of the matter and call for your immediate intervention and consideration of the circumstances.



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15. I conclude to suggest that PRASA considers withdrawing its application for review issued against my client and tenders the costs whilst consenting to the arbitration proceedings before the retired judges to proceed without delay. I believe there is no doubt that the aforesaid arbitrators are experienced judges of the High Court and will not allow any undue benefits to accrue to my client especially under circumstances where PRASA will have the opportunity to defend the matters and raise its defences against the claims instituted by my client.
16. I need to record that I reserve the right to instruct my counsel to hand this letter to the court if and in the event that PRASA decides to pursue an application for postponement of the matter.

Kind regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES

RC


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Simone

From: Simone <simone@vdmass.co.za>
 Sent: Tuesday, 04 February 2020 09:48
 To: 'bongisizwe.mpondo@prasa.com'
 Subject: S493: SIYANGENA TECHNOLOGIES (PTY) LTD / PASSENGER RAIL AGENCY SOUTH AFRICA AND ANOTHER
 Attachments: S493 ADMINISTRATOR OF PRASA 2.doc
 Importance: High

Dear Sir/Madam,

Kindly find appended hereto a letter for your attention.

Kindest regards / Vriendelike groeta.

Simone Taljaard
 Van der Merwe & Ass Inc
 0876540209
 62 Rigel Avenue
 Waterkloof
 Pretoria



Handwritten signature and initials, possibly 'RC' and a large flourish.

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van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokurators • Notarisse • Altyevrvaardigers

Director / Direkteur:
Gert van der Merwe (BLC, LLB)

Associates/Assosiate:
Ilze Rauch (B.Com, LLB, LLM)

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
Danie Malan (B.Com, LLB)

Reg No: 2006/015908/21
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Pretoria
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Email/Spas:
sirrone@vdmass.co.za

Our Ref: MR GT VD MERWE/st/S493

Your Ref: THE PRESIDING JUDGES

13 February 2020

URGENT

The Honourable Judge Van Oosten
The Honourable Judge Raulinga
The Honourable Judge Holland-Muter
okomane@judiciary.org.za

CC: The Administrator of Passenger
Rail Agency South Africa
Mr. Bongisizwe Mpondo
bongisizwe.mpondo@prasa.com

CC: Webber Wentzel
Ref: V MOVSHOVICH/D DAFFERTY/ J THEMBE
/3025290
viad.movshovich@webberwentzel.com
radia.dhorat@webberwentzel.com
Daniel.Rafferty@webberwentzel.com

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The Honourable Judges Van Oosten, Raulinga and Holland-Muter,

SIYANGENA TECHNOLOGIES (PTY) LTD / PASSENGER RAIL AGENCY
SOUTH AFRICA AND ANOTHER
CASE NUMBERS: 11314/18 AND 14332/18

1. I represent Siyangena Technologies (Pty) Ltd ("Siyangena") against PRASA under case numbers 11314/18 and 14332/18.
2. The Honourable Judge Raulinga's clerk has gratuitously offered to forward this letter to the Honourable Judges van Oosten and Holland-Muter's clerks, for which we thank her.
3. Until 14 January 2020 our colleagues, Werksmans Attorneys, represented PRASA. Webber Wentzel Attorneys represent the *amicus curae*, #Unitebehind.
4. During or about October 2015 Siyangena commenced arbitration proceedings against PRASA as a consequence of its failure to pay outstanding invoices for work executed pursuant to written agreements concluded with PRASA. I respectfully emphasise that the invoices rendered were for work certified by PRASA's Technical Team.
5. Now retired, Judges Joffe and Goldstein were appointed to preside over the arbitration proceedings.
6. On 2 February 2016 PRASA launched an application to review the agreements concluded between PRASA and Siyangena under case number 7839/2016. The Honourable Judge Sutherland dismissed PRASA's application with costs.



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7. PRASA pursued an application for leave to appeal and on 7 July 2017 the leave to appeal was dismissed with costs.
8. PRASA approached the Supreme Court of Appeal following the failed application for leave to appeal. On 22 August 2017 the Supreme Court of Appeal dismissed PRASA's petition.
9. PRASA then, again, approached the Supreme Court of Appeal for a reconsideration of the previous order. The Supreme Court of Appeal, again, dismissed PRASA's application for reconsideration.
10. As a consequence of the aforesaid the arbitration proceedings were pursued. The arbitration hearing on Phase 1 of the agreements concluded had to commence before the Honourable Retired Judge Goldstein on 2 October 2017.
11. Despite numerous undertakings from PRASA to pursue a further application for review (following the judgment of the Constitutional Court commonly known as the judgment of *SITA v Gijima*) Siyangena approached the Court on an urgent basis under case number 11314/18 pursuant to which PRASA, eventually, filed its second application for review, this time under case number 14332/18.
12. Since the aforesaid date Siyangena pursued every possible avenue to have the matter heard experiencing an uninterrupted effort to frustrate and delay the matter.
13. Following a directive issued by the Honourable Deputy Judge President on 13 March 2018 the matter was initially enrolled for hearing thereof on 27, 28 and 29 June 2018.



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14. PRASA managed to frustrate the hearing of the matter and following further efforts by Siyangena a further directive was issued by the Honourable Deputy Judge President on 21 August 2018 pursuant to which the matter was duly enrolled for hearing before a full bench on 5, 6, 7 and 8 March 2019.
15. When the matter had to commence an order was granted that affected parties had to be afforded an opportunity to file affidavits.
16. Pursuant to a further directive issued by the Honourable Deputy Judge President on 9 September 2019 this matter was, eventually, enrolled for hearing on 24 to 28 February 2020 before a full bench of this Honourable Court.
17. Siyangena complied with every term and condition of the directives issued from time to time.
18. On 14 January 2020 Werksmans Attorneys filed a notice of withdrawal as attorneys of record.
19. On 21 January 2020 I directed correspondence to the Administrator of PRASA alerting him of the circumstances and allowing PRASA to file supplementary heads of argument even after the date directed in the directive of the Honourable Deputy Judge President. The Administrator of PRASA was informed of the fact that Siyangena will not agree or consent to a postponement of the matter.
20. On 22 January 2020 Werksmans directed a letter to the Office of the Deputy Judge President advising the Court that Werksmans will be reappointed as PRASA's attorney of record.

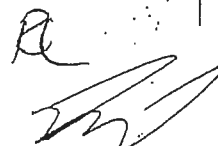
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21. We did not receive a notice of appointment by Werksmans.
22. On 4 February 2020 I directed a further letter to the Administrator of PRASA and repeated the fact that it is of imperative importance for PRASA to act since the matter is due to be heard on 24 February 2020.
23. As a consequence of PRASA's failure to get the court file in order Siyangena complied with the obligations of PRASA to provide each of the three Honourable Judges with a bundle. Siyangena, again, pursued every possible effort to ensure that the matter is ripe for hearing thereof.
24. We have not heard from PRASA albeit from the Administrator or a newly appointed attorney of record.
25. Siyangena is concerned that PRASA will attempt to frustrate the matter and approach the Court on short notice with an application to postpone.
26. The purpose of this letter is to record that Siyangena will seek for PRASA's review application to be dismissed with costs in the event of no appearance for or on behalf of PRASA and, should there be an application for postponement, same will be opposed vehemently.
27. Since the papers and supporting documentation are fairly voluminous I took the liberty of directing this letter to the Honourable Presiding Judges and to request that the papers be read.
28. A postponement will severely prejudice Siyangena. A dismissal of PRASA's second review application will enable the arbitration proceedings before retired Judges Joffe and Goldstein to take its normal



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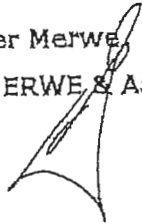
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course and nothing prevents PRASA from defending those arbitration proceedings on the merits.

29. I conclude this letter to beg the Court to read the papers and prevent a possible undue effort to delay and frustrate the matter which is long overdue for finalisation thereof.

Kind regards,

Gert van der Merwe
VAN DER MERWE & ASSOCIATES



"POSTS"

WERKSMANS
ATTORNEYS

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DELIVERED BY EMAIL

The Administrator of PRASA
Mr Bongisizwe Mpondo
Email: Bongisizwe.mpondo@prasa.com

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The Central
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Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr D Hertz/cb/SARC0001.786/#6662572v2
DIRECT PHONE: +27 11 535 8283
DIRECT FAX: +27 11 535 8683
EMAIL ADDRESS: dhertz@werksmans.com

03 February 2020

URGENT

Dear Mr Mpondo

PRASA'S FAILURE TO DISCHARGE INDEBTEDNESS IN BREACH OF TREASURY REGULATIONS AND INSTRUCTIONS IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT

1 On 14 January 2020 I addressed a letter to you recording, inter alia –

"10. Whilst Werksmans remains committed to representing PRASA in all matters, we simply cannot continue to do so in circumstances where our accounts are not discharged with scant regard to the devastating financial impact this has on the numerous professionals who have dedicated themselves to successfully representing PRASA over the years.

11. Unless ALL of our accounts which are already overdue, owing and payable are discharged within 5 days from date hereof, we will also regrettably have to institute appropriate proceedings against PRASA for the recovery of all amounts owing. Werksmans will exercise its lien over all files pending payment."

2 On 16 January 2020 you responded to that letter recording therein –

"I have therefore engaged with the Group CFO to see what we can afford in the short term in order to show good faith to you and to assuage the predicament that you find yourselves in with your own suppliers that you have engaged to further the interests of PRASA. The Group CFO has assured me that in the next pay run (month-end) we will be in a position to pay all the disbursements that you have incurred with your suppliers in the matters that

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office The Central 96 Rivonia Road Sandton 2196 South Africa
Directors D Hertz (Chairman) OL Abraham C Andropoulos JKOF Antunes DA Arteiro T Bata LM Becker JD Behr AR Berman MNM Bhengu Z Bleden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Drlman D Gewer JA Gobetz R Gootkin ID Gouws GF Grlessel J Hollesen MGH Honlball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallmeyer A Kenny R Killoran N Kirby HA Kotze S Krige PJ Krusche P Ie Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso DD Magidson MPC Manaka JE Melring H Michael SM Moerane C Moraitis PM Mosebo KO Motshwane NPA Motsiri A Ngidi JJ Niemand BPF Olivier WE Oosthuizen Z Oosthuizen S Padayachy M Pansegrouw S Passmoor D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhn MDF Rodrigues BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman S Sinden DE Singo JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron PW Tindle SA Tom JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk JJ van Niekerk FJ van Tonder JP van Wyk A Vataldis RN Wakefield DC Walker L Watson D Wegierski G Wicklins M Wiehahn DC Willans OG Williams E Wood BW Workman-Davies Consultant DH Rabin

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you are seized with. We will make payment of the remainder of the fees by the end of February 2020.

I wish to assure you that PRASA values the relationship that it has with your firm over the years which relationship has been crucial in the clean-up campaign that PRASA has been engaged in over the past few years. The matter of Siyangena is very important to us and I have been advised by PRASA's Group Legal Services that PRASA has good prospects of success in it and that a number of PRASA employees who were implicated in the irregularities, fraud and corruption that led to the award of the contracts to Siyangena have been dealt with by PRASA. It would therefore not be in the best interests of PRASA for the matter not to proceed in February 2020. We also urge you to ensure that the appeal that is set down for 29 January 2020 also be saved to ensure that the rights of PRASA are protected."

3 On the same day I responded to your letter recording therein –

"3. *I truly sympathise with the challenges which you have encountered since taking over the affairs of PRASA and, as appears from what is set out below, will endeavour to assist you in addressing these so as to ensure that Werksmans is placed in a position where it can again represent PRASA.*

4. ***Please let me have your written confirmation by close of business tomorrow that PRASA is in a financial position to (the Group CFO having confirmed this fact) and will –***

4.1 *pay all disbursements that have been incurred with all suppliers in the matters in which Werksmans was retained to represent PRASA by the end of this month; and*

4.2 *make payment of all outstanding fees by the end of February 2020."*

4 On 17 January 2020 Martha Ngoye, Group Executive: Legal Risk and Compliance responded to Werksmans' letter of 16 January 2020 addressed to you, recording the following –

"2. *I can confirm as indicated in our previous letter that PRASA:*

2.1 *is in a financial position to pay all disbursements that have been incurred with all the suppliers in the matters that Werksmans is handling on behalf of PRASA; this payment will be made by 31 January 2020.*

2.2 *will make payment of currently outstanding fees by the end of February 2020.*

2.3 *has noted the above amounts as indicated in your letter of 16 January 2020"*.

5 Having regard to the agreement reached, I have, on an ongoing basis kept your team advised of developments as regards the matters where we have continued to represent and protect PRASA's interests at additional cost to our firm in accordance with your antecedent request.

6 In addition, on 27 January 2020 Werksmans delivered a complete set of all invoices which aggregate to the amount in respect of disbursements which PRASA had undertaken to pay on 31 January 2020, in the amount of R7 810 718.49 (inclusive of VAT) ("the disbursement amount").

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- 7 On 28 January 2020 a meeting was arranged at your offices to discuss the Siyangena matter. The meeting was attended by you, several representatives of your offices, myself, two other Werksmans directors and senior and junior counsel.
- 8 The following, inter alia, transpired at the meeting –
- 8.1 you reinforced the fact that the requisite approval had been obtained to allow the payments referenced above to be made timeously through what you termed the conversion of CAPEX amounts to OPEX amounts;
- 8.2 we advised you of the information that we required to facilitate a substantive approach to the Deputy Judge President as regards a postponement of the hearing of the Siyangena matter and you undertook to let us have same by Friday, 31 January 2020;
- 8.3 our senior counsel explained at a high level the manner in which Werksmans was required to conduct the Siyangena litigation on behalf of PRASA, the difficulties that had been encountered within PRASA and what was at stake in the event that Werksmans was compelled to withdraw both to the Country as a whole and to PRASA specifically. Evidence which had been discovered during the course of Werksmans' representation of PRASA was specifically highlighted by senior counsel.
- 9 We have not heard a word from your offices since that date and –
- 9.1 payment of the disbursement amount, which as stated above was undertaken and approved by you, was not effected on 31 January 2020;
- 9.2 we did not receive any explanation for the breach of this unconditional and irrevocable undertaking;
- 9.3 no information relating to the Siyangena matter has been received notwithstanding your personal undertaking to let us have same by Friday 31 January 2020.
- 10 We are, in the circumstances, formally and finally withdrawing from all matters in which Werksmans has and continued to represent the interests of PRASA.
- 11 We will now commence formal steps to recover amounts due to Werksmans, and further reiterate that until all payments are received, Werksmans retains a lien on all work done in all matters.

Yours sincerely

DAVID HERTZ
THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

c.c. The President of the Republic of South Africa
President Cyril Ramaphosa
Email: bonganik@presidency.gov.za
geofrey@presidency.gov.za
angeline@presidency.gov.za
sello@presidency.gov.za

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S583 Agenda for Case Management Meeting with DJP 12 08 2019 (SM comments)/#6366942v1
10042018

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review was not heard in the normal course, but the court handed down an order to the effect that nine (9) PRASA employees and former employees who have been specifically mentioned in the affidavits have been given an opportunity to intervene in the review proceedings as witnesses or as parties. The court was of the view that it was not inclined to make findings against persons who have not been afforded the opportunity to place their versions before the court.

2.2 The court order sets out dates upon which those individuals must file their affidavits. The court order further states that the parties may approach the court for further directions, including directions to add individuals to the list identified in the court order. This would be in the form of case management. A copy of the order is appended hereto as Annexure "A".

2.3 PRASA has addressed a number of letters to the court seeking directions and requesting a case management meeting. The court has not responded to the requests for directions and for a case management meeting.

2.4 The witnesses identified in the order who served affidavits are:

- | | | | |
|-------|---------------|---|----------------|
| 2.4.1 | Mr M Bopape | - | 29 April 2019; |
| 2.4.2 | Mr J Sindane | - | 30 April 2019; |
| 2.4.3 | Mr L Gantsho | - | 30 April 2019; |
| 2.4.4 | Mr S Khuzwayo | - | 2 May 2019; |



prasa

PASSENGER RAIL AGENCY
OF SOUTH AFRICA

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Halfield
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Braamfontein, 2017
T: +27 12 748 7000

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30 September 2019

Dear Mr Alvin Wilsnach

I have been made aware of the correspondence to our Kaparo/ Nosipho.

May I request that we arrange a meeting to discuss the close out report and related issues.

The issue of the final account will continue to be a discussion with our lawyers as this matter is still a court matter

May I suggest that we meet on the 8th October 2019 at Umjantshi House at 10am.

Regards,

Nathi Khena

Acting CEO: PRASA CRES

Date: 30/09/2019

Members of the Board of Control
K Kweyama (Chairperson), S Ntsaluba,
I Wessie, J Schreiner, B Mthembu, O Tshepo,
X George, R Khan, P Setal, E Nchabeleng

Group Chief Executive Officer
Dr. N Sishi
Acting Group Company Secretary
M Thebelhe

POST 4

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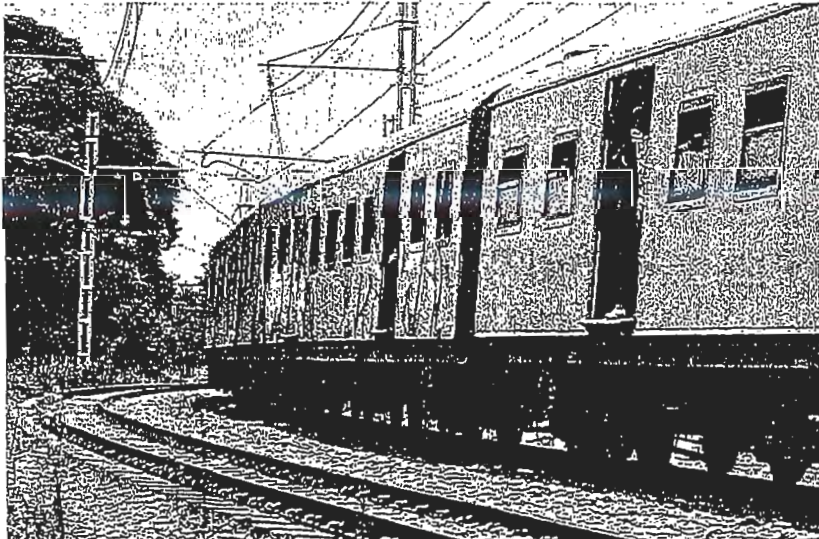


government (<https://citizen.co.za/category/news/south-africa/government/>) 20.2.2020 03:00 pm

Possible seizure of Prasa assets could leave Park Station commuters stranded

3

Citizen reporter



(<https://citizen.co.za/lifestyle/lifestyle-travel/2244352/possible-seizure-of-prasa-assets-could-leave-park-station-commuters-stranded/>)

A Prasa Metrorail train near Langlaagte station in Johannesburg, 4 February 2020. Picture Neil McCartney

This after the government agency lost an appeal challenging a R22-million debt owed for cleaning services.

The thousands of commuters who make their way through Joburg's Park Station after having used trains belonging to the Passenger Rail Agency of SA (Prasa) could soon find themselves stranded when Mbita Consulting enacts a September judgment allowing Prasa's assets to be attached for not paying the service provider a R22-million debt.

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According to The Star (<https://www.iol.co.za/the-star/news/prasas-r22m-debt-may-lead-to-park-station-coming-to-a-halt-43045596>), the pending legal action could see coaches seized by the court after the High Court in Johannesburg recently denied Prasa's appeal application seeking to overturn the September judgment.

After Prasa lost their appeal, legal representatives speaking on behalf of Mbita reportedly told the publication that Prasa had 48 hours from Wednesday to pay up for for the cleaning services provided by Mbita for more than two dozen Prasa-owned train stations over the period of five years as well as interest accrued since 2015.

"We feel sorry for the passengers, but they would need to speak with Prasa because it has been defying court orders since 2015 to pay a contracted service provider. We will also attach and remove computers, desks and other equipment from Umjantshi House [Prasa's offices in the Joburg CBD]," said a member of their legal team on condition of anonymity.

READ NEXT: Prasa announces three-phase plan to fix trains, safety (<https://citizen.co.za/news/south-africa/government/2243523/prasa-announces-three-phase-plan-to-fix-trains-safety/>)

They even threatened to go after the pay of Prasa's staff.

"In fact, we will start in the finance department before the employees' salaries are sent through ahead of next week's payday. The employees will have to take that up with their leaders in Tshwane when they don't get paid. People have lost their jobs at Mbita and it's time Prasa feels the pain," the source added.

Prasa simply told The Star that Mbita had no case against it.

(Compiled by Kaunda Selisho)

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Malema laughs at new party formed by 'EFF co-founder'

(<https://citizen.co.za/news/south-africa/politics/2167028/malema-laughs-at-new-party-formed-by-eff-co-founder/>)

"TB9"

Simone

From: Simone <simone@vdmass.co.za>
Sent: Tuesday, 17 March 2020 16:59
To: 'Secretary@commissionsc.org.za'
Cc: 'Shannon S. Van Vuuren'; 'Trudi T. McCracken'; 'Warren Redcliffe'; 'Andre J. Lamprecht'; 'Boipelo B. Ratshikana'
Subject: F115: MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE
Attachments: Letter to Zondo Commission 17.02.2020.pdf; SCC 1.pdf; SCC 2.pdf; SCC 3.pdf; SCC 4.pdf; SCC 5.pdf
Importance: High

Dear Sir/Madam,

Kindly find appended hereto a letter for your attention.

Kindest regards / Vriendelike groete.

Simone Taljaard
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62 Rigel Avenue
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Pretoria



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&
Associates Incorporated



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Our Ref: **MR GT VD MERWE/st/S583**

Your Ref: **THE CHAIRPERSON OF THE COMMISSION:
THE HONOURABLE JUDGE RAYMOND ZONDO
AND MR BOIPELO RATSHIKANA**

17 March 2020

EXTREMELY URGENT

**The Chairperson of the Commission of
Enquiry into allegations of
State Capture, Corruption and Fraud in the
Public Sector including Organs of State
Secretary@commissionsc.org.za
shannonv@commissionsc.co.za**

Dear Sirs,

**MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE
RULES OF THE RULES OF THE JUDICIAL COMMISSION OF
INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

1. On or about **19 February 2020** our offices (representing **Mr Mario Ferreira**) received a notice in terms of Rule

3.3 of the Rules of your Commission in terms of which **Mr Ferreira** was afforded the opportunity to consider the contents of an affidavit deposited to by **Mr AZ Achmat**. For the sake of completeness I append hereto a copy of the notice in terms of Rule 3.3 signed by the Acting Secretary of the Commission on **19 February 2020** as **Annexure "SCC1"**.

2. On **24 February 2020** we responded to the aforesaid on behalf of **Mr Ferreira** whilst in paragraph 8 of our response we, specifically, recorded the following:

"8. *To the extent that there is any reference to a company called Siyangena Technologies (Pty) Ltd in the affidavit of Mr Achmat we record that **we act on behalf of the aforesaid entity.***" (Own emphasis)

3. A copy of our letter is appended hereto marked **Annexure "SCC2"** to which you are kindly referred.
4. On **3 March 2020** your secretary informed us that **Mr Achmat** will give evidence as from **19 March 2020**.
5. On **5 March 2020** we directed a further letter to **the Commission** of which a copy is appended hereto marked **Annexure "SCC3"** to which you are humbly referred.
6. On **6 March 2020 the Commission**, via Ms Shannon van Vuuren, informed our offices that the draft response prepared by the legal team of **the Commission** was, due to an oversight, never sent to us. We were invited to access the relevant documentation from the website of **the Commission**, in particular, the following:

- 6.1 The relevant **Treasury** report referred to by **Mr Achmat** in his affidavit;
- 6.2 The relevant **Werksmans** report referred to by **Mr Achmat** in his affidavit;
- 6.3 Certain notices issued by the SAPS referred to by **Mr Achmat** in his affidavit;
- 6.4 A presentation by **#Unitebehind** referred to by **Mr Achmat** in his affidavit.

For the sake of completeness a copy of the letter received from **the Commission** is appended hereto as **Annexure "SCC4"**.

7. We could not find any significant reference to our clients in the aforesaid documentation and **as a consequence** we advised our clients not to consider any cross-examination of **Mr Achmat**.
8. On **17 March 2020** the writer received a telephone call from our client complaining of the fact that a one **Mrs Martha Ngoya** (purportedly on behalf of **PRASA** and/or employed as the Head of the Legal Division of **PRASA**) was busy **giving misleading, untrue and provocative "evidence"** pursuant to what seems to be a supplementary affidavit prepared by or on behalf or for the benefit of **the Commission** on or about **15 March 2020**.
9. Our brief consideration of the evidence of **Mrs Ngoya** resulted in a disturbing conclusion that **the Commission** is being abused for ulterior motives without you, necessarily, being alerted to the true facts. In

addition we pause to record that **Mrs Ngoya** has absolutely **no** first-hand knowledge of any of the issues she so spontaneously gave evidence on

10. We need to record the following common cause facts before we address you on what we believe to be the appropriate relief under the circumstances:

10.1 We act on behalf of **Siyangena Technologies (Pty) Ltd** under **case number 11314/2018** and **case number 14332/2018**, both to be heard simultaneously before a full court on **11 August 2020** in Pretoria.

10.2 **Werksmans Attorneys** act on behalf of **PRASA** in both the aforesaid matters.

10.3 **PRASA**, on a previous occasion, applied for the agreements concluded with our client to be set aside. The High Court in Pretoria **dismissed the aforesaid application with costs.**

10.4 **PRASA** filed an application for leave to appeal which was subsequently **dismissed with costs.**

10.5 **PRASA** approached the Supreme Court of Appeal which petition was **dismissed with costs.**

10.6 **PRASA** approached the Supreme Court of Appeal with an application for reconsideration, which application was similarly **dismissed with costs.**

10.7 Following an urgent application launched by **Siyangena** during or about **January 2018** **Siyangena** approached the High Court

and, only then, did **PRASA** launch a **second attempt** to apply for the review of the agreements concluded with **Siyangena**.

- 10.8 The High Court, initially, issued a directive on **13 March 2018** and enrolled the matters for hearing thereof on **27, 28 and 29 June 2018**.
- 10.9 **PRASA** requested a meeting with the Offices of the Deputy Judge President during which meeting it managed to delay the hearing subsequent to which the Deputy Judge President, on **21 August 2018**, directed that the matters would be heard before a full bench on **5, 6, 7 and 8 March 2019**.
- 10.10 When the matters had to be heard the court issued an order affording affected and/or implicated individuals the opportunity to file affidavits if they so deemed fit.
- 10.11 Several witnesses filed affidavits.
- 10.12 Following a directive by the Offices of the Deputy Judge President on **9 September 2019** the matters were eventually enrolled for hearing on **24 to 28 February 2020** before a full bench of the High Court in Pretoria.
- 10.13 On **14 January 2020 Werksmans Attorneys** withdrew as attorneys of record only to be **reappointed as attorneys of record** with an instruction to file an application for postponement of the matter on **Sunday evening, 23 February 2020**, a day before the hearing was scheduled to commence.

- 10.14 On **24 February 2020** the court granted a postponement of the matters and awarded **punitive costs** against **PRASA** as a result of the undue delay.
- 10.15 On **4 March 2020** the Honourable Acting Deputy Judge President Potterill issued a directive pursuant to which the matter was enrolled as a special motion to be heard by a full court on **11 to 14 August 2020**. A copy of the notice of set down and the directive (appended thereto) is appended hereto as **Annexure "SCC5"** to which the Commission is humbly referred.
- 10.16 Not surprisingly the affidavit of **Mr Achmat** is dated **13 February 2020** whilst the supplementary affidavit of **Mrs Ngoya** is dated **15 March 2020**.
11. Our client was shocked to realise that **Mrs Ngoya** was allowed to give "*evidence*" pertaining to matters directly and pertinently due for consideration before court in the aforesaid litigation process.
12. We need to record our full support and our clients' full cooperation with **your Commission** and the mammoth task you have been encumbered with.
13. We have full appreciation for the fact that the rules of evidence applicable in a court of law need not be strictly applied to the determination of the admissibility of evidence before the Commission **but we doubt whether you have been accurately informed** of the actual circumstances pertaining to the case enrolled for argument in the High Court on **11 August 2020**. Rule 6.5 of the Rules of the Commission provides for specific mention where a matter or certain facts serve or served before a

court in order for the Commission to secure the relevant transcript or, at least be mindful of the rights of the parties to any such proceedings.

14. We believe that the Commission has been called upon by **#Unitebehind** and/or **Mr Achmat** and/or **Mrs Ngoya** to encumber itself with a pending court case in which all the relevant facts have been clearly and concisely disclosed to the High Court and are due for scrutiny, argument, consideration and conclusion in **August 2020**.
15. Our clients believe that your Commission is being abused by **PRASA** and/or those ostensibly concerned about corruption in **PRASA** to allow untested and inaccurate "*evidence*" to be led in public in order to secure sympathy and empathy for all the wrong reasons.
16. Our clients' objection lies in the fact that our clients will now become subjected to a scenario where our clients have successfully defended themselves in court and intend doing so in **August 2020** (if **PRASA** doesn't frustrate or delay the matters again). To allow wild, unsubstantiated and reckless allegations to be made in public shortly before the matters will be heard in a court of law will subject our clients to unprecedented adverse media attention and, subsequently, adverse consequences ranging from closure of bank accounts, nervous customers and clients distancing them from our clients and many other unwarranted repercussions. Our clients believe that your Commission became **PRASA's** Trojan horse with the intention to cause our clients' demise instead of allowing the matter in the High Court to take its normal course.
17. We will never advise our clients to object to evidence being led in an effort to find traces of corruption albeit in government, state owned enterprises or the private sector. It has never been our instruction to oppose any such process. It is, consequently, not the intention of this

letter to prevent **the Commission** from conducting the work it was mandated to do.

18. The purpose of this letter is to apply to **the Chairperson of the Commission** to consider hearing any further evidence **regarding the pending court case after it has been heard in August 2020**. We believe that our clients are not afforded a fair opportunity in court if **the Commission** allows untested and inadmissible evidence to be broadcasted whilst the aforesaid is digested by journalists and the public general as the "*truth*".
19. The papers before the High Court comprise of thousands of pages and the affidavits deal meticulously with all relevant matter contained therein.
20. We believe that the evidence (on exactly the same subject matter) presented at your Commission prior to the hearing of the matters in the High Court will materially and adversely affect our clients' right to a fair and unbiased hearing of the matters. We also believe that a full bench of the High Court will be more than capable to consider all relevant facts prior to the conclusion thereof.
21. As such we beg **the Chairperson of the Commission** to consider hearing any further evidence with regards to the relationship between **PRASA** and **Siyangena only after the matters were heard by the court** scheduled to commence on **11 August 2020**.
22. Should you wish for our clients to address you on this matter albeit by way of affidavit, formal application or in person we will immediately attend thereto.

Kind regards.


Gert van der Merwe
VAN DER MERWE & ASSOCIATES

SCC 1

Simone

From: Secretary <Secretary@commissionsc.org.za>
Sent: Wednesday, 19 February 2020 13:34
To: simone@vdmass.co.za
Subject: Notice in Terms of Rule 3.3/Achmat/Ferreira
Attachments: FERREIRA MR MARIO br.pdf; Annexure 'A'.pdf; Annexure 'B' (AA3).pdf; Annexure 'B' (AA4).pdf

Dear Mr Ferreira

Please find the attached Rule 3.3 Notice in respect of Mr Achmat's evidence for your attention.

Please also find Annexure A and B attached hereto.

Kindly acknowledge receipt hereof and contact us regarding any queries you may have in this regard.

Kind Regards,

Boipelo Ratshikana
Executive Assistant to the Secretary
COMMISSION OF INQUIRY INTO STATE CAPTURE
Hillside House, 2nd Floor, 17 Empire Road, Parktown, Johannesburg, 2193
Tel: 010 214 0651 | Mobile: 071 319 7843 | Email: boipelor@commissionsc.org.za | www.sastatecapture.org.za





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JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

NOTICE IN TERMS OF RULE 3.3

TO : MR MARIO FERREIRA
C/O : VAN DER MERWE & ASSOCIATES
CELL : 082 451 7943 / 087 654 0209
EMAIL : simone@vdmass.co.za

IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE ("THE COMMISSION"), YOU ARE HEREBY GIVEN NOTICE THAT:

- 1 The Commission's Legal Team intends to present the evidence of Mr Abdurrazack "Zackie" Achmat ("Mr Achmat") at its hearing held at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg. The presentation of Mr Achmat's evidence will commence on a date to be confirmed at a later stage.
- 2 The evidence in question contains allegations/averments concerning you, to which you may wish to respond. The relevant portions of the statement of Mr Achmat which refer to you are annexed hereto marked "A". Your attention is drawn to paragraphs 41 to 71 of the statement. The relevant annexures to the statement are annexed hereto marked "B". Your attention is drawn to Annexures "AA3" and "AA4".
- 3 Due to the fact that the statement of Mr Achmat refers to you in a manner to which you may wish to respond, you are entitled to attend the hearing at which that evidence is being

presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Mr Achmat will be uploaded on the Commission's website (www.sastatecapture.org.za) as soon as he concludes his evidence. The transcript will be uploaded daily.

4 If you wish to:

4.1 give evidence yourself;

4.2 call any witness to give evidence on your behalf; or

4.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.

5 An application referred to in paragraph 4 above must be submitted to the Secretary of the Commission. The application must be submitted with an affidavit from you in which you respond to the witness's statement insofar as it implicates you. The affidavit must identify what parts of the witness's statement are disputed or denied and the grounds on which they are disputed or denied.

6 If you wish to apply to cross-examine the witness, your application must follow the requirements of Rule 11.3. In other words, it must be a substantive application on affidavit accompanied by a notice of motion.

7 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

8 Please take note that even if you do not make an application under Rule 3.4:

8.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and

- 8.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.
- 9 The witness's statement provided to you is confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.
- 10 Any response or affidavit in regard to this notice must be sent to Advocate André Lamprecht, Ms Shannon van Vuuren and Mr Warren Redcliffe at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 19th DAY OF FEBRUARY 2020



MS K B SHABALALA
Acting Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State

AFFIDAVIT

I, the undersigned,

ABDURRAZACK "ZACKIE" ACHMAT

do hereby affirm and state as follows: -

Introduction

1. I am an adult male political activist resident in Cape Town. I make this affidavit on my own behalf and also on behalf of #UniteBehind, a coalition of people's movements, organisations and individual activist supporters.
2. I am a co-founding member of #UniteBehind. I coordinate legal work related to state capture at the Passenger Rail Agency of South Africa (PRASA) on behalf of its Organising Secretariat.
3. The facts deposed hereto are within my personal knowledge, save where the context indicates otherwise, and are true and correct. Where I make legal submissions, I do so on the advice of legal practitioners.
4. The principal matters that I address in this affidavit, and will give evidence on at the Commission are the following: my personal background and work; the nature of #UniteBehind's activities and its interest in state capture and the PRASA; the evidence in support of a finding that PRASA was and probably still is a victim of state capture; the extent to which PRASA was captured; how state capture was perpetrated and why it flourished despite the purported safeguards in our

that the accounting authority bears the legal duty to enforce SCM policy and the PFMA. This statement alone raises the culpability of the PRASA Board of Control and its Executives for corruption and malfeasance. Similarly, the remedial actions ordered confirmed the "culture of systemic failure" and revealed much more. The Treasury and Werksmans reports indicate that the state capture project at PRASA cost not millions but in fact billions of Rands.

40. I will later suggest that the investigations as a whole, together with what has emerged from them, reveal the scale and depth of the PRASA state capture project based on politically connected persons, public officials and corporations tied together in over-lapping criminal networks. This is a very different, and often much larger, project when compared to institutional and corrupt practices confined to small group of individuals.

The Treasury Reports

41. In compliance with the remedial action prescribed in the PP's Report, Treasury commissioned investigations into some 212 contracts. These investigations were conducted by 13 legal and forensic auditing firms. The reports they compiled were completed in late 2016. Notwithstanding that the reports indicated that there was systematic looting and corruption within PRASA at almost every level, no criminal prosecutions followed from their submission.
42. The Treasury Reports considered mainly the documents that were available and could be secured. The investigators however did not conduct in-depth investigations.
43. The major persons implicated are set out in paragraph 19 of our presentation: Messrs Sifiso Buthelez, Roy Moodley, Arthur Fraser, Makhensa Mabunda and Mano Ferreira.

44. The major companies that are implicated are identified at paragraph 21 as follows: Siyaya Energy; Siyaya DB Consulting Engineers; Siyaya Rail Infrastructure Solutions and Technology (the "S Group"); Swifambo; Vosloh Espana and Vosloh Kiepe (Germany); Royal Security; Resurgent Risk Management; Tshiletsi and Enzo Construction. (I do not deal further with the latter two.)
45. As pointed out in paragraph 22, the total value of the contracts investigated by Treasury was R15 billion. Of this, R2.5 billion was "irregular expenditure" and R3.5 billion was unverifiable due to missing documents.
46. The presentation then points out the following [at paragraphs 23 to 25]: among the findings of the investigations were the following: there was a lack of proper record keeping; documents were missing; in many instances the audit trail had been destroyed, and where it could be followed it showed a lack of compliance with PRASA's supply chain management process and the PFMA; tenders were awarded without a needs analysis first being done; tender and contract rigging was commonplace; even where, on the face of it, the tender process appeared to have been followed, the scoring had been rigged to allow preferred suppliers to win.
47. The presentation also notes [at paragraphs 27 and 28] that in 2015 the Auditor General had made adverse findings against the PRASA Board and management, but had not detected the culture of systemic corruption; and that the Portfolio Committee had failed to hold PRASA to account.
48. It then points out [at paragraphs 29 and 30] the finding of corruption by the High Court in the Swifambo case and that the PP's Report gave cause to suspect that offences listed in the Prevention and Combating of Corrupt Activities Act, have

been committed in relation to PRASA. The presentation then refers to a number of court matters [at paragraph 33]. Among the matters are: Siyangena Technologies (Pty) Ltd; Swifambo; an application to require the Hawks to investigate certain matters; the KPG Media case; and the challenge by Mr Molefe to the dismissal of the Board in March 2017.

49. I understand that a file has been compiled that includes the relevant documents relating to the cases. I will where relevant refer to the file.

The Werksmans Reports

50. In compliance with the PP's remedial action, PRASA's Board, with Mr Molefe as chairperson, engaged Werksmans Attorneys to conduct investigations into the more serious matters identified in the Treasury Reports. However, the Board also identified matters that had not necessarily been investigated by the team that Treasury had engaged. (I point out in parenthesis that one such matter concerned a contract that PRASA had concluded with Swifambo for some R3,5 million.)

51. The Werksmans Reports are probably the most far-reaching because of their scale and depth. By 18 October 2016, Werksmans had assisted PRASA to have 108 notices issued by the SAPS Directorate of Priority Crimes Investigations (Hawks) and engaged the National Prosecuting Authority (NPA). By 2017, it became clear that neither the Hawks nor the NPA were taking the state capture matters seriously and in fact appeared to be obstructing investigations to prevent prosecution and asset protection. During 2017, #UniteBehind and the UDF Veterans wrote to the NPA and later protested against Advocate Shaun Abrahams for their failure to act on the Werksmans reports and the criminal charges laid by PRASA.

52. The state capture beneficiaries and enablers attacked the Werksmans reports and Mr Molero. There was an Achilles heel in relation to Werksmans. The cost of the its work attracted criticism. PRASA paid Werksmans some R300 million for its investigations and reports. Two points need to be made about the criticism:

53. First, the fact that Werksmans was engaged. On this score, the critics of the engagement of Werksmans contend that the appointment of Werksmans was irregular, as they were not on the panel of PRASA attorneys at the time they were engaged. The short answer to this is as follows. No Panel existed at the time Werksmans was one of the attorneys that had been on the Panel that had been set up some 10 years older. The Board had no choice: it could ignore the PP's remedial action and be dragged to Court, or it could appoint a firm from the existing, though outdated, Panel. It chose the latter.

54. Second, what ought to have been the focus was the cost, not the investigations and the fact that they were conducted without fear, favour or prejudice. On the costs issue, they ought to have asked PRASA to ensure that Werksmans fully accounted for the full amount it had charged PRASA for its services. There also needed to be a cap on its fees.

55. I may point also point out that many of those who sought to discredit the Werksmans Reports are primarily people who are directly implicated in the debacle that PRASA now is – such as Mr Montana – or MPs who failed to fulfil their constitutional duty to hold those in power to account.³

³ #UniteBehind stance on this issue may be summarised as follows. We hold no candle for Werksmans: we seek only to protect the integrity of reports that demonstrate orchestrated corruption and state capture at PRASA. We agree with the detractors of Werksmans that the amount spent on the investigations appear to be excessive. However, this requires national regulation and capping on the fees charged by legal, accounting and investigating companies who milk the state. Werksmans is or was a formal part of the PRASA Legal Panel constituted under the PFMA, except, in the same way as the security contracts, this panel's term had expired nearly a decade or more ago. The Montana-controlled Supply Chain Management team had inexplicably failed to finalise a tender to establish a new Legal Panel and the roll-over and extension of the contracts of all the

56. Ironically, one of the newspapers central to exposing state capture, the *Mail & Guardian*, was the first media outlet to attack Mr Molefe and the Werksmans Reports. A closer look revealed a more self-interested motive for the attacks on the investigation by its then political editor Mafuma Letsoalo, who was also found to have benefited from unlawful contracts at PRASA. Mr Letsoalo failed to disclose his conflict of interest when commissioning the article attacking the investigations which implicated him. It was only when the *Daily Maverick* revealed this fact on 31 October 2018 that the newspaper, who was aware of the egregious abuse of public trust dismissed their political editor.⁴

57. The bulk of the Werksmans work had been completed by 2016 but these documents were not publicly released. In late 2018, these documents were released to #UniteBehind, who in turn released them to the news agency *GroundUp*, recognising that the contents of the reports were in the public interest.

58. The limitations of the reports are that the investigations are directed towards a smaller set of companies than the Treasury Reports. Werksmans investigations were both company and contract based. What is indisputable is that there are many instances of staggering criminality, both on the part of the executive and management of the rail agency, and on the part of private companies that did business with PRASA.

59. I submit that a consideration of the investigations demonstrates that they suggest in general that PRASA's procurement and other processes were manipulated to

law firms on the panel was unlawful. As to the unlawful nature of the investigations as claimed by Mr Montana and others, their incorrect and spurious claims can be objectively tested. #UniteBehind's record of the Werksmans Reports is available here: <https://drive.google.com/open?id=1a13em3LgiD4VbJvAn30xZN0lkqB3RzE>

⁴ *Daily Maverick*, Senior M&G reporter's Prasa contract raises ethical issues, <https://www.dailymaverick.co.za/article/2018-10-31-senior-mg-reporters-prasa-contract-raises-ethical-issues/>, accessed 13 February 2020

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achieve certain pre-determined outcomes. In addition, I submit that a proper consideration of the role played by certain officials at PRASA and the identity of those whom they sought to benefit confirms that PRASA had been captured and that those manipulating the processes were enjoying protection from higher powers.

Attempts to derail the investigations

60. Our presentation to Parliament deals with this issue at paragraphs 37 to 41.

What happened may be summarised very briefly as follows:

61. First, in August 2016, the then Minister of Transport, Ms Dipuo Peters, said that the investigations by Werksmans were to be curtailed. But to its credit the Board refused to do so.

62. Second, in retaliation, in March 2017 Minister Peters dismissed the Board. A High Court application was launched and the Board was reinstated. In granting the application, the Judge described the Minister's decision as unlawful and irrational. I respectfully refer to the relevant paragraphs of the judgment, which is part of the bundle of case material before this Commission.

63. Third, at the end of March 2017, in a Cabinet reshuffle then President Zuma appointed Mr Joe Maswanganyi to replace Ms Peters as the Minister of Transport.

64. Fourth, the Board's term of office ended on 31 July 2017. Minister Maswanganyi did not renew its term of office. Nor did he appoint a new Board. Sadly, an interim Board was appointed – on 19 October 2017. No permanent Board has been appointed since. This means that from 1 August 2017, PRASA has not had a permanent accounting authority.

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Appointment of Interim Boards

65. In paragraph 42 of our presentation, we made the point that the governing statutory provisions do not empower the Minister to appoint an Interim Board. The Interim Board was also often inoperative. Thereafter, we made this point to the different Ministers of Transport who succeeded Minister Peters. As is detailed in the presentation, not only has this appointment of Interim boards been unlawfully abused but it has been a total disaster for PRASA operations.

66. At this stage I deal with the appointment by Minister Maswanganyi of Advocate Makhubele SC as the Chairperson of the Interim Board and why it was inappropriate in our constitutional dispensation. This is dealt with at paragraphs 43 to 51. I respectfully incorporate what was said in those paragraphs. I point out however that the presentation notes, at in paragraph 51, that a complaint was still to be lodged with the JSC. I record that the complaint has been lodged.

Concerns about Ms Makhubele and decisions taken by her Interim Board

67. The appointment of Advocate Makhubele SC as Board Chairperson and her role in that capacity is a highly controversial matter at several levels.

68. The presentation deals, at paragraphs 52 to 61, with three decisions taken by the Board. Again, I respectfully request that what is said in those paragraphs is incorporated in this affidavit.

69. The decisions that are specifically dealt with and the concerns that they prompt are the following:

- a failure by the Interim Board to take action against senior executives in particular Mr. Lindekhaya Zide and Mr. Cromet Molepo who attempted to

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unlawfully invest R1 billion in VBS, this was money that had been allocated to capital projects. #UniteBehind and others revealed this scam in a report published in the Sunday Times and this put paid to the matter. Most importantly, Ms Yvonne Page, PRASA's then Acting Chief Executive Officer refused to pay VBS and she resigned to prevent the unlawful expenditure and received no protection from the Interim Board. paragraph 52.

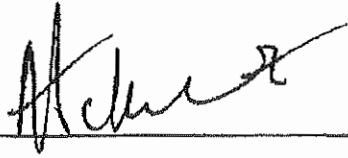
- the refusal of the Interim Board to set aside the appointment of Mr Mthura Swartz as Acting head of PRASA Rail, paragraphs 53-57; and
- the decision to suspend PRASA's legal panel, paragraphs 58-63.

70. In our presentation we submitted that the purpose of disbanding the legal panel was two-fold: to scupper attempts to recover looted funds from companies such as Sivangena and Swifambo [paragraph 62]; and to enable the settlement of all disputes with the S-group of companies, companies in which Mr Mabunda has significant financial interests [paragraph 63]. In paragraphs 64-69, we set out the bases for that submission. Again, I respectfully request that what is set out in those paragraphs is regarded as specifically incorporated in this affidavit.

71. Thereafter, in paragraphs 70 and 71, we point out the extensive efforts we made to raise our concerns at different levels. Again, I respectfully request that what is set out in those paragraphs is regarded as specifically incorporated herein.

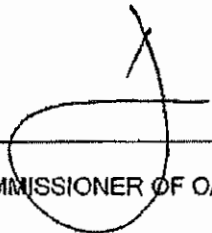
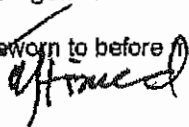
Complaint to JSC about Judge Makhubele

72. In January 2019, #UniteBehind lodged a complaint against North Gauteng High Court Judge Tintswalo Annah Nana Makhubele, accusing her of breaching the Code of Judicial Conduct. The complaint relates to Ms Makhubele's conduct while she was the Chair of PRASA's Interim Board, where she went to



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The terms of Regulation R. 1258 published in Government Gazette No. 3619 of 21 July, 1972 (as amended) having been complied with, I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at CAPE TOWN on this ^{13TH} day of February 2010.



COMMISSIONER OF OATHS

Full names: **DARREN BRANDER**
COMMISSIONER OF OATHS
PRACTISING ATTORNEY R.S.A
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#UNITE BEHIND

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A JUST AND EQUAL SOUTH AFRICA

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Submission to the Portfolio Committee on Transport on State Capture, Governance and an Emergency Safety Plan

6 February 2018

Introduction to #UniteBehind

- 1 We present this submission on behalf of #UniteBehind, a voluntary association of people's movements, legal, policy and support organisations advocating for justice and equality. The 20+ organisations which constitute #UniteBehind include, among others, the Alternative Information and Development Centre, the Centre for Environmental Rights, Women's Legal Centre, Social Justice Coalition, Ndifuna Ukwazi, Equal Education, Women and Democracy Initiative (Dullah Omar Institute), Right2Know (Western Cape) and UDF Veterans Network. These organisations are supported by communities of faith such as the Western Cape Religious Leaders Forum and the South African Council of Churches and the Muslim Judicial Council. #UniteBehind is predominantly Western Cape-based but many of our constituent organisations operate across the country.
- 2 #UniteBehind emerged out of the Cape Town Ahmed Kathrada Memorial, held on 6 April 2017. This event brought together thousands of people from across Cape Town, equally motivated to honour the memory of Comrade Kathy and to protest the assault on the democratic state which at that time had just been epitomised by the cabinet reshuffle that saw the removal of Pravin Gordhan and Mcebisi Jonas from the Ministry of Finance. Gordhan addressed the memorial along with activist leaders from Black African and Coloured communities from across the Cape Flats.
- 3 Our key mission in #UniteBehind is to build a just and equal society where all people share in the country's wealth, participate in the decisions that affect their lives, and where the environment is sustainably protected for future generations. One of our central demands is the building of a safe, reliable, affordable, efficient and quality public transport system, in particular a commuter rail

service. Dealing with the endemic corruption, state capture, political interference by the Executive, incompetence and maladministration at the Passenger Rail Agency of South Africa (PRASA) is one of our most immediate and urgent campaigns to give effect to the right to safe, reliable, efficient rail transport for all.

URGENT LEADERSHIP INTERVENTIONS REQUIRED FROM PARLIAMENT; A NEW PRASA BOARD AND EXECUTIVE MANAGEMENT

- 4 Safety and security represents an urgent emergency and PRASA is mired in state capture, corruption, mismanagement and maladministration. The crisis in safety and security cannot be adequately resolved without simultaneously addressing the crisis in governance and management. We therefore request the following urgent action to bring relief to workers, students, communities and the economy.
 - 4.1 The Passenger Rail Agency of South Africa (PRASA) will not emerge from the current crisis unless and until a new board is appointed. Cabinet must instruct the Minister of Transport to appoint a credible new board with the requisite qualifications, experience, skills and competencies.
 - 4.2 All those implicated in corruption, mismanagement, maladministration must be removed from PRASA. Parliament must instruct the Board to continue investigations and to support all criminal and civil proceedings against those involved in state capture and corruption at the rail agency.
 - 4.3 Investigations must be concluded and the rapid prosecution of cases against all those involved in the criminal enterprise to capture PRASA must be prioritised. In particular, Sifiso Buthelezi, Makhensa Mabunda, Lucky Montana, Mthura Swartz, Roy Moodley, Mario Ferreira, Arthur Fraser, Manala Manzini, Auswell Mashaba, Josephat Phungula, Chris Mbatha, Daniel Mthimkulu, Rebecca Setino, Maishe Bopape and Ernest Gow have cases to answer based on all the available evidence. See our attached annexures and submission to Parliament for further details on the above individuals.
 - 4.4 Criminal investigations must also include international companies such as Vossloh Espana/Stadler Rail which has stolen billions of rand through contracts like Swifambo Rail (locomotives). The relevant European regulatory authorities must be contacted.

- 4.5 A qualifications, skills, competencies and life-style audit is urgently needed for PRASA management at every level, starting with head office and its Western Cape region. The new Board must lead this audit to ensure that people's needs are prioritised and the economy (particularly in Cape Town where the rail system forms the backbone of all public transport) is stabilised.
- 4.6 All PRASA appointments must be merit based with open competition. Only appropriately qualified, skilled, competent and experienced people must be appointed at managerial and supervisory levels.
- 4.7 An urgent safety plan is needed to enable commuters to travel without constant fear of being crushed to death, thrown from the train or attacked by criminals. We believe the following are among the immediate steps required:
- 4.7.1 The reopening of the Central Line with adequate security.
- 4.7.2 Security employed by PRASA must be qualified and PSIRA compliant. They must be supported by the South African Police Service and the Law Enforcement Officers of the City of Cape Town. All current security employees must be assessed; where possible redeployed and trained. Those with serious criminal records must be dismissed.
- 4.7.3 The protection of commuters and all workers, particularly women, children and other vulnerable people, must be prioritised. This can be partially achieved through securing of stations and their surrounds (including proper lighting and CCTV surveillance).
- 4.7.4 Separate compartments are needed for women, children and differently abled commuters. This has been successfully implemented in other countries such as India. Organisations such #UniteBehind and the broader commuting public must be involved in the development of a plan with clear objectives; targets; deadlines and budgets.
- 4.7.5 Specific details and timeframes for any such safety plans or measures be communicated to all commuters.

4.8 In Cape Town the passenger rail service must be coordinated and at an appropriate time transferred to the relevant local authority as contemplated the Draft White Paper of the National Rail Policy – June 2017. Much of our work involves campaigning against the anti-poor and anti-black policies of the City of Cape Town’s DA administration, but in this instance the City has made a realistic set of recommendations which should be taken seriously. Most importantly however, is that the National Land Transport Act requires that all land transport including rail be integrated with municipal transport. This international standard is crucial to the provision of efficient, accessible and reliable integrated transport systems in our metros.

4.9 Alternative forms of transport, like busses, must urgently be provided to commuters who ordinarily use lines that are currently suspended or those facing constant delays.

4.10 In the medium term we need a proper plan: How do we stop delays? What new rolling stock is needed? Is there surplus rolling stock elsewhere? Which of the existing coaches, not in use, could be upgraded rapidly?

4.10.1 As much as possible such rolling stock must be manufactured and procured locally to develop our manufacturing sector, creating employment and stimulating growth.

5 The above recommendations combine a set of priorities for parliament, a new board, and a Minister of Transport to stabilise the passenger rail service in every region. Government (all its different arms and spheres) cannot save our rail service alone. People who use public transport, business, trade unions, schools and communities and #UniteBehind stand ready to assist.

THE URGENT ISSUES FACING PRASA COMMUTERS OF SAFETY AND SECURITY AND THE COLLAPSE OF SERVICE

6 The lack of safety on our country’s passenger trains is a daily nightmare.

7 PRASA and Metrorail have never complied with the Constitutional Court’s 2004 judgment and subsequent Court Order of 2009 in *Rail Commuter Action Group and 54 Others v Transnet Limited t/a Metrorail and 3 others* (see Annexure 1). This was a matter brought forward by Leslie van Minnen who tragically lost his son, COSATU, and many others.

8 PRASA Western Cape Region currently sources largely incompetent, unregistered and unskilled

security personnel who cannot protect themselves, passengers or the assets of the agency. Many have criminal records. For more information see the 31 May 2017 letter sent by PRASA's Mr Ernest Hendricks, Regional Security Manager, to Mr Tiro Holele and PRASA's Corporate Office (see Annexure 2). Over 80% of the security staff in the Western Cape are not registered with the Private Security Industry Regulatory Authority (PSIRA). Alazmingly the majority of this group are so-called Military Veterans who cannot be registered because they have criminal records. As #UniteBehind wrote, in a letter to Minister of Transport, Mr Mkhacani Joe Maswanganyi, on 18 October 2017, the manner in which security guards have been appointed and the failure to protect people and assets "can only be described as criminal negligence". (See Annexure 3)

- 9 The impression of criminal negligence was amplified when we were provided with a copy of a business plan prepared by the City of Cape Town, sent some time ago to PRASA Western Cape, offering that "an additional 100 law enforcement officers be added to the City's resources – split 40% to focus on infrastructure (cable theft and vandalism) and 60% on commuter safety." This offer was not responded to by PRASA. (see Annexure 4)
- 10 #UniteBehind has sent a letter demanding among other things an urgent safety and security plan to PRASA Western Cape's Regional Manager, Richard Walker, on 12 January 2018 (see Annexure 5).

GENERAL CRISIS AT PRASA: COLLAPSE OF THE SERVICE

- 11 The Rail Safety Regulator has reported that there were 495 fatalities, 2079 injuries, and 73 derailments or collisions of PRASA trains, in 2016/17 (see Annexure 6). Most recently there was a derailment or collision:
 - 11.1 derailment at Bellville Station where 10 passengers were injuries - 18 August 2017
 - 11.2 derailment at Plumstead Station – 1 November 2017;
 - 11.3 collision and derailment in the Free State where 254 passengers were injured and 18 were killed – 4 January 2018;
 - 11.4 in Germiston where over 226 passengers were injured;
 - 11.5 In Germiston – 17 January 2017;

- 11.6 on the Cape Town Central Line (Still suspended) where four trains derailed on a test run for the resumption – 18 January 2018.
- 12 The Central Line, servicing over 120 000 commuters whom are overwhelmingly working-class and poor African and Coloured, has been shut down since the 8th of January 2018 after a security guard was murdered. This has cascaded to other sectors of public transport causing unrest for bus and taxi commuters as well.
- 13 Around 43% of former passengers (~248 500) have stopped using the trains over the past four years¹; on average over 45% of trains are late and around 16% of all trains are cancelled (July 2017)², with the exception of the Central Line, which has faced far worse collapse.
- 14 Up to 57% of trains have been cancelled during certain weeks on the Central Line, with an overall 400% increase in train cancellations in the Western Cape between 2015 and 2017³.
- 15 We have reason to believe that PRASA's management team at a national and regional level, is incompetent and dysfunctional. This stems from a decade of state capture, corruption, mismanagement and maladministration.

STATE CAPTURE, CORRUPTION AND MALADMINISTRATION

- 16 In August 2015, then Public Protector Advocate Thulisile Madonsela published her report "*Derailed*" (No.3 of 2015/16) based on 32 complaints of maladministration, procurement irregularities and corruption at PRASA. Her report dealt with serious allegations of tender fraud, nepotism, corruption and conflicts of interest involving former CEO Lucky Montana, amongst others. The Public Protector found that 19 of the 32 complaints were substantiated.
- 17 A new PRASA Board was appointed in August 2014, under the chairmanship of Mr Popo Molefe. On receiving the *Derailed* report, he set about addressing the extremely serious findings and binding

¹ TDA Cape Town. Comprehensive Integrated Transport Plan 2017 – 2022. (Report by City of Cape Town Transport and Urban Development Authority - 2017), pg. 41.

² Metrorail: Western Cape, Key Stakeholder Engagement Presentation – September 2017

³ Nceba Hlana, *A 400% increase in train cancellations worries the Western Cape*. (Business Day, 2017). Available: [<https://www.businesslive.co.za/bd/national/2017-08-15-a-400-increase-in-train-cancellations-worries-the-western-cape/>]

remedial actions. According to a statement by Mr Molefe in 2017:

“in accordance with the recommendations of the erstwhile Public Protector in her report entitled *Derailed*, to address long-standing corruption and governance issues at PRASA... the board instituted and completed significant investigations at PRASA and, consequently, embarked on litigation to unwind unlawful and corrupt transactions... vindicated most recently by the judgment of Francis J in *PRASA v Swifambo Rail Leasing (Pty) Ltd*, in terms of which PRASA succeeded in setting aside an unlawful contract amounting to approximately R2.6bn... also taken steps to compel the law enforcement agencies, including the National Prosecuting Authority and the Directorate for Priority Crime Investigation, to act against the wrongdoers.”

- 18 A crucial remedial action ordered by the Public Protector directed PRASA to assist the National Treasury in investigations of all contracts above R10 million for the period 2012-2015.
- 19 These investigations, commissioned by National Treasury, and conducted by 13 different prominent law firms and forensic agencies, implicate among others the current Deputy Minister of Finance Mr Siso Buthelezi (former PRASA Board Chairperson) in possible criminal conduct along with politically connected persons known to President Jacob Zuma including Mr. Roy Moodley, Arthur Fraser, Mr Makhensa Mabunda and Mr. Mario Ferreira.
- 20 The reports reveal a systematic effort to loot the rail agency.
- 21 The major companies directly implicated include S-Investments of the “S Group” which includes Siyaya Energy, Siyaya DB Consulting Engineers and Siyaya Rail Infrastructure Solutions and Technology. Swifambo, Voslo Espana, Royal Security, Resurgent Risk Management and Tshireletso Enza Construction are also directly implicated although these latter three are not dealt with further in this letter.
- 22 R15bn was the total value of the contracts investigated by Treasury for contracting periods between 2012-2015. Specifically, R2.5bn can explicitly be attributed to “irregular” and unlawful expenditure. Another R3.5bn is unverifiable due to missing documentation. The extent of missing documentation and/or missing steps in the procurement process can be attributed to fraud with criminal intent.
- 23 All the investigators for the Treasury report cited a lack of proper record keeping and missing

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documentation. In many instances the audit trail was destroyed and where it could be followed it showed lack of compliance with the PRASA's supply chain management process and the PFMA.

- 24 Tenders were awarded without any needs analysis having been conducted.
- 25 Tender and contract rigging was found to be commonplace. Where competitive tendering processes were followed on the surface, the specs and scoring were rigged to allow preferred suppliers to win.
- 26 The reports of these Treasury investigations were leaked to #UniteBehind and became known in the media under the heading #PrasaLeaks. #UniteBehind published a detailed report on the basis of the #PrasaLeaks. (See Annexure 7)
- 27 In 2015 the Auditor General issued several adverse findings against the PRASA board and management. However, it is noteworthy that the Auditor General failed to come close to detecting and exposing the systemic rot, corruption and fraud which has been ongoing for years.
- 28 Notably, the Parliamentary Portfolio Committee on Transport failed totally to hold PRASA accountable to date.
- 29 Further, on 3 July 2017, in setting aside the corrupt Swifambo tender award, Justice Francis stated as follows:

"This case concerns corruption by a public body concerning a tender that will affect the public for decades to come... Harm has been done in this case to the principle that corruption should not be allowed to triumph. Harm will be done to the laudable objectives of our hard-fought freedom if I was not to set aside the award. Harm will be done to all the hardworking and honest people of our land who refrain from staining themselves with corruption... Harm will be done if the benefactors of the tender were allowed to reap the benefits of their spoils... Corruption will triumph if this court does not set aside the tender."

- 30 Even a cursory perusal of the Auditor General's 2015 report, the Public Protector's '*Derailed*' report, the judgment in *Swifambo* and the affidavits filed in other matters, gives much reason to suspect that offences listed in Chapter 2 of the Prevention and Combatting of Corrupt Activities Act 2004 have been committed in relation to PRASA.

- 31 Most seriously, despite mountains of evidence of systemic corruption and state capture at PRASA, the Hawks and NPA have failed to act for more than two years (See paragraph 33.3).

PRASA, UNDER FORMER CHAIR POPO MOLEFE, GOES TO COURT TO RECOVER LOOTED FUNDS

- 32 During 2017 PRASA, on instructions from its then-Board of Control, under the chairmanship of Mr Popo Molefe, instituted legal proceedings against various companies, entities and individuals to address lapses in governance and recover looted funds. The institution of these legal proceedings followed the forensic investigation that was instituted by the BoC under Molefe and the report of the Public Protector entitled "Derailed".

- 33 The legal proceedings brought by PRASA were:

33.1 Siyangena Technologies (Pty) Ltd: This is a review application against an award of two contracts to Siyangena for installing security systems at 200 PRASA stations. Former Group CEO, Lucky Montana, and the Project Manager on this project, Luyanda Gantsho, are implicated. Gantsho has admitted to investigators that he received the beneficial use of a penthouse apartment. PRASA's court papers alleged that Montana had received kickbacks of R4.9-million. PRASA's internal legal department (see Annexure 8) are confident of success in the review because the Constitutional Court has recently changed the law to allow a public entity to review its own decision and because new evidence has emerged that shows that Siyangena knew the contracts were irregular.

33.2 Swifambo Rail Agency (Pty) Ltd (Case No. 2015/42219): This is the famous case where 70 diesel-electric locomotives were acquired that exceeded the maximum height specified. The tender was worth R3.5bn. (For further details see from paragraph 68 below.) Justice Francis set aside the corrupt contract with a scathing judgment on numerous grounds including likely tiggling of the tender, Swifambo's lack of tax clearance, PRASA's failure to secure approvals required by the PFMA and various other grounds. Swifambo was granted leave to appeal and the appeal is underway.

33.3 Directorate of Priority Crimes Investigation and the National Prosecuting Authority (Case No. 36337/17): This application is for an order directing the Hawks and the NPA to investigate complaints laid by PRASA in respect of Swifambo and Siyangena. To date the

Hawks have refused, saying that when he signed an affidavit on behalf of PRASA, as Chairperson of the Board, which he then was, Dr Popo Molefe lacked the required authority.

33.4 KPG Media: In this litigation PRASA cancelled an irregular tender based on evidence and findings in the Public Protector's 'Derailed' report. KGP Media attempted to interdict the cancellation but PRASA opposed this application successfully up to the Supreme Court of Appeal

33.5 A case challenging the unlawful dismissal of the previous Board of Control by Ms Dipuo Peters, former Minister of Transport (Case No. 17748/17)

34 Apart from the last two matters, all the others are either pending or on appeal.

35 PRASA is also involved in arbitration with Siyaya before Justice Brand (see paragraph 65 below).

36 It is important to note that PRASA has still not instituted any litigation flowing from the investigations of the National Treasury.

ATTEMPTS TO 'DERAIL' THE INVESTIGATIONS

37 The then Minister of Transport, Dipuo Peters, in August 2016, announced that the investigations into corruption that Werksman's Attorneys had been commissioned to carry out were to be curtailed.

38 In March 2017, Peters went a step further and attempted to remove the PRASA board. This was successfully resisted in court as "unlawful" and "irrational".

39 President Zuma replaced Peters with Joe Maswanganyi in the cabinet reshuffle at the end of March 2017. However, according to Mr Molefe, the same pattern continued:

"The current minister of transport has, however, continued to attempt to thwart the operations of PRASA and prejudice its attempts to address Derailed... the new minister has refused to meet with the board; despite repeated requests... rather than dealing with the critical substantive issues and supporting the work of the board, Minister notified the board of his intention to remove the Board in June 2017; and the minister has undermined the

authority of the board, including its authority to complete its investigations and take steps in addressing corruption at PRASA. The current minister's actions, unfortunately, dovetail with those of his predecessor, who once instructed the board to 'stop' the investigations; did not appoint a permanent CEO even after the board had followed all due processes; and unlawfully terminated the board's service prematurely and was rebuked by the court for having done so."

- 40 Mr Molcfe's term ended on 31 July 2017. Since he left corrupt practices appear to have re-emerged, commencing with the appointment by the Minister of Transport, of an "Interim Board"
- 41 The Ministers of Transport at the relevant times: Ben Martins, Dipuo Peters and now Joe Maswanganyi appear to have deliberately turned a blind eye to corruption and mismanagement. In the cases of Peters and Maswanganyi, there appears to be collusion to obstruct justice.

UNLAWFUL APPOINTMENT OF AN "INTERIM" BOARD OF CONTROL "UNTIL FURTHER NOTICE"

- 42 The Minister of Transport appointed "an interim" Board of Control (BoC) for the Passenger Rail Agency of South Africa (PRASA) "until further notice", on the 19th of October 2017. This appointment is unlawful in terms of the Legal Succession to the South African Transport Services Act 9 of 1989 (the Legal Succession Act), which does not allow for the appointment of an "interim board". In the litigation referred to in paragraph 71.5, #UniteBehind has asked the Court to review the decision and to find that the BoC was improperly constituted.

THE INAPPROPRIATE APPOINTMENT OF JUSTICE MAKHUBELE AS PRASA INTERIM BOARD OF CONTROL CHAIRPERSON

- 43 On 5 October 2017, the Judicial Services Commission (JSC) formally recommended for appointment Adv Tintswalo Annah Nana Makhubele SC as a judge in the Gauteng High Court. This followed Makhubele's interview before the JSC.
- 44 On 19 October 2017, Makhubele was appointed by Mr. Joe Maswanganyi, Minister of Transport, as the Chairperson of the Interim Board of Control of PRASA "until further notice". The Minister seems not to have been concerned that he was appointing an Interim Chairperson who had already been recommended for appointment as a judge.

- 45 Two weeks later, on 2 November 2017, Makhubele was indeed appointed by President Zuma as a Judge of the Gauteng Division of the High Court, with effect from 1 January 2018.
- 46 Makhubele confirmed her impending appointment as a judge in her report to the Parliamentary Portfolio Committee on Transport chaired by Ms Dikeledi Magadzi (MP) on 24 November 2018.
- 47 To this day, Makhubele remains Chairperson of the Interim Board of Control of PRASA.
- 48 Based on the above, #UniteBehind is concerned about a breach of the separation of powers. As chairperson of the interim PRASA Board of Control, Justice Makhubele is carrying out functions in the executive domain and is accountable to the Minister of Transport, Parliament, the Minister of Finance and the Auditor-General. Further, #UniteBehind is concerned about the possibility that the standing of the judiciary could be damaged by one of its incoming members appearing to condone ill-gotten gains.
- 49 The Constitutional Court dealt with this question in relation to former President Mandela's appointment of Justice Willem Heath as Head of the Special Investigating Unit. In *S.A. Association of Personal Injury Lawyers v Heath and Others* (CCT27/00) [2000] ZACC 22; 2001 (1) SA 883; 2001 (1) BCLR 77 (28 November 2000) the late President of the Constitutional Court, Arthur Chaskalson, held the following when declaring Heath's appointment unlawful:

"Under our Constitution, the judiciary has a sensitive and crucial role to play in controlling the exercise of power and upholding the bill of rights. It is important that the judiciary be independent and that it be perceived to be independent. If it were to be held that this intrusion of a judge into the executive domain is permissible, the way would be open for judges to be appointed for indefinite terms to other executive posts, or to perform other executive functions, which are not appropriate to the "central mission of the judiciary." Were this to happen the public may well come to see the judiciary as being functionally associated with the executive and consequently unable to control the executive's power with the detachment and independence required by the Constitution. This, in turn, would undermine the separation of powers and the independence of the judiciary, crucial for the proper discharge of functions assigned to the judiciary by our Constitution. The decision, therefore, has implications beyond the facts of the present case, and states a principle that is of fundamental importance to our constitutional order."

- 50 #UniteBehind wishes to place on record that we have the fullest confidence that judges in our democratic constitutional dispensation have followed the precepts of the separation of powers because not one member of our judiciary has since occupied post in the executive's domain. Justice Makhubele is the only such appointment.
- 51 You will find annexed a confidential letter (see Confidential Annexure 9) sent to #UniteBehind by the appropriate ranking member of the judiciary in which #UniteBehind is advised of the steps being taken by said ranking member of the judiciary to manage the problems in regards to Justice Makhubele. The annexed letter was in response to a letter from #UniteBehind. We have not currently laid a complaint with the Judicial Services Commission pertaining to Justice Makhubele because we believe such a course of action can be averted along with any unnecessary tension or conflict. However, we believe that Justice Makhubele must resign from the Interim Board with immediate effect.
- 52 The latest egregious act of irregular and possibly corrupt action shows that under the Transport Minister Joe Maswanganyi and his "Interim" Board chaired by Justice TAN Makhubele, a decision was taken to "invest" R1 billion allocated to capital projects in the VBS Bank. President Jacob Zuma's unlawful expenditure on Nkandla was paid through this bank and in the attached memorandum we show that he has benefitted directly from state capture at PRASA. Since at least November 2017, PRASA has been involved in negotiations with VBS Bank and unlawfully committed to invest monies allocated to improve commuter rail services. The Minister of Transport Joe Maswanganyi, Justice Makhubele and her Board colleagues along with most of the Executive Management are ethically and legally compromised. #UniteBehind has gained access (through whistle-blowers) to letters between PRASA and the VBS Bank. We will provide annexures after this hearing.

THE RECKLESS APPOINTMENT OF MTHURA SWARTZ AS ACTING PRASA RAIL CEO

- 53 On 3 January 2018, the Acting Group CEO of PRASA Mr. Cronet Molepo (who was himself improperly appointed by the unlawfully appointed Interim Board of Control) announced the appointment of a certain Mr. Mithura Swartz as head of PRASA Rail, the main subsidiary in the group.
- 54 Mr Molepo was appointed despite the fact that he was suspended by KwaZulu-Natal's Umgeni Water on grounds of serious financial conduct, illegal tapping of communications, and unauthorised expenditure. He resigned in order to prevent disciplinary action being taken against him. Molepo's

appointment of Swartz also features in our legal challenge mentioned in paragraph 71.5 above.

- 55 It is extraordinary that this appointment happened only days after PRASA's own lawyers, from a large reputable law firm, advised PRASA management to immediately suspend Mr. Mthura Swartz who was then Executive Manager for PRASA Mainline Passenger Services. This advice was given on 28 December 2017. The basis for the advice was because complainants and witnesses in new matters of victimisation, intimidation, irregular procurement processes and sexual harassment feared for their jobs and/or personal safety. Instead of suspension, Mr. Swartz was on 1 January 2018 promoted to the position of Acting PRASA Rail CEO where he has power and control over all whistle-blowers, complainants, potential witness and documentary evidence.
- 56 On 5 January 2018, we addressed a letter to Justice Makhubele (see Annexure 10) pointing out the following:
- 56.1 Mr. Swartz has provisional findings against him by the Western Cape office of the Public Protector for maladministration, specifically the improper appointment of unqualified and unskilled persons to senior security positions;
- 56.2 The Directorate for Priority Crime Investigation (DPCI) ("the Hawks") in the Eastern Cape is investigating Mr Swartz (now the head of PRASA's rail division) for organising the theft of rail lines and sleepers as well as corruption (Elliott CAS 35/02/2013);
- 56.3 Earlier in his career, Swartz was found guilty by the City of Cape Town on 8 charges relating to an irregular tender and over-payment by R6m.
- 56.4 At PRASA, Swartz appointed senior security staff members despite them lacking the necessary qualification, security clearance, firearms training and Private Security Industry Regulatory Authority registration (see Annexure 11 for further details on this.)
- 56.5 Swartz is likely to face charges for a corrupt relationship with Spanish Ice, a "logistics company" used to transport the stolen PRASA assets.
- 56.6 We are reliably informed that sufficient evidence on oath exists to suspend Swartz on grounds of sexual harassment, victimisation, intimidation, irregular procurement and corruption.

56.7 As shown above, PRASA was advised on 28 December of the need to suspend Swartz, before he was promoted.

57 To date, we have not received any acknowledgment of, or reply to, our letter to Justice Makhubele that might provide a reasonable explanation for Swartz's appointment and continued presence at PRASA.

DECISION OF THE "INTERIM" BOARD UNDER JUSTICE MAKHUBELE TO SUSPEND PRASA'S LEGAL PANEL, ENDANGERING LEGAL PROCEEDINGS AGAINST LOOTING

58 On 1 December 2017, the interim BoC, under the chairpersonship of Justice Makhubele, convened a special meeting at the PRASA Corporate Office in Hatfield in Pretoria, at which various resolutions were taken.

59 One of these decisions was to suspend PRASA's legal panel, i.e. the group of attorneys that had provided legal services to PRASA for years. These were, of course, the attorneys working on all of the above cases intended to recover funds looted from PRASA. Instead, the BoC decided, any legal services were to be sourced not through Group Legal Services, but through PRASA's Supply Chain Management (SCM) department.

60 This decision received strong opposition from professionals within PRASA. On 5 December 2017, PRASA's Group Executive for Legal, Risk & Compliance, Martha Ngoye and General Manager for Group Legal Services, Fani Dingiswayo, sent Interim Chairperson Makhubele a 15-page memorandum (see Annexure 12) in which they detailed their strong objections to the Interim Board's decision. They wrote: "We do not support the part of the draft resolution that states that procurement of legal services should be done through the SCM Department."

61 The memorandum expressed a number of fundamental concerns:

61.1 It says that the Board resolution "appears to be a termination of the panel of attorneys and not a suspension thereof".

61.2 It says and that the decision ignores "the risks of not having a panel of service providers that service PRASA on a daily basis". It explains: "There is always a need for legal advice and representation for project-related work, personal injury, labour issues that arise etc. It is not an exaggeration to indicate that this occurs almost daily. Without a list of service providers who

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are immediately available to PRASA, the work of [Group Legal Services] GLS will be severely hampered.”

- 61.3 That the Supply Chain Management (SCM) department to which the BoC has now delegated authority to procure legal services is in a “parlous state”, “paralysis” and that twice in three years the SCM Department showed itself to be “inept to procure a panel of attorneys”. They noted to the BoC that the SCM Department was event unable to provide PRASA with ink charges or paper for over a month. “Our view”, the memorandum states, “is that they cannot be entrusted with the responsibility to procure legal services almost every day.”
- 62 #UniteBehind has reason to believe that the decision to disband the legal panel is partly intended to scupper the attempts detailed at paragraph 33 above, against companies such as Siyangena and Swifambo to recover looted funds.
- 63 Further, #UniteBehind has received credible information and has reason to believe that the decision to disband the legal panel is partly intended to enable the settlement of all disputes with the S-Investments (which included Siyaya) companies of Mr. Makhensa Mabunda.

S-INVESTMENTS AND MAKHENSA MABUNDA

- 64 S-Investments is a company whose sole director is Makhensa Mabunda, a former government official and erstwhile colleague of Lucky Moutana, PRASA's former CEO. Mabunda and S-Investments control Siyaya and are strongly linked to Swifambo.
- 65 Siyaya DB Consulting Engineers (Pty) Ltd (now in liquidation) and Siyaya Rail Solution (Pty) Ltd, are implicated in significant corruption and payments to them have been halted pending arbitration. The BoC's apparent intention to forego the arbitration and settle — in favour of Mabunda and to the severe detriment of PRASA (and in disregard of the arbitration process underway before Justice FDJ Brand) — would in our view deprive PRASA of significant resources urgently required to address the crisis commuters face daily and is simply irrational.
- 66 In our court papers we contend that the resolutions taken by the BoC are unlawful for the reason that they were taken by an ‘interim’ BoC that was unlawfully appointed and is improperly constituted; and further on the grounds that the resolutions themselves are irrational and accordingly unlawful because their impact would be to bury all corruption investigations, litigation and asset

protection. This would—indeed appears designed to—benefit entities such as Siyaya DB Consulting Engineers (Pty) Ltd and Siyaya Rail Solution (Pty) Ltd owned by Mr. Makhensa Mabunda.

- 67 In recent weeks it has become common knowledge that Vossloh España (named changed to Stadler Rail Valencia in 2016 and now owned by the Swiss-owned Stadler Rail AG) the supplier of the too-tall locomotives to PRASA, made a series of payments between February 2014 and October 2015 totalling R75m as a kickback to Mabunda's S-Investments.
- 68 Swifambo Rail Leasing was the company Mabunda set up to purchase the locomotives from Vossloh España for PRASA. Swifambo was set up only a year before PRASA first advertised the tender and had no track record in the rail industry. It nevertheless won the R3.5bn tender.
- 69 It is important to remember that Dr Popo Molefe stated on affidavit in 2016 that Vossloh España paid roughly R80m to an Angolan businesswoman, Maria Gomes, a friend of President Jacob Zuma, and to a local lawyer who'd introduced himself to Swifambo's managing director as a fundraiser for the ANC. This was allegedly done because Gomes had insisted that ten percent of the tender's value be paid to the ANC.
- 69.1 Lucky Montana's testimony to the Eskom inquiry has brought up this payment. He claimed it was initially demanded of him by Dr. Zweli Mkhize, the former Treasurer of the ANC, that 10% of R465 million of the first payment that was due to Swifambo Rail Leasing be paid to him. Montana denies the payment was made and claims he met with Gomes who denied it as well.
- 69.2 There can be little doubt that Montana's partial truths revealed to the Eskom Inquiry is not whistle-blowing but in fact an attempt to cover-up that the criminal syndicate in PRASA is almost intact and that under his leadership and that of current Deputy Finance Minister Sifiso Buthelezi, they fiercely resisted a takeover by the Gupta syndicate.

#UNITEBEHIND'S ATTEMPTS TO-DATE TO HAVE THE PROBLEMS ADDRESSED

- 70 We make this submission to Parliament after having made numerous attempts to raise our concerns at all the appropriate levels:

- 70.1 We have undertaken serious research and education into PRASA state capture (assisted by

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whistle-blowers);

- 70.2 We have educated ourselves and the need for a decent rail service.
- 70.3 We have produced two podcasts that address state capture and its role in the increasingly unreliable, unsafe and undignified commuter rail service;
- 70.4 We have created a pamphlet on the crisis (see Annexure 13);
- 70.5 We hold monthly public meetings with activists from our affiliate organisations, engage regularly with commuter groups on social media platforms and have hosted workshops;
- 71 We organised protests:
- 71.1.1 On the 1st of November we occupied the NPA demanding the immediate arrest of President Zuma after the SCA reinstatement of corruption charges and the revealing of his corrupt relationship with Roy Moodley. Eight of our activists were arrested and held overnight, however all charges were eventually dropped. This followed unsuccessful engagement with Shaun Abrahams, the National Director of Public Prosecutions by the UDF Veterans for more than two months;
- 71.1.2 We have picketed outside of the Portfolio Committee on Transport;
- 71.1.3 On the 30th of November 2017 we organised "The People's Trial of Jacob Zuma and his PRASA Thieves" where we presented excerpts of evidence to over 2000 people at Cape Town Station.
- 71.2 We have sent letters to the following people:
- 71.2.1 The Minister of Transport Mr. Joseph Maswanganyi (cc. Chairpersons of the Portfolio Committee on Transport and Standing Committee on Public Accounts) re. the Governance and Operational Emergency in Prasa/Metrorail – 18 October 2017 (see Annexure 3).
- 71.2.2 The Chairperson of the Standing Committee on Finance Mr Yunus Carrim re. the




Governance and Operational Emergency in Prasa/MetroRail – 8 December 2017
(see Annexure 14).

- 71.2.3 The Public Protector Advocate Busisiwe Mkhwebane re. Urgent request for release of a report in the alleged maladministration, mismanagement and abuse of resources and irregular recruitment and labour processes by officials of MetroRail Western Cape most notably Mr. Mthura Swartz – 30 January 2018 (see Annexure 15).
- 71.3 Letter of demand by our attorneys Bradley Conradie and Halton Cheadle to:
- 71.3.1 The Minister of Transport Mr Joseph Maswanganyi re. the appointment of the interim BoC and the appointment of Cromet Molepo (see Annexure 16).
- 71.3.2 To the Chairperson of the interim BoC Justice Makhubele re. the BoC's resolution (see paragraph 59; Annexure 17).
- 71.3.3 To the National Director of Public Prosecution Mr Shaun Abrahams re. appointing a special investigator and on the protection of PRASA assets – 25 January 2018 (see Annexure 18).
- 71.4 On 7 August 2017, the UDF Veterans group presented the NPA with a petition demanding that the NDPP urgently proceed with the prosecution of those involved in bribery, corruption and other related criminal activities in various institutions, which included PRASA. The NDPP, Shaun Abrahams, responded that the responsibility for investigating crime lies with police and the Hawks. However, section 22 of the Prevention and Combating of Corrupt Activities Act 2004 empowers the NDPP to appoint a Special Director of Public Prosecutions to investigate, whenever the NDPP has reason to believe that there may be in any building or in the possession or custody or control of any person any property which may have been used, or is connected with the commission of an offence listed under Chapter 2 of the Act, or may be the proceeds of such an offence. Our attorneys wrote to NDPP Shaun Abrahams to explain this elementary legal point and to request that he exercise his powers accordingly (see Annexure 18). In that letter our attorneys named individuals that we believe, based on the evidence in reports by the Auditor General and Public Protector as well as the Swifambo judgment and other affidavits, have committed offences in terms of Chapter 2 of the Act, namely Mr Makhensa

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Mabunda, Mr Mario Ferreira, Mr Roy Moodley, Mr Lucky Montana and Mr Sifiso Buthelezi, to name a few. We have advised the NDPP that should he not respond affirmatively we will be left with no choice but to bring an urgent application to compel him to do so. To date we have received no further response from the NDPP.

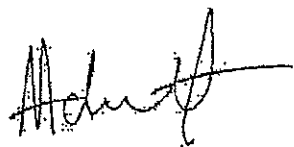
- 71.5 On 18 December 2017 #Unite Behind and one of its affiliate organisations Equal Education launched legal proceedings against the Minister of Transport, the NPA and PRASA (regrettably, including Justice Makhubele in her capacity as Interim Board Chairperson of PRASA) and others (Case No. 23200/2017) in the Western Cape Division of the High Court. On 22 December 2017, Justice Straj Desai postponed the hearing to 19 February 2018, which is less than two weeks away (see Annexure 19).

CONCLUSION

- 72 Thank you for giving this important issue your attention. It literally affects the daily lives of millions of people. These are poor and working-class people that the Constitution insists must be the state's first priority.
- 73 We intend to make this letter public one week from today, not in order to embarrass you but because we believe that in order to take the necessary action you will need public support.
- 74 We hope you have a fruitful year and trust that this letter is received in the spirit of demonstrating our commitment towards building an equal and free society under the rule of law.

Yours Faithfully,

Members of the #UniteBehind Organising Secretariat



Zackie Achmat



Zukiswa Vuka

Zelda Holtzman

Doron Isaacs

Madoda Cuphe

June Esau

Noncedo Madubedube

Bruce Baigrie

Reverend Alan Storey

Phumeza Mlungwana

Barry James Mitchell

LIST OF ANNEXURES:

1. Settlement Agreement between the Rail Commuter Action Group and 54 Others v Transnet Limited t/a Metrorail and 3 others [8232/2005] – 12 June 2009;
2. Letter from PRASA's Mr Ernest Hendricks, Regional Security Manager, to Mr Tiro Holele and PRASA's Corporate Office – 31 May 2017;
3. Letter from #UniteBehind to Minister of Transport Joe Maswanganyi re. the Governance and Operational Emergency at PRASA – 18 October 2017;
4. Project Business Plan: Project entered into by and between: Transport for Cape Town (TCT) and the Passenger Rail Agency of South Africa – 22 January 2018;
5. Letter from #UniteBehind demanding among other things an urgent safety and security plan to PRASA Western Cape's Regional Manager, Richard Walker - on 12 January 2018;
6. Rail Safety Regulator, *State of Safety Report 2016/2017*, pp 98 – November 2017;
7. #UniteBehind, *Rig, Conceal, Destroy and Falsify: How State Capture Happened at PRASA*, #PRASALeaks – January 2018;
8. Application for leave to appeal in the matter between Passenger Rail Agency of South Africa v Siyangena Technologies (PTY) LTD and 2 others [2016/7839] – 21 August 2017;
9. Letter from ranking member of the Judiciary to #UniteBehind re. Justice Makhubele – 29 January 2018;
10. Letter from #UniteBehind to Justice Makhubele re. the appointment of Mthura Swartz – 5 January 2018;
11. Progress Report: Alleged maladministration and mismanagement and abuse of resources and irregular recruitment and labour processes by officials of Metrorail Western Cape [001076/13/WC], Office of the Public Protector – 17 November 2015;
12. Memorandum to the Chairperson of the Board of Control of PRASA from Group Executive: Legal, Risk and Compliance – 5 December 2017;
13. #UniteBehind pamphlet for the #FixOurTrains campaign – 31 October 2017;
14. Letter from #UniteBehind to Chairperson of the Standing Committee on Finance Yunus Carrim – 8 December 2017;
15. Letter from #UniteBehind to Office of the Public Protector re. the release of final report (see Annexure 10) – 30 January 2018;
16. Letter of demand from #UniteBehind attorneys to the Minister of Transport Joe Maswanganyi re. the appointment of the interim BoC and the appointment of Cromet Molepo – 8 December 2017;
17. Letter of demand from #UniteBehind attorneys to the Chairperson of the interim BoC Justice Makhubele re. the BoC's resolution – 8 December 2017;
18. Letter of demand from #UniteBehind attorneys to National Director of Public Prosecutions re. investigation and protection of PRASA property – 25 January 2018;

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19. Notice of Motion and Founding Affidavit in the matter between #UniteBehind and Equal Education v the Minister of Transport and the Passenger Rail Agency of South Africa [23200/2017] – 18 December 2017.



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*"Derailed"**A Report of the
Public Protector*

August 2015



8.33. General observations

- 8.33.1. The transactions investigated and related findings reveal a culture of systemic failure to comply with the SCM policy, particularly involving failure to plan for bulk procurement, test the market appropriately for competitive pricing and to manage contracts, which culture may have cost PRASA millions in avoidable expenditure and preventable disruption of services.
- 8.33.2. There also seems to be a culture of either poor information management or hiding of information that could provide evidence of maladministration and other forms of improper conduct. If the pattern is not arrested it has the potential to derail the effective and efficient procurement of goods and services to support PRASA operations and consequently service delivery by this important national asset. Poor financial management also has implications for the national revenue as it may mean frequent yet preventable rescue funding.
- 8.33.3. Regarding PRASA's failure to provide information, it must be appreciated that public accountability via administrative bodies such as the Public Protector is not accountable to Complainants but to the public that entrusts public functionaries with public power and resources. It is, accordingly, not open to public functionaries to try and win a case by withholding or hiding information.

9. REMEDIAL ACTION

The appropriate remedial action I am taking in pursuit of section 182(1)(c) of the Constitution, with a view of placing the Complainant as close as possible to where they would have been had the improper conduct or maladministration not occurred,



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van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

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Our Ref: **MR GT VD MERWE/st/F115**

Your Ref: **MR BOIPELO RATSHIKANA**

24 February 2020

**Commission of Enquiry into allegations of
State Capture, Corruption and Fraud in the
Public Sector including Organs of State**

Secretary@commissionsc.org.za

boipelo@commissionsc.org.za

Dear Sirs,

**MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE
RULES OF THE RULES OF THE JUDICIAL COMMISSION OF
INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

1. We refer to the abovementioned matter and in particular a notice in terms of Rule 3.3 of the Rules of the Commission dated 19 February 2020 dispatched to Mr Mario Ferreira, our client.

2. In considering the rights of our client articulated in paragraphs 4 and 5 of your letter read with the Rules of the Commission and the Commissions Act it is, by necessity, important to have some understanding of the allegations levelled against our client.
3. We pursued the highlighted paragraphs of the affidavit of Mr Achmat in an effort to appreciate the nature and extent of a response envisaged in your notice.
4. The affidavit of Mr Achmat incorporates, at least by reference, the following documents:
 - 4.1 The Treasury reports frequently referenced by Mr Achmat in his affidavit and in the submission of #Unitebehind;
 - 4.2 A so called "*Werksmans report*" referencing our client on several occasions in the affidavit and presentation;
 - 4.3 Certain "*notices issued by the SAPS Directorate of Priority Crimes Investigations (HAWKS)*" mentioned in paragraph 51 and other paragraphs in the affidavit of Mr Achmat.
5. Our understanding of the Rules of the Commission is that the purpose of the enquiry is to stimulate, *inter alia*, an open, fair and public hearing of relevant matters.
6. None of the aforesaid documents (paragraph 4.1 to 4.3 *supra*) seem to be either privileged or confidential. In fact, in paragraph 57 of Mr Achmat's affidavit he specifically records the fact that **he released the**

Werksmans reports to a news agency thereby destroying any possible privilege (which we believe there was not in the first instance) to those documents.

7. In further addition to the aforesaid we believe that our client is, in any event, entitled to copies of any and all documentation implicating our client in any alleged wrong-doing which could adversely affect our client's interests. This principle is enshrined in our Constitution, supporting legislation and common cause in an open and democratic society.
8. To the extent that there is any reference to a company called Siyangena Technologies (Pty) Ltd in the affidavit of Mr Achmat we record that we act on behalf of the aforesaid entity.
9. Should you, therefore, consider any notice to the aforesaid entity you are most welcome to direct it to our offices for further consideration in which event we will, probably, request copies of the very same documents for perusal thereof. We tender the reasonable costs for copies.
10. Kindly advise on whether and how we will be able to gain access to the documentation contextualising the vague and unsubstantiated allegations against our client(s).
11. We could not find any support for any of the defamatory allegations raised against our client(s) in the papers presented to us.
12. To the extent that the documentation requested may entail information pertaining to irrelevant or third parties we consent to a redaction of the portions of those reports not relevant to our client(s).

13. Upon receipt of your kind feedback to this request we will be in a position to advise on our client's intention to apply for cross-examination of Mr Achmat.

14. We look forward to your kind feedback.

Kind regards.


Gert van der Merwe
VAN DER MERWE & ASSOCIATES



van der Merwe
&
Associates Incorporated

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Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

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Our Ref: **MR GT VD MERWE/st/F115**

Your Ref: **MR BOIPELO RATSHIKANA**

5 March 2020

URGENT

**Commission of Enquiry into allegations of
State Capture, Corruption and Fraud in the
Public Sector including Organs of State**

Secretary@commissionsc.org.za

Dear Sirs,

**MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE
RULES OF THE RULES OF THE JUDICIAL COMMISSION OF
INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

1. We refer to the abovementioned matter as well as:

1.1 your letter directed to our client dated **19 February 2020** together with the annexures thereto;

- 1.2 our response to the aforesaid letter dated **24 February 2020** in which we requested your urgent feedback;
 - 1.3 your letter dated **25 February 2020** acknowledging receipt of our request;
 - 1.4 your letter dated **3 March 2020** advising that the witness will give evidence on **19 March 2020**.
2. We believe that our client is prejudiced as a consequence of the fact that:
 - 2.1 our client's request to be furnished with documentation referenced (on a frequent basis) by the witness in his affidavit has not been met;
 - 2.2 the witness has been called to give evidence without affording our client a fair opportunity to consider our client's rights in terms of the notice received from the Commission on **19 February 2020**;
 - 2.3 our client has not been afforded the opportunity (to which he is entitled) to protect or reserve his rights and/or interests.
 3. As a consequence of the aforesaid this letter serves to advise the Commission of our views and, should the Commission allow the matter to proceed with full knowledge of the aforesaid factual circumstances it does so with a consciousness of the prejudice caused towards our client.
 4. We request you to bring the contents of this letter to the attention of the Honourable Raymond Zondo.

Kind regards,


Gert van der Merwe

VAN DER MERWE & ASSOCIATES

Simon

From: Simone <simone@vdmass.co.za>
Sent: Tuesday, 25 February 2020 06:36
To: 'Secretary@commissionsc.org.za'; 'boipelo@commissionsc.org.za'
Subject: F115: MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE 20200225053342290.pdf
Attachments:
Importance: High

Dear Sir/Madam,

Kindly find appended hereto a letter for your attention.

Kindest regards / Vriendelike groete.

Simone Taljaard
Van der Merwe & Ass Inc
0876540209
62 Rigel Avenue
Waterkloof
Pretoria



van der Merwe
&
Associates Incorporated

SCC4

Simone

From: Shannon S. Van Vuuren <ShannonV@commissionsc.org.za>
Sent: Friday, 06 March 2020 15:20
To: Simone
Cc: Andre J. Lamprecht; Warren Redcliffe; Boipelo B. Ratshikana; Trudi T. McCracken
Subject: RE: F115: MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE
Attachments: Annexure A Letter to Van Der Merwe Inc.pdf; Annexure B Unite Behind.pdf
Follow Up Flag: Follow up
Flag Status: Completed

Dear Sir / Madam

We acknowledge receipt of your correspondence below.

Please be advised that the Legal Team responds as follows:

1. "We refer to your letters dated 24 February 2020 and 5 March 2020, respectively.
2. We note from your letter of 5th March 2020, that you have not received a response to your letter of 24 February 2020. Please be advised that the response to your letter of 24 February 2020 was prepared by the Legal Team and was sent to the Secretariat to be dispatched to you. We have learned after receipt of your letter of 5 March 2020 that the response prepared by the Legal Team was unfortunately, due to an oversight, not sent to you. We apologise for the inconvenience caused herein. We attach to this email the response that ought to have been sent to yourselves (marked hereto as Annexure "A").
3. Without repeating what is stated in Annexure A, we confirm that the documents that you are requesting are public documents and could be easily accessed from the websites, all of which have been identified in the witness's affidavit. We however do not intend to prolong the process and would like to assist your accessing the documents as soon as possible by providing your office with the links for the documents as indicated in the witness's statement.
 - 3.1. **Treasury reports:**
https://drive.google.com/drive/folders/1UFE4pgDChM4BODF4AYdicb2cyBWsBzl?usp=sharing_eil&ts=5e622f5e
 - 3.2. **Werksman report:**
<https://drive.google.com/open?id=1gI3em3LgiD4VbJvAg30xZN0iilgB3RzE>
 - 3.3. **Notices issued by the SAPS Directorate of Priority Crimes Investigations(HAWKS):**
https://drive.google.com/drive/folders/1CzCY3D8oscl3qgNnXsLcz2SMTdmWASJ7?usp=sharing_eil&ts=5e622fc2
 - 3.4. **Presentation by #Unite Behind to parliament**
 Please find the attached presentation (marked as Annexure "B")

4. We confirm that your client's concerns are adequately addressed and that he will be in a position to consider all the documents referred to by the witness. We further confirm that Mr Achmat will be testifying before the Commission as per the schedule communicated by the Secretariat."

Kindly acknowledge receipt hereof.

Yours faithfully,

Shannon Van Vuuren

Legal Advisor: Operations & Investigative Support

COMMISSION OF INQUIRY INTO STATE CAPTURE

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193 | Gauteng | South Africa |

Cell: 060 749 5687

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From: Simone [<mailto:simone@vdmass.co.za>]

Sent: Thursday, 05 March 2020 09:11

To: Secretary <Secretary@commissionsc.org.za>

Subject: F115: MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

Importance: High

Dear Sir/Madam,

Kindly find appended hereto a letter for your attention.

Kindest regards / Vriendelike groete.

Simone Taljaard
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JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

02nd March 2020

Van Der Merwe & Associates
Waterkloof
Pretoria

Per e-mail: simone@vdmass.co.za

Dear Sir/ Madam

1. We acknowledge receipt of your letter dated 24 February 2020.
2. We note your request for the documents contextualising the "vagueness and unsubstantiated allegations" made against your client. We confirm that the documents referred to by Mr Achmat in his affidavit, as stipulated in paragraph 4 of your letter are not privileged documents. Your letter correctly points out in paragraph 7 thereof that your client is entitled to copies of any and all documentation, implicating him of any wrong doing. It is further confirmed that the documents referred to by Mr Achmat are public documents.
3. We therefore advise that the documents could be accessed from the website, as Mr Achmat in his affidavit makes reference to the relevant websites where the documentation could be accessed, i.e. Footnote 3.

Yours faithfully

#UNITE BEHIND

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A JUST AND EQUAL SOUTH AFRICA

• 604, 6th Floor, Constitution House Cape Town • (T) +27 21 424 5660 • info@unitebehind.org.za

Submission to the Portfolio Committee on Transport on State Capture, Governance and an Emergency Safety Plan

6 February 2018

Introduction to #UniteBehind

- 1 We present this submission on behalf of #UniteBehind, a voluntary association of people's movements, legal, policy and support organisations advocating for justice and equality. The 20+ organisations which constitute #UniteBehind include, among others, the Alternative Information and Development Centre, the Centre for Environmental Rights, Women's Legal Centre, Social Justice Coalition, Ndifuna Ukwazi, Equal Education, Women and Democracy Initiative (Dullah Omar Institute), Right2Know (Western Cape) and UDF Veterans Network. These organisations are supported by communities of faith such as the Western Cape Religious Leaders Forum and the South African Council of Churches and the Muslim Judicial Council. #UniteBehind is predominantly Western Cape-based but many of our constituent organisations operate across the country.
- 2 #UniteBehind emerged out of the Cape Town Ahmed Kathrada Memorial, held on 6 April 2017. This event brought together thousands of people from across Cape Town, equally motivated to honour the memory of Comrade Kathy and to protest the assault on the democratic state which at that time had just been epitomised by the cabinet reshuffle that saw the removal of Pravin Gordhan and Mcebisi Jonas from the Ministry of Finance. Gordhan addressed the memorial along with activist leaders from Black African and Coloured communities from across the Cape Flats.
- 3 Our key mission in #UniteBehind is to build a just and equal society where all people share in the country's wealth, participate in the decisions that affect their lives, and where the environment is sustainably protected for future generations. One of our central demands is the building of a safe, reliable, affordable, efficient and quality public transport system, in particular a commuter rail

service. Dealing with the endemic corruption, state capture, political interference by the Executive, incompetence and maladministration at the Passenger Rail Agency of South Africa (PRASA) is one of our most immediate and urgent campaigns to give effect to the right to safe, reliable, efficient rail transport for all.

URGENT LEADERSHIP INTERVENTIONS REQUIRED FROM PARLIAMENT; A NEW PRASA BOARD AND EXECUTIVE MANAGEMENT

- 4 Safety and security represents an urgent emergency and PRASA is mired in state capture, corruption, mismanagement and maladministration. The crisis in safety and security cannot be adequately resolved without simultaneously addressing the crisis in governance and management. We therefore request the following urgent action to bring relief to workers, students, communities and the economy.
- 4.1 The Passenger Rail Agency of South Africa (PRASA) will not emerge from the current crisis unless and until a new board is appointed. Cabinet must instruct the Minister of Transport to appoint a credible new board with the requisite qualifications, experience, skills and competencies.
- 4.2 All those implicated in corruption, mismanagement, maladministration must be removed from PRASA. Parliament must instruct the Board to continue investigations and to support all criminal and civil proceedings against those involved in state capture and corruption at the rail agency.
- 4.3 Investigations must be concluded and the rapid prosecution of cases against all those involved in the criminal enterprise to capture PRASA must be prioritised. In particular, Siso Buthelezi, Makhensa Mabunda, Lucky Montana, Mthura Swartz, Roy Moodley, Mario Ferreira, Arthur Fraser, Manala Manzini, Auswell Mashaba, Josephat Phungula, Chris Mbatha, Daniel Mthimkulu, Rebecca Setino, Maishe Bopape and Ernest Gow have cases to answer based on all the available evidence. See our attached annexures and submission to Parliament for further details on the above individuals.
- 4.4 Criminal investigations must also include international companies such as Vossloh Espana/Stadler Rail which has stolen billions of rand through contracts like Swifambo Rail (locomotives). The relevant European regulatory authorities must be contacted.

- 4.5 A qualifications, skills, competencies and life-style audit is urgently needed for PRASA management at every level, starting with head office and its Western Cape region. The new Board must lead this audit to ensure that people's needs are prioritised and the economy (particularly in Cape Town where the rail system forms the backbone of all public transport) is stabilised.
- 4.6 All PRASA appointments must be merit based with open competition. Only appropriately qualified, skilled, competent and experienced people must be appointed at managerial and supervisory levels.
- 4.7 An urgent safety plan is needed to enable commuters to travel without constant fear of being crushed to death, thrown from the train or attacked by criminals. We believe the following are among the immediate steps required:
- 4.7.1 The reopening of the Central Line with adequate security.
- 4.7.2 Security employed by PRASA must be qualified and PSIRA compliant. They must be supported by the South African Police Service and the Law Enforcement Officers of the City of Cape Town. All current security employees must be assessed; where possible redeployed and trained. Those with serious criminal records must be dismissed.
- 4.7.3 The protection of commuters and all workers, particularly women, children and other vulnerable people, must be prioritised. This can be partially achieved through securing of stations and their surrounds (including proper lighting and CCTV surveillance).
- 4.7.4 Separate compartments are needed for women, children and differently abled commuters. This has been successfully implemented in other countries such as India. Organisations such #UniteBehind and the broader commuting public must be involved in the development of a plan with clear objectives; targets; deadlines and budgets.
- 4.7.5 Specific details and timeframes for any such safety plans or measures be communicated to all commuters.

4.8 In Cape Town the passenger rail service must be coordinated and at an appropriate time transferred to the relevant local authority as contemplated the Draft White Paper of the National Rail Policy – June 2017. Much of our work involves campaigning against the anti-poor and anti-black policies of the City of Cape Town's DA administration, but in this instance the City has made a realistic set of recommendations which should be taken seriously. Most importantly however, is that the National Land Transport Act requires that all land transport including rail be integrated with municipal transport. This international standard is crucial to the provision of efficient, accessible and reliable integrated transport systems in our metros.

4.9 Alternative forms of transport, like busses, must urgently be provided to commuters who ordinarily use lines that are currently suspended or those facing constant delays.

4.10 In the medium term we need a proper plan: How do we stop delays? What new rolling stock is needed? Is there surplus rolling stock elsewhere? Which of the existing coaches, not in use, could be upgraded rapidly?

4.10.1 As much as possible such rolling stock must be manufactured and procured locally to develop our manufacturing sector, creating employment and stimulating growth.

5 The above recommendations combine a set of priorities for parliament, a new board, and a Minister of Transport to stabilise the passenger rail service in every region. Government (all its different arms and spheres) cannot save our rail service alone. People who use public transport, business, trade unions, schools and communities and #UniteBehind stand ready to assist.

THE URGENT ISSUES FACING PRASA COMMUTERS OF SAFETY AND SECURITY AND THE COLLAPSE OF SERVICE

6 The lack of safety on our country's passenger trains is a daily nightmare.

7 PRASA and Metrorail have never complied with the Constitutional Court's 2004 judgment and subsequent Court Order of 2009 in *Rail Commuter Action Group and 54 Others v Transnet Limited t/a Metrorail and 3 others* (see Annexure 1). This was a matter brought forward by Leslie van Minnen who tragically lost his son, COSATU, and many others.

8 PRASA Western Cape Region currently sources largely incompetent, unregistered and unskilled

security personnel who cannot protect themselves, passengers or the assets of the agency. Many have criminal records. For more information see the 31 May 2017 letter sent by PRASA's Mr Ernest Hendricks, Regional Security Manager, to Mr Thro Holele and PRASA's Corporate Office (see Annexure 2). Over 80% of the security staff in the Western Cape are not registered with the Private Security Industry Regulatory Authority (PSIRA). Alarminglly the majority of this group are so-called Military Veterans who cannot be registered because they have criminal records. As #UniteBehind wrote, in a letter to Minister of Transport, Mr Mkhacani Joe Maswanganyi, on 18 October 2017, the manner in which security guards have been appointed and the failure to protect people and assets "can only be described as criminal negligence". (See Annexure 3)

- 9 The impression of criminal negligence was amplified when we were provided with a copy of a business plan prepared by the City of Cape Town, sent some time ago to PRASA Western Cape, offering that "an additional 100 law enforcement officers be added to the City's resources – split 40% to focus on infrastructure (cable theft and vandallism) and 60% on commuter safety." This offer was not responded to by PRASA. (see Annexure 4)
- 10 #UniteBehind has sent a letter demanding among other things an urgent safety and security plan to PRASA Western Cape's Regional Manager, Richard Walker, on 12 January 2018 (see Annexure 5).

GENERAL CRISIS AT PRASA: COLLAPSE OF THE SERVICE

- 11 The Rail Safety Regulator has reported that there were 495 fatalities, 2079 injuries, and 73 derailments or collisions of PRASA trains, in 2016/17 (see Annexure 6). Most recently there was a derailment or collision:
 - 11.1 derailment at Bellville Station where 10 passengers were injuries - 18 August 2017
 - 11.2 derailment at Plumstead Station – 1 November 2017;
 - 11.3 collision and derailment in the Free State where 254 passengers were injured and 18 were killed – 4 January 2018;
 - 11.4 in Germiston where over 226 passengers were injured;
 - 11.5 in Germiston – 17 January 2017;

- 11.6 on the Cape Town Central Line (Still suspended) where four trains detailed on a test run for the resumption – 18 January 2018:
- 12 The Central Line, servicing over 120 000 commuters whom are overwhelmingly working-class and poor African and Coloured, has been shut down since the 8th of January 2018 after a security guard was murdered. This has cascaded to other sectors of public transport causing unrest for bus and taxi commuters as well.
- 13 Around 43% of former passengers (~248 500) have stopped using the trains over the past four years¹; on average over 45% of trains are late and around 16% of all trains are cancelled (July 2017)², with the exception of the Central Line, which has faced far worse collapse.
- 14 Up to 57% of trains have been cancelled during certain weeks on the Central Line, with an overall 400% increase in train cancellations in the Western Cape between 2015 and 2017³.
- 15 We have reason to believe that PRASA's management team at a national and regional level, is incompetent and dysfunctional. This stems from a decade of state capture, corruption, mismanagement and maladministration.

STATE CAPTURE, CORRUPTION AND MALADMINISTRATION

- 16 In August 2015, then Public Protector Advocate Thulisile Madonsela published her report "*Derailed*" (No.3 of 2015/16) based on 32 complaints of maladministration, procurement irregularities and corruption at PRASA. Her report dealt with serious allegations of tender fraud, nepotism, corruption and conflicts of interest involving former CEO Lucky Montana, amongst others. The Public Protector found that 19 of the 32 complaints were substantiated.
- 17 A new PRASA Board was appointed in August 2014, under the chairmanship of Mr Popo Molefe. On receiving the *Derailed* report, he set about addressing the extremely serious findings and binding

¹ TDA Cape Town, Comprehensive Integrated Transport Plan 2017 – 2022. (Report by City of Cape Town Transport and Urban Development Authority - 2017), pg. 41.

² Metrorail: Western Cape, Key Stakeholder Engagement Presentation – September 2017

³ Nceba Hlana, *A 400% increase in train cancellations worries the Western Cape*. (Business Day, 2017). Available: <https://www.businesslive.co.za/bd/national/2017-08-15-a-400-increase-in-train-cancellations-worries-the-western-cape/>

remedial actions. According to a statement by Mr Molefe in 2017:

“in accordance with the recommendations of the erstwhile Public Protector in her report entitled *Derailed*, to address long-standing corruption and governance issues at PRASA... the board instituted and completed significant investigations at PRASA and, consequently, embarked on litigation to unwind unlawful and corrupt transactions... vindicated most recently by the judgment of Francis J in *PRASA v Swifambo Rail Leasing (Pty) Ltd*, in terms of which PRASA succeeded in setting aside an unlawful contract amounting to approximately R2.6bn... also taken steps to compel the law enforcement agencies, including the National Prosecuting Authority and the Directorate for Priority Crime Investigation, to act against the wrongdoers.”

- 18 A crucial remedial action ordered by the Public Protector directed PRASA to assist the National Treasury in investigations of all contracts above R10 million for the period 2012-2015.
- 19 These investigations, commissioned by National Treasury, and conducted by 13 different prominent law firms and forensic agencies, implicate among others the current Deputy Minister of Finance Mr. Sifiso Buthelezi (former PRASA Board Chairperson) in possible criminal conduct along with politically connected persons known to President Jacob Zuma including Mr. Roy Moodley, Arthur Fraser, Mr. Makhensa Mabunda and Mr. Matlo Ferreira.
- 20 The reports reveal a systematic effort to loot the rail agency.
- 21 The major companies directly implicated include S-Investments or the “S Group” which includes Siyaya Energy, Siyaya DB Consulting Engineers and Siyaya Rail Infrastructure Solutions and Technology, Swifambo, Voslo Espana, Royal Security, Resurgent Risk Management and Tshireletso Enza Construction are also directly implicated although these latter three are not dealt with further in this letter.
- 22 R15bn was the total value of the contracts investigated by Treasury for contracting periods between 2012-2015. Specifically, R2.5bn can explicitly be attributed to “irregular” and unlawful expenditure. Another R3.5bn is unverifiable due to missing documentation. The extent of missing documentation and/or missing steps in the procurement process can be attributed to fraud with criminal intent.
- 23 All the investigators for the Treasury report cited a lack of proper record keeping and missing

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documentation. In many instances the audit trail was destroyed and where it could be followed it showed lack of compliance with the PRASA's supply chain management process and the PFMA.

- 24 Tenders were awarded without any needs analysis having been conducted.
- 25 Tender and contract rigging was found to be commonplace. Where competitive tendering processes were followed on the surface, the specs and scoring were rigged to allow preferred suppliers to win.
- 26 The reports of these Treasury investigations were leaked to #UniteBehind and became known in the media under the heading #PrasaLeaks. #UniteBehind published a detailed report on the basis of the #PrasaLeaks. (See Annexure 7)
- 27 In 2015 the Auditor General issued several adverse findings against the PRASA board and management. However, it is noteworthy that the Auditor General failed to come close to detecting and exposing the systemic rot, corruption and fraud which has been ongoing for years.
- 28 Notably, the Parliamentary Portfolio Committee on Transport failed totally to hold PRASA accountable to date.
- 29 Further, on 3 July 2017, in setting aside the corrupt Swifambo tender award, Justice Francis stated as follows:

"This case concerns corruption by a public body concerning a tender that will affect the public for decades to come. . Harm has been done [a this case to the principle that corruption should not be allowed to triumph. Harm will be done to the laudable objectives of our hard-fought freedom if I was not to set aside the award. Harm will be done to all the hardworking and honest people of our land who refrain from staining themselves with corruption... Harm will be done if the benefactors of the tender were allowed to reap the benefits of their spoils... Corruption will triumph if this court does not set aside the tender."

- 30 Even a cursory perusal of the Auditor General's 2015 report, the Public Protector's *'Derailed'* report, the judgment in *Swifambo* and the affidavits filed in other matters, gives much reason to suspect that offences listed in Chapter 2 of the Prevention and Combatting of Corrupt Activities Act 2004 have been committed in relation to PRASA.

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- 31 Most seriously, despite mountains of evidence of systemic corruption and state capture at PRASA, the Hawks and NPA have failed to act for more than two years (See paragraph 33.3).

PRASA, UNDER FORMER CHAIR POPO MOLEFE, GOES TO COURT TO RECOVER LOOTED FUNDS

- 32 During 2017 PRASA, on instructions from its then-Board of Control, under the chairmanship of Mr Popo Molefe, instituted legal proceedings against various companies, entities and individuals to address lapses in governance and recover looted funds. The institution of these legal proceedings followed the forensic investigation that was instituted by the BoC under Molefe and the report of the Public Protector entitled "Derailed".

- 33 The legal proceedings brought by PRASA were:

- 33.1 Siyangena Technologies (Pty) Ltd: This is a review application against an award of two contracts to Siyangena for installing security systems at 200 PRASA stations. Former Group CEO, Lucky Montana, and the Project Manager on this project, Luyanda Gantsho, are implicated. Gantsho has admitted to investigators that he received the beneficial use of a penthouse apartment. PRASA's court papers alleged that Montana had received kickbacks of R4.9-million. PRASA's internal legal department (see Annexure 8) are confident of success in the review because the Constitutional Court has recently changed the law to allow a public entity to review its own decision and because new evidence has emerged that shows that Siyangena knew the contracts were irregular.
- 33.2 Swifambo Rail Agency (Pty) Ltd (Case No. 2015/42219): This is the famous case where 70 diesel-electric locomotives were acquired that exceeded the maximum height specified. The tender was worth R3.5bn. (For further details see from paragraph 68 below.) Justice Francis set aside the corrupt contract with a scathing judgment on numerous grounds including likely rigging of the tender, Swifambo's lack of tax clearance, PRASA's failure to secure approvals required by the PFMA and various other grounds, Swifambo was granted leave to appeal and the appeal is underway.
- 33.3 Directorate of Priority Crimes Investigation and the National Prosecuting Authority (Case No. 36337/17): This application is for an order directing the Hawks and the NPA to investigate complaints laid by PRASA in respect of Swifambo and Siyangena. To date the

Hawks have refused, saying that when he signed an affidavit on behalf of PRASA, as Chairperson of the Board, which he then was, Dr Popo Molefe lacked the required authority.

33.4 KPG Media: In this litigation PRASA cancelled an irregular tender based on evidence and findings in the Public Protector's 'Derailed' report. KGP Media attempted to interdict the cancellation but PRASA opposed this application successfully up to the Supreme Court of Appeal

33.5 A case challenging the unlawful dismissal of the previous Board of Control by Ms Dipuo Peters, former Minister of Transport (Case No. 17748/17)

34 Apart from the last two matters, all the others are either pending or on appeal.

35 PRASA is also involved in arbitration with Siyaya before Justice Brand (see paragraph 65 below).

36 It is important to note that PRASA has still not instituted any litigation flowing from the investigations of the National Treasury.

ATTEMPTS TO 'DERAIL' THE INVESTIGATIONS

37 The then Minister of Transport, Dipuo Peters, in August 2016, announced that the investigations into corruption that Werksman's Attorneys had been commissioned to carry out were to be curtailed.

38 In March 2017, Peters went a step further and attempted to remove the PRASA board. This was successfully resisted in court as "unlawful" and "irrational".

39 President Zuma replaced Peters with Joe Maswanganyi in the cabinet reshuffle at the end of March 2017. However, according to Mr Molefe, the same pattern continued:

"The current minister of transport has, however, continued to attempt to thwart the operations of PRASA and prejudice its attempts to address Derailed... the new minister has refused to meet with the board; despite repeated requests... rather than dealing with the critical substantive issues and supporting the work of the board, Minister notified the board of his intention to remove the Board in June 2017; and the minister has undermined the

authority of the board, including its authority to complete its investigations and take steps in addressing corruption at PRASA. The current minister's actions, unfortunately, dovetail with those of his predecessor, who once instructed the board to 'stop' the investigations; did not appoint a permanent CEO even after the board had followed all due processes; and unlawfully terminated the board's service prematurely and was rebuked by the court for having done so."



- 40 Mr Molefe's term ended on 31 July 2017. Since he left corrupt practices appear to have re-emerged, commencing with the appointment by the Minister of Transport, of an "Interim Board"
- 41 The Ministers of Transport at the relevant times: Ben Martins, Dipuo Peters and now Joe Maswanganyi appear to have deliberately turned a blind eye to corruption and mismanagement. In the cases of Peters and Maswanganyi, there appears to be collusion to obstruct justice.

UNLAWFUL APPOINTMENT OF AN "INTERIM" BOARD OF CONTROL "UNTIL FURTHER NOTICE"

- 42 The Minister of Transport appointed "an interim" Board of Control (BoC) for the Passenger Rail Agency of South Africa (PRASA) "until further notice", on the 19th of October 2017. This appointment is unlawful in terms of the Legal Succession to the South African Transport Services Act 9 of 1989 (the Legal Succession Act), which does not allow for the appointment of an "interim board". In the litigation referred to in paragraph 71.5, #UniteBehind has asked the Court to review the decision and to find that the BoC was improperly constituted.

THE INAPPROPRIATE APPOINTMENT OF JUSTICE MAKHUBELE AS PRASA INTERIM BOARD OF CONTROL CHAIRPERSON

- 43 On 5 October 2017, the Judicial Services Commission (JSC) formally recommended for appointment Adv Tlntswalo Annah Nana Makhubele SC as a judge in the Gauteng High Court. This followed Makhubele's interview before the JSC.
- 44 On 19 October 2017, Makhubele was appointed by Mr. Joe Maswanganyi, Minister of Transport, as the Chairperson of the Interim Board of Control of PRASA "until further notice". The Minister seems not to have been concerned that he was appointing an Interim Chairperson who had already been recommended for appointment as a judge.

- 45 Two weeks later, on 2 November 2017, Makhubele was indeed appointed by President Zuma as a Judge of the Gauteng Division of the High Court, with effect from 1 January 2018.
- 46 Makhubele confirmed her impending appointment as a judge in her report to the Parliamentary Portfolio Committee on Transport chaired by Ms Dikeledi Magadzi (MP) on 24 November 2018.
- 47 To this day, Makhubele remains Chairperson of the Interim Board of Control of PRASA.
- 48 Based on the above, #UniteBehind is concerned about a breach of the separation of powers. As chairperson of the Interim PRASA Board of Control, Justice Makhubele is carrying out functions in the executive domain and is accountable to the Minister of Transport, Parliament, the Minister of Finance and the Auditor-General. Further, #UniteBehind is concerned about the possibility that the standing of the judiciary could be damaged by one of its incoming members appearing to condone ill-gotten gains.
- 49 The Constitutional Court dealt with this question in relation to former President Mandela's appointment of Justice Willem Heath as Head of the Special Investigating Unit. In *SA Association of Personal Injury Lawyers v Heath and Others* (CCT27/00) [2000] ZACC 22; 2001 (1) SA 883; 2001 (1) BCLR 77 (28 November 2000) the late President of the Constitutional Court, Arthur Chaskalson, held the following when declaring Heath's appointment unlawful:

"Under our Constitution, the judiciary has a sensitive and crucial role to play in controlling the exercise of power and upholding the bill of rights. It is important that the judiciary be independent and that it be perceived to be independent. If it were to be held that this intrusion of a judge into the executive domain is permissible, the way would be open for judges to be appointed for indefinite terms to other executive posts, or to perform other executive functions, which are not appropriate to the "central mission of the judiciary." Were this to happen the public may well come to see the judiciary as being functionally associated with the executive and consequently unable to control the executive's power with the detachment and independence required by the Constitution. This, in turn, would undermine the separation of powers and the independence of the judiciary, crucial for the proper discharge of functions assigned to the judiciary by our Constitution. The decision, therefore, has implications beyond the facts of the present case, and states a principle that is of fundamental importance to our constitutional order."

- 50 #UniteBehind wishes to place on record that we have the fullest confidence that judges in our democratic constitutional dispensation have followed the prescripts of the separation of powers because not one member of our judiciary has since occupied post in the executive's domain. Justice Makhubele is the only such appointment.
- 51 You will find annexed a confidential letter (see Confidential Annexure 9) sent to #UniteBehind by the appropriate ranking member of the judiciary in which #UniteBehind is advised of the steps being taken by said ranking member of the judiciary to manage the problems in regards to Justice Makhubele. The annexed letter was in response to a letter from #UniteBehind. We have not currently laid a complaint with the Judicial Services Commission pertaining to Justice Makhubele because we believe such a course of action can be averted along with any unnecessary tension or conflict. However, we believe that Justice Makhubele must resign from the Interim Board with immediate effect.
- 52 The latest egregious act of irregular and possibly corrupt action shows that under the Transport Minister Joe Maswanganyi and his "Interim" Board chaired by Justice TAN Makhubele, a decision was taken to "invest" R1 billion allocated to capital projects in the VBS Bank. President Jacob Zuma's unlawful expenditure on Nkandla was paid through this bank and in the attached memorandum we show that he has benefitted directly from state capture at PRASA. Since at least November 2017, PRASA has been involved in negotiations with VBS Bank and unlawfully committed to invest monies allocated to improve commuter rail services. The Minister of Transport Joe Maswanganyi, Justice Makhubele and her Board colleagues along with most of the Executive Management are ethically and legally compromised. #UniteBehind has gained access (through whistle-blowers) to letters between PRASA and the VBS Bank. We will provide annexures after this hearing.

THE RECKLESS APPOINTMENT OF MTHURA SWARTZ AS ACTING PRASA RAIL CEO

- 53 On 3 January 2018, the Acting Group CEO of PRASA Mr. Cromet Molepo (who was himself improperly appointed by the unlawfully appointed Interim Board of Control) announced the appointment of a certain Mr. Mthura Swartz as head of PRASA Rail, the main subsidiary in the group.
- 54 Mr Molepo was appointed despite the fact that he was suspended by KwaZulu-Natal's Umgeni Water on grounds of serious financial conduct, illegal tapping of communications, and unauthorised expenditure. He resigned in order to prevent disciplinary action being taken against him. Molepo's

appointment of Swartz also features in our legal challenge mentioned in paragraph 71.5 above.

- 55 It is extraordinary that this appointment happened only days after PRASA's own lawyers, from a large reputable law firm, advised PRASA management to immediately suspend Mr. Mthura Swartz who was then Executive Manager for PRASA Mainline Passenger Services. This advice was given on 28 December 2017. The basis for the advice was because complainants and witnesses in new matters of victimisation, intimidation, irregular procurement processes and sexual harassment feared for their jobs and/or personal safety. Instead of suspension, Mr. Swartz was on 1 January 2018 promoted to the position of Acting PRASA Rail CEO where he has power and control over all whistle-blowers, complainants, potential witness and documentary evidence.
- 56 On 5 January 2018, we addressed a letter to Justice Makhubele (see Annexure 10) pointing out the following:
- 56.1 Mr. Swartz has provisional findings against him by the Western Cape office of the Public Protector for maladministration, specifically the improper appointment of unqualified and unskilled persons to senior security positions;
- 56.2 The Directorate for Priority Crime Investigation (DPCI) ("the Hawks") in the Eastern Cape is investigating Mr Swartz (now the head of PRASA's rail division) for organising the theft of rail lines and sleepers as well as corruption (Elliott CAS 35/02/2013);
- 56.3 Earlier in his career, Swartz was found guilty by the City of Cape Town on 8 charges relating to an irregular tender and over-payment by R6m.
- 56.4 At PRASA, Swartz appointed senior security staff members despite them lacking the necessary qualification, security clearance, firearms training and Private Security Industry Regulatory Authority registration (see Annexure 11 for further details on this.)
- 56.5 Swartz is likely to face charges for a corrupt relationship with Spanish Ice, a "logistics company" used to transport the stolen PRASA assets.
- 56.6 We are reliably informed that sufficient evidence on oath exists to suspend Swartz on grounds of sexual harassment, victimisation, intimidation, irregular procurement and corruption.

56.7 As shown above, PRASA was advised on 28 December of the need to suspend Swartz, before he was promoted.

57 To date, we have not received any acknowledgment of, or reply to, our letter to Justice Makhubele that might provide a reasonable explanation for Swartz's appointment and continued presence at PRASA.

DECISION OF THE "INTERIM" BOARD UNDER JUSTICE MAKHUBELE TO SUSPEND PRASA'S LEGAL PANEL, ENDANGERING LEGAL PROCEEDINGS AGAINST LOOTING

58 On 1 December 2017, the interim BoC, under the chairpersonship of Justice Makhubele, convened a special meeting at the PRASA Corporate Office in Hatfield in Pretoria, at which various resolutions were taken.

59 One of these decisions was to suspend PRASA's legal panel, i.e. the group of attorneys that had provided legal services to PRASA for years. These were, of course, the attorneys working on all of the above cases intended to recover funds looted from PRASA. Instead, the BoC decided, any legal services were to be sourced not through Group Legal Services, but through PRASA's Supply Chain Management (SCM) department.

60 This decision received strong opposition from professionals within PRASA. On 5 December 2017, PRASA's Group Executive for Legal, Risk & Compliance, Martha Ngoye and General Manager for Group Legal Services, Fani Dingiswayo, sent Interim Chairperson Makhubele a 15-page memorandum (see Annexure 12) in which they detailed their strong objections to the Interim Board's decision. They wrote: "We do not support the part of the draft resolution that states that procurement of legal services should be done through the SCM Department."

61 The memorandum expressed a number of fundamental concerns:

61.1 It says that the Board resolution "appears to be a termination of the panel of attorneys and not a suspension thereof".

61.2 It says and that the decision ignores "the risks of not having a panel of service providers that service PRASA on a daily basis". It explains: "There is always a need for legal advice and representation for project-related work, personal injury, labour issues that arise etc. It is not an exaggeration to indicate that this occurs almost daily. Without a list of service providers who

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are immediately available to PRASA, the work of [Group Legal Services] GLS will be severely hampered.”

- 61.3 That the Supply Chain Management (SCM) department to which the BoC has now delegated authority to procure legal services is in a “parlous state”, “paralysis” and that twice in three years the SCM Department showed itself to be “inept to procure a panel of attorneys”. They noted to the BoC that the SCM Department was even unable to provide PRASA with ink charges or paper for over a month. “Our view”, the memorandum states, “is that they cannot be entrusted with the responsibility to procure legal services almost every day.”
- 62 #UniteBehind has reason to believe that the decision to disband the legal panel is partly intended to scupper the attempts detailed at paragraph 33 above, against companies such as Siyangena and Swifambo to recover looted funds.
- 63 Further, #UniteBehind has received credible information and has reason to believe that the decision to disband the legal panel is partly intended to enable the settlement of all disputes with the S-Investments (which included Siyaya) companies of Mr. Makhensa Mabunda.

S-INVESTMENTS AND MAKHENSA MABUNDA

- 64 S-Investments is a company whose sole director is Makhensa Mabunda, a former government official and erstwhile colleague of Lucky Montana, PRASA's former CEO. Mabunda and S-Investments control Siyaya and are strongly linked to Swifambo.
- 65 Siyaya DB Consulting Engineers (Pty) Ltd (now in liquidation) and Siyaya Rail Solution (Pty) Ltd, are implicated in significant corruption and payments to them have been halted pending arbitration. The BoC's apparent intention to forego the arbitration and settle — in favour of Mabunda and to the severe detriment of PRASA (and in disregard of the arbitration process underway before Justice FDJ Brand) — would in our view deprive PRASA of significant resources urgently required to address the crisis commuters face daily and is simply irrational.
- 66 In our court papers we contend that the resolutions taken by the BoC are unlawful for the reason that they were taken by an ‘interim’ BoC that was unlawfully appointed and is improperly constituted; and further on the grounds that the resolutions themselves are irrational and accordingly unlawful because their impact would be to bury all corruption investigations, litigation and asset

protection. This would—indeed appears designed to—benefit entities such as Siyaya DB Consulting Engineers (Pty) Ltd and Siyaya Rail Solution (Pty) Ltd owned by Mr. Makhensa Mabunda.

- 67 In recent weeks it has become common knowledge that Vossloh España (named changed to Stadler Rail Valencia in 2016 and now owned by the Swiss-owned Stadler Rail AG) the supplier of the too-tall locomotives to PRASA, made a series of payments between February 2014 and October 2015 totalling R75m as a kickback to Mabunda's S-Investments.
- 68 Swifambo Rail Leasing was the company Mabunda set up to purchase the locomotives from Vossloh España for PRASA. Swifambo was set up only a year before PRASA first advertised the tender and had no track record in the rail industry. It nevertheless won the R3.5bn tender.
- 69 It is important to remember that Dr Popo Molefe stated on affidavit in 2016 that Vossloh España paid roughly R80m to an Angolan businesswoman, Maria Gomes, a friend of President Jacob Zuma, and to a local lawyer who'd introduced himself to Swifambo's managing director as a fundraiser for the ANC. This was allegedly done because Gomes had insisted that ten percent of the tender's value be paid to the ANC.
- 69.1 Lucky Montana's testimony to the Eskom inquiry has brought up this payment. He claimed it was initially demanded of him by Dr. Zweli Mkhize, the former Treasurer of the ANC, that 10% of R465 million of the first payment that was due to Swifambo Rail Leasing be paid to him. Montana denies the payment was made and claims he met with Gomes who denied it as well.
- 69.2 There can be little doubt that Montana's partial truths revealed to the Eskom Inquiry is not whistle-blowing but in fact an attempt to cover-up that the criminal syndicate in PRASA is almost intact and that under his leadership and that of current Deputy Finance Minister Sifiso Buthelezi, they fiercely resisted a takeover by the Gupta syndicate.

#UNITEBEHIND'S ATTEMPTS TO-DATE TO HAVE THE PROBLEMS ADDRESSED

- 70 We make this submission to Parliament after having made numerous attempts to raise our concerns at all the appropriate levels:
- 70.1 We have undertaken serious research and education into PRASA state capture (assisted by

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whistle-blowers);

- 70.2 We have educated ourselves and the need for a decent rail service.
- 70.3 We have produced two podcasts that address state capture and its role in the increasingly unreliable, unsafe and undignified commuter rail service;
- 70.4 We have created a pamphlet on the crisis (see Annexure 13);
- 70.5 We hold monthly public meetings with activists from our affiliate organisations, engage regularly with commuter groups on social media platforms and have hosted workshops;
- 71 We organised protests:
- 71.1.1 On the 1st of November we occupied the NPA demanding the immediate arrest of President Zuma after the SCA reinstatement of corruption charges and the revealing of his corrupt relationship with Roy Moodley. Eight of our activists were arrested and held overnight, however all charges were eventually dropped. This followed unsuccessful engagement with Shaun Abrahams, the National Director of Public Prosecutions by the UDF Veterans for more than two months;
- 71.1.2 We have picketed outside of the Portfolio Committee on Transport;
- 71.1.3 On the 30th of November 2017 we organised "The People's Trial of Jacob Zuma and his PRASA Thieves" where we presented excerpts of evidence to over 2000 people at Cape Town Station.
- 71.2 We have sent letters to the following people:
- 71.2.1 The Minister of Transport Mr. Joseph Maswanganyi (cc. Chairpersons of the Portfolio Committee on Transport and Standing Committee on Public Accounts) re. the Governance and Operational Emergency in Prasa/MetroRail – 18 October 2017 (see Annexure 3).
- 71.2.2 The Chairperson of the Standing Committee on Finance Mr Yunus Carrim re. the




Governance and Operational Emergency in Prasa/MetroRail – 8 December 2017
(see Annexure 14).

- 71.2.3 The Public Protector Advocate Busisiwe Mkhwebane re. Urgent request for release of a report in the alleged maladministration, mismanagement and abuse of resources and irregular recruitment and labour processes by officials of MetroRail Western Cape most notably Mr. Mthura Swartz – 30 January 2018 (see Annexure 15).
- 71.3 Letter of demand by our attorneys Bradley Conradie and Halton Cheadle to:
- 71.3.1 The Minister of Transport Mr Joseph Maswanganyi re. the appointment of the interim BoC and the appointment of Cromet Molepo (see Annexure 16).
- 71.3.2 To the Chairperson of the interim BoC Justice Makhubele re. the BoC's resolution (see paragraph 59; Annexure 17).
- 71.3.3 To the National Director of Public Prosecution Mr Shaun Abrahams re. appointing a special investigator and on the protection of PRASA assets – 25 January 2018 (see Annexure 18).
- 71.4 On 7 August 2017, the UDF Veterans group presented the NPA with a petition demanding that the NDPP urgently proceed with the prosecution of those involved in bribery, corruption and other related criminal activities in various institutions, which included PRASA. The NDPP, Shaun Abrahams, responded that the responsibility for investigating crime lies with police and the Hawks. However, section 22 of the Prevention and Combatting of Corrupt Activities Act 2004 empowers the NDPP to appoint a Special Director of Public Prosecutions to investigate, whenever the NDPP has reason to believe that there may be in any building or in the possession or custody or control of any person any property which may have been used, or is connected with the commission of an offence listed under Chapter 2 of the Act, or may be the proceeds of such an offence. Our attorneys wrote to NDPP Shaun Abrahams to explain this elementary legal point and to request that he exercise his powers accordingly (see Annexure 18). In that letter our attorneys named individuals that we believe, based on the evidence in reports by the Auditor General and Public Protector as well as the Swifambo judgment and other affidavits, have committed offences in terms of Chapter 2 of the Act, namely Mr Makhensa

Mabunda, Mr Mario Ferreira, Mr Roy Moodley, Mr Lucky Montana and Mr Sifiso Buthelezi, to name a few. We have advised the NDPP that should he not respond affirmatively we will be left with no choice but to bring an urgent application to compel him to do so. To date we have received no further response from the NDPP.

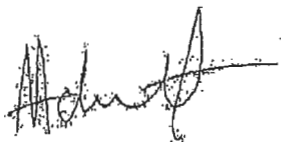
- 71.5 On 18 December 2017 #Unite Behind and one of its affiliate organisations Equal Education launched legal proceedings against the Minister of Transport, the NPA and PRASA (regrettably, including Justice Makhubele in her capacity as Interim Board Chairperson of PRASA) and others (Case No. 23200/2017) in the Western Cape Division of the High Court. On 22 December 2017, Justice Straj Desai postponed the hearing to 19 February 2018, which is less than two weeks away (see Annexure 19).

CONCLUSION

- 72 Thank you for giving this important issue your attention. It literally affects the daily lives of millions of people. These are poor and working-class people that the Constitution insists must be the state's first priority.
- 73 We intend to make this letter public one week from today, not in order to embarrass you but because we believe that in order to take the necessary action you will need public support.
- 74 We hope you have a fruitful year and trust that this letter is received in the spirit of demonstrating our commitment towards building an equal and free society under the rule of law.

Yours Faithfully,

Members of the #UniteBehind Organising Secretariat



Zackie Achmat



Zukiswa Vuka

Zelda Holtzman

Doron Isaacs

Madoda Cuphe

June Esau

Noncedo Madubedube

Bruce Balgile

Reverend Alan Storey

Phumeza Mlungwana

Barry James Mitchell

LIST OF ANNEXURES:

1. Settlement Agreement between the Rail Commuter Action Group and 54 Others v Transnet Limited t/a Metrorail and 3 others [8232/2005] – 12 June 2009;
2. Letter from PRASA's Mr Ernest Hendricks, Regional Security Manager, to Mr Tiro Holele and PRASA's Corporate Office – 31 May 2017;
3. Letter from #UniteBehind to Minister of Transport Joe Maswanganyi re. the Governance and Operational Emergency at PRASA – 18 October 2017;
4. Project Business Plan: Project entered into by and between: Transport for Cape Town (TCT) and the Passenger Rail Agency of South Africa – 22 January 2018;
5. Letter from #UniteBehind demanding among other things an urgent safety and security plan to PRASA Western Cape's Regional Manager, Richard Walker - on 12 January 2018;
6. Rail Safety Regulator, *State of Safety Report 2016/2017*, pp 98 – November 2017;
7. #UniteBehind, *Rig, Conceal, Destroy and Falsify: How State Capture Happened at PRASA*, #PRASALeaks – January 2018;
8. Application for leave to appeal in the matter between Passenger Rail Agency of South Africa v Siyangena Technologies (PTY) LTD and 2 others [2016/7839] – 21 August 2017;
9. Letter from ranking member of the Judiciary to #UniteBehind re. Justice Makhubele – 29 January 2018;
10. Letter from #UniteBehind to Justice Makhubele re. the appointment of Mthura Swartz – 5 January 2018;
11. Progress Report: Alleged maladministration and mismanagement and abuse of resources and irregular recruitment and labour processes by officials of Metrorail Western Cape [001076/13/WC], Office of the Public Protector – 17 November 2015;
12. Memorandum to the Chairperson of the Board of Control of PRASA from Group Executive: Legal, Risk and Compliance – 5 December 2017;
13. #UniteBehind pamphlet for the #FixOurTrains campaign – 31 October 2017;
14. Letter from #UniteBehind to Chairperson of the Standing Committee on Finance Yunus Carrim – 8 December 2017;
15. Letter from #UniteBehind to Office of the Public Protector re. the release of final report (see Annexure 10) – 30 January 2018;
16. Letter of demand from #UniteBehind attorneys to the Minister of Transport Joe Maswanganyi re. the appointment of the interim BoC and the appointment of Cromet Molepo – 8 December 2017;
17. Letter of demand from #UniteBehind attorneys to the Chairperson of the interim BoC Justice Makhubele re. the BoC's resolution – 8 December 2017;
18. Letter of demand from #UniteBehind attorneys to National Director of Public Prosecutions re. investigation and protection of PRASA property – 25 January 2018;

19. Notice of Motion and Founding Affidavit in the matter between #UniteBehind and Equal Education v the Minister of Transport and the Passenger Rail Agency of South Africa [23200/2017] – 18 December 2017.

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VAN DER MERWE
& ASSOCIATES

88A

☎ 087 654 0209
☎ 086 500 7587
✉ 62 RIGEL
AVENUE
WATERKLOOF
GT VD
MERWE/st

IN THE HIGH COURT OF SOUTH AFRICA
[GAUTENG DIVISION, PRETORIA]

CASE NUMBER: 14332/18

CASE NUMBER: 11314/2018

In the matter between:

PASSENGER RAIL AGENCY OF SOUTH AFRICA

APPLICANT

and

SIYANGENA TECHNOLOGIES (PTY) LTD

FIRST RESPONDENT

RETIRED JUSTICE EZRA GOLDSTEIN

SECOND RESPONDENT

RETIRED JUSTICE MEYER JOFFE

THIRD RESPONDENT

and

#UNITEBEHIND

AMICUS CURIAE

NOTICE OF SET DOWN

KINDLY TAKE NOTE that this matter is set down for hearing on **11 AUGUST 2020 TO 14 AUGUST 2020** at **10h00** as per the appended directive issued by the Acting Deputy Judge President on **4 March 2020** or as soon thereafter as the matter may be heard.

SIGNED AT PRETORIA ON THIS THE 5th DAY OF MARCH 2020.



VAN DER MERWE & ASSOCIATES
ATTORNEYS FOR THE FIRST RESPONDENT

62 RIGEL AVENUE
WATERKLOOF
PRETORIA

REF: MR GT VD MERWE/S583
TEL: 087 654 0209
EMAIL: simone@vdmass.co.za

TO:

THE REGISTRAR OF THE ABOVE
HONOURABLE COURT

AND TO:

WERKSMANS ATTORNEYS
ATTORNEYS FOR THE APPLICANT
THE CENTRAL
98 RIVONIA ROAD
SANDTON
EMAIL: bhotz@werksmans.com
igobetz@werksmans.com
smoerane@werksmans.com

REF: SARC0001.789/J GOBETZ
C/O BRAZINGTON & MCCONNELL
424 HILDA STREET
2ND FLOOR, HATFIELD MALL
HATFIELD
REF: MR A MCCONNELL

WITHOUT PREJUDICE
BRAZINGTON Mc CONNELL
RECEIVED WITHOUT PREJUDICE

ON THIS THE 05 DAY OF March 2020

Maede
8:55

AND TO:

WEBBER WENTZEL
ATTORNEYS FOR THE AMICUS CURIAE
90 RIVONIA ROAD
SANDTON
2196
TEL: 011 530 5867
EMAIL: vlad.movshovich@webberwentzel.com

REF: V MOVSHOVICH/ D RAFFERTY/N QWABEHILLS INCORPORATED
C/O HILLS INCORPORATED ATTORNEYS
OFFICE B313, 1ST FLOOR
PARKDEV BUILDING
BROOKLYN BRIDGE OFFICE PARK
570 FEHRSEN STREET
BROOKLYN
PRETORIA

1st Floor Parkdev Building
Brooklyn Bridge Office Park
570 Fehrsen Street
Brooklyn Pretoria
DATE: 05.03.2020
TIME: 08:40
SIGN: HR Matota W.O.P

TEL: 087 944 1800
REF: A ENGELBRECHT



REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

OFFICE OF THE ACTING DEPUTY JUDGE-PRESIDENT

HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION, PRETORIA

Pretoria High Court Building, c/o Madiba & Paul Kruger Streets, Room 8.10, 8th Floor

Tel: (012) 492-6829 E-mail: JHefer@judiciary.org.za

4 March 2020

Mr. G.T. van der Merwe

Van der Merwe & Associates Incorporated

Your ref: MR GT VD MERWE/st/S583 AND S493/23

Our ref: 14332/18 AND 11314/18

E-mail: gert@vdmass.co.za; simone@vdmass.co.za

Werksmans Attorneys

Your ref: SARC0001.789#5435897v1

Our ref: 14332/18 AND 11314/18

E-mail: bhotz@werksmans.com; jgobetz@werksmans.com;
smoerane@werksmans.com

Webber Wentzel

Your ref: V MOVSHOVICH/D DAFFERTY/J THEMBE/3025290

Our ref: 14332/18 AND 11314/18

E-mail: nadia.dhorat@webberwentzel.com; vlad.movshovich@webberwentzel.com;
Daniel.Rafferty@webberwentzel.com

Dear Sir/Madam

**RE: SIYANGENA TECHNOLOGIES (PTY) LTD VS PASSENGER RAIL AGENCY
OF SOUTH AFRICA AND TWO OTHERS**

CASE NO: 11314/2018

**PASSENGER RAIL AGENCY OF SOUTH AFRICA VS SIYANGENA
TECHNOLOGIES (PTY) LTD AND TWO OTHERS**

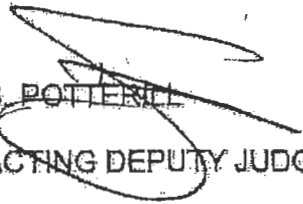
CASE NO: 14332/2018

1. The meeting held in chambers on 4 March 2020 refers.
2. The matter is hereby set down as a special motion to be heard by a full court on **11-14 AUGUST 2020**. You are directed to serve and file the notice of set down together with a copy of this letter attached to it **within 7 (seven) days** after receipt hereof, failing which the allocated date(s) of hearing will lapse and the date may be allocated to other litigants who applied for a special motion date. The notice of set down must be filed at the office of the Deputy Judge President, 7th Floor, Room 7.15, High Court Building, Pretoria.
3. It is recommended that the following Judges hear the special motion: The Honourable Mr Justice Raulinga, The Honourable Mr Justice Ranchod and the Honourable Madam Justice Hughes.
4. For proper administration and allocation of special motions, the applicants' should deliver **the court file duly indexed and paginated, in triplicate**, to my office not later than **8 JULY 2020**. The parties should also file and send via

email (AnNieuwoudt@judiciary.org.za) to my office a **Joint Practice Note and Chronology of events** by no later than **8 JULY 2020** containing the following:

- Names of the parties and the case number
 - Names and telephone numbers of all counsel in the Motion
 - Nature of the Motion
 - Issues to be determined in the application
 - Relief sought at the hearing by the party on whose behalf counsel is appearing
 - An estimate of the probable duration of the application
 - Number of pages in the application and whether or not all papers need to be read and if not, which portion need not be read
5. All queries and/or communications concerning the hearing of this matter must be directed to my office in writing. All documents and the court file must be filed at the office of the Deputy Judge President on the 7th Floor, High Court Building.
6. **It remains the duty of all legal representatives to ensure that the court file has been properly indexed and paginated in time and that all documents have been filed accordingly as directed at the office of the Deputy Judge President, 7th Floor, Room 7.15, High Court Building, Pretoria.**
7. Should it, for any reason(s), transpire that this matter will not proceed on the given date, you are directed to inform the office of the Deputy Judge President, immediately.
8. None availability of counsel representing any of the parties shall simply not be allowed as a reason for the matter not to proceed on the date of hearing arranged with my office.
9. **Should the above directive not be complied with, the matter may not be allocated to a Judge and the allocated date(s) will be utilized for other deserving cases.**

Yours faithfully



S. POTTERILL

ACTING DEPUTY JUDGE-PRESIDENT

GAUTENG DIVISION, PRETORIA.

Simone

From: Simone <simone@vdmass.co.za>
Sent: Thursday, 05 March 2020 09:11
To: Secretary@commissionsc.org.za
Subject: F115: MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE 20200305080510818.pdf
Attachments:
Importance: High

Dear Sir/Madam,

Kindly find appended hereto a letter for your attention.

Kindest regards / Vriendelike groete.

Simone Taljaard
Van der Merwe & Ass Inc
0876540209
62 Rigel Avenue
Waterkloof
Pretoria





van der Merwe
&
Associates Incorporated

TB10

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

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Associate/Assosiaat
Ilze Rauch (B.Com, LLB, LLM)

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
Danie Malan (B.Com, LLB)

Reg No: 2006/015908/21
VAT/BTW No: 4630239152

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Sunnyside
0132

Tel: 087 654 0209
Fax/Faks: 012 343 5435
Email/Epos:
simone@ydmass.co.za

Our Ref: **MR GT VD MERWE/st/S583**

Your Ref: **THE CHAIRPERSON OF THE COMMISSION:
THE HONOURABLE JUDGE RAYMOND ZONDO
AND MR BOIPELO RATSHIKANA**

3 April 2020

**The Chairperson of the Commission of
Enquiry into allegations of
State Capture, Corruption and Fraud in the
Public Sector including Organs of State**
Secretary@commissionsc.org.za
shannonv@commissionsc.co.za

The Honourable Judge Zondo and Mr Ratshikana,

**MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE
RULES OF THE RULES OF THE JUDICIAL COMMISSION OF
INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

1. We refer to the abovementioned matter and in particular our letter dated **17 March 2020** dealing with a formal request to consider particular and in our view pivotal

issues before allowing untested and/or potential duplicating and/or conflicting evidence with regards to a matter duly enrolled for hearing before a full bench in the High Court in Pretoria as from **11 August 2020**.

2. May we, humbly, request you to consider the aforesaid and/or respond thereto.
3. If your Lordship requires any further detail and/or information in order to make an informed and meaningful decision we will immediately and gladly abide and furnish you with same.

Kind regards.

Gert van der Merwe

VAN DER MERWE & ASSOCIATES

**** Document dictated by Gert van der Merwe but typed and sent without proofreading.***

Simone

From: Simone <simone@vdmass.co.za>
Sent: Friday, 03 April 2020 11:54
To: 'Secretary@commissionsc.org.za'; 'shannonv@commissionsc.co.za'
Subject: S583: MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE
Attachments: S583 COMMISSION OF INQUIRY 4.doc

Dear Sir/Madam,

Kindly find appended hereto a letter for your attention.

Kindest regards / Vriendelike groete.

Simone Taljaard
Van der Merwe & Ass Inc
0876540209
62 Rigel Avenue
Waterkloof
Pretoria



van der Merwe
&
Associates Incorporated

" During the Covid 19 lockdown period our staff and our attorneys will work from remote locations as directed by the President. We will maintain agile working hours and will be available to assist our clients as always. To accommodate these unique circumstances we will consult telephonically and respond electronically without any undue delay. As such we consent to service of notices and pleadings electronically. Our office telephone line is forwarded to one of our staff members who will gladly take your messages during normal office hours and relay it to the relevant attorney. If required a consultation can be booked and our attorneys are ready to advise on all pending or new matters"

"TDH"



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17 Empire Road,
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Johannesburg
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Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

6 April 2020

Van der Merwe & Associates Incorporated

By email: simone@vdmass.co.za

Re: MJ Ferreira: Notice ito Rule 3.3 of the Rules of the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the Public Service including Organs of State

1. Your letters dated 17 March 2020 and 3 April 2020 in connection with the above and addressed to the Chairperson of the Commission refer.
2. I have been directed by the Chairperson to inform you that:
 - a. due to an error in the Secretariat, he was not aware of the letters until today, 6 April 2020;
 - b. he was not aware that the review application is now scheduled to be heard by the Full Court in August 2020;
 - c. however, despite the review application being scheduled to be heard by the High Court in August 2020, the Chairperson would be of the *prima facie* view that the Commission should continue to discharge its functions in respect of matters falling within its terms of reference (and paragraph 27 of your letter of 17 March suggests that you share this view);
 - d. he is of the *prima facie* view that the Full Court will be able to give your client a fair hearing based on the material properly before it and will not be influenced by matters that are not covered in the papers before it;

- e. the foregoing *prima facie* views notwithstanding, he is of the view that your client should feel free to bring before the Commission a substantive application in order to have the hearing of any evidence deferred, if your client believes that there are proper grounds for such an application, and the Chairperson will consider it on its merits.

Yours faithfully



.....
Ms Brigitte Shabalala
ACTING SECRETARY
Judicial Commission of Inquiry into Allegations of State Capture, Corruption
and Fraud in the Public Sector Including Organs of State



van der Merwe
&
Associates Incorporated

"TSD12"

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

Director / Direkteur:
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Associate/Assosiaat
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Assisted by / Bygestaan deur:
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Danie Malan (B.Com, LLB)

Reg No: 2006/015908/21
VAT/BTW No: 4630239152

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Fax/Faks: 012 343 5435
Email/Epos:
simone@vdmass.co.za

Our Ref: **MR GT VD MERWE/st/F115**

Your Ref: **THE CHAIRPERSON OF THE COMMISSION:
THE HONOURABLE JUDGE RAYMOND ZONDO
AND MR BOIPELO RATSHIKANA**

20 June 2020

URGENT

**The Chairperson of the Commission of
Enquiry into allegations of
State Capture, Corruption and Fraud in the
Public Sector including Organs of State**
Secretary@commissionsc.org.za
shannonv@commissionsc.co.za

Dear Sirs,

**MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE
RULES OF THE RULES OF THE JUDICIAL COMMISSION OF
INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

1. We acknowledge receipt of your notices dispatched to our offices on **Thursday, 18 May 2020 at 21h48 and**

Friday 19 June 2020 at 12h53, representing Mr M Ferreira.

2. We will consult with our client over the weekend and revert with our instructions by **Monday, 22 June 2020**.
3. We received instruction to record, as a preliminary remark, that:
 - 3.1 the "*report*" of Mr Oellermann is **materially inaccurate and incomplete**;
 - 3.2 the "*report*" of Mr Oellerman is **deceptive and seemingly rushed** with what our client believes to be a predetermined outcome;
 - 3.3 the "*report*" of Mr Oellerman is **based on factual inaccuracies** which could have been prevented if an objective investigative process was followed.
4. As a consequence we will deal in detail with the **glaring inadequacies** and absence of much needed context in the "*report*" of Mr Oellermann to ensure that the Commission is not misguided by what seems to be his stance on the matter without following fair practise and basic principles prior to dispatching the document.
5. Our client's rights remain reserved.

Kind regards.

Gert van der Merwe

VAN DER MERWE & ASSOCIATES

Simone

From: Simone <simone@vdmass.co.za>
Sent: Saturday, 20 June 2020 12:55
To: 'Secretary@commissionsc.org.za'; shannonv@commissionsc.co.za
Subject: F115: MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE F115 COMMISSION OF INQUIRY 4.doc

Attachments:

Importance: High

Tracking:

Recipient

Read

'Secretary@commissionsc.org.za'

Read: 2020/06/21 00:05

shannonv@commissionsc.co.za

Dear Sir/Madam,

Kindly find appended hereto a letter for your attention.

Kindest regards / Vriendelike groete.

Simone Taljaard
Van der Merwe & Ass Inc
0876540209
62 Rigel Avenue
Waterkloof
Pretoria



van der Merwe
&
Associates Incorporated



van der Merwe
&
Associates Incorporated

"TD13"

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

Director / Direkteur:
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Associate/Assosiaat
Ilze Rauch (B.Com, LLB, LLM)

Assisted by / Bygestaan deur:
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Reg No: 2006/015908/21
VAT/BTW No: 4630239152

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0132
Tel: 087 654 0209
Fax/Faks: 012 343 5435
Email/Epos:
simone@vdmass.co.za

Our Ref: **MR GT VD MERWE/st/F115**

Your Ref: **THE CHAIRPERSON OF THE COMMISSION:
THE HONOURABLE JUDGE RAYMOND ZONDO
AND MR BOIPELO RATSHIKANA**

22 June 2020

**The Chairperson of the Commission of
Enquiry into allegations of
State Capture, Corruption and Fraud in the
Public Sector including Organs of State
Secretary@commissionsc.org.za
ShannonV@commissionsc.org.za**

Dear Sirs,

**MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE
RULES OF THE RULES OF THE JUDICIAL COMMISSION OF
INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

1. We refer to the abovementioned matter and in particular the Notices in terms of Rule 3.3 of the Commission pertaining to the evidence of the following witnesses:

- 1.1 Mr Clinton Oellermann;
 - 1.2 Mr Andre Wagner; and
 - 1.3 Mr Nicolas Johannes Loubser.
2. Since the aforesaid notices suggest evidence to be given by witnesses who may implicate our client in wrongdoing we are in the process of obtaining instructions to protect our client's rights.
 3. In earlier correspondence we have indicated that our client intends to dispute the evidence of Mr Oellermann to the extent that his report (appended to the notice) is based on substantially incorrect and incomplete information.
 4. We have received instruction to explore the appointment of a forensic auditor to prepare a report and/or assist our client in preparation of an application to cross-examine any of the aforesaid witnesses.
 5. The purposes of this letter to record that all our client's rights remain strictly reserved whilst our client records his intention to protect his rights in terms of the Rules of the Commission read with the constitutional principles underlying the rights of any individual implicated in wrongdoing.

Kind regards.

Gert van der Merwe

VAN DER MERWE & ASSOCIATES

"TS14"



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

26 June 2020

To: Mr Lucky Montana

Email: Lucky Montana luckymontana500@gmail.com

Mr Van Der Walt

Waltja05@gmail.com

Mr Ferreira

simone@ydmass.co.za

Mr Johan Smith

jsmith@mprs.co.za

Dear Messrs Montana, Ferreira, Smith and Van der Walt

Re: Report served on you with the affidavit of Mr Oellermann

1. During the course of last week, an affidavit made by Mr Clinton Oellermann on 17 June 2020 was served on you.
2. Annexed to the affidavit was a Report relating to four property transactions.

3. We hereby inform you that the following adjustments have been made to the Report and formal notification of the adjustments will be made at the Commission's hearing at the time the Report is presented.
4. First, the words "Report on . . ." in the title of the Report will now read: Preliminary Report on the Commission's investigations into . . ."
5. Second, in paragraphs 13 and 14 [at page 3 of the Report] the reference is to Mr Loubser, not to Mr Ferreira.

With kind regards.

Signed

Obo PRASA Legal Team.

Kind Regards:

B. Rangata

COMMISSION OF INQUIRY INTO STATE CAPTURE Hillside House, 2nd Floor, 17 Empire Road,
Parktown, Johannesburg, 2193, Gauteng South Africa,

Email: BaitsengB@commissionsc.org.za

Website: www.sastatecapture.org.za





van der Merwe
&
Associates Incorporated

"TDS15"

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

Director/Direkteur:
Gert van der Merwe (BLC, LLB)

Associate/Assosiaat
Ilze Rauch (B.Com, LLB, LLM)

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
Danie Malan (B.Com, LLB)

Reg No: 2006/015908/21
VAT/BTW No: 4630239152

Pretoria
Street Address / Straatadres:
62 Rigel Avenue, Waterkloof,
Pretoria

Postal Address / Posadres:
Posbus / P.O. Box 27756
Sunnyside
0132
Tel: 087 654 0209
Fax/Faks: 012 343 5435
Email/Epos:
simone@vdmass.co.za

Our Ref: **MR GT VD MERWE/st/F115**

Your Ref: **MR BAITSENG RANGATA**

30 June 2020

URGENT

**The Judicial Commission of Enquiry
into allegations of State Capture,
Corruption and Fraud in the Public
Sector including Organs of State**
BaitsengB@commissionsc.org.za

CC: Mr Vas Soni

VasS@commissionsc.org.za

CC: Mr Clint C. Oellermann

ClintO@commissionsc.org.za

Dear Sirs,

**MJ FERREIRA: NOTICE IN TERMS OF RULE 3.3 OF THE
RULES OF THE RULES OF THE JUDICIAL COMMISSION OF
INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE**

1. We refer to your email received on **26 June 2020** with particular reference to an affidavit made by Mr Clint Oellermann on **17 June 2020**.
 2. The letter seems to suggest certain amendments to an affidavit (or annexures thereto) of Mr Oellermann.
-
3. The purpose of this letter to you is to record the following:
 - 3.1 We have indicated earlier that we act for and on behalf of **Mr MJA Ferreira**.
 - 3.2 We have, previously, indicated that we represent **Siyangena Technologies (Pty) Ltd** in a High Court matter enrolled before a full court for **11 August 2020** to **14 August 2020**.
 - 3.3 We have indicated that we are concerned about the fact that the Commission intends hearing evidence in public concurrent to the aforesaid court case.
 - 3.4 We have, recently, indicated that the affidavit and report of Mr Oellermann are fatally defective, factually incorrect and premised on what seems to be a bias point of departure, the reasons for our submission to be furnished within a reasonable time.
 - 3.5 We have indicated that we are in the process of mandating a forensic auditor to compile a report on issues raised by Mr Oellermann in his report (now provisional report).
 - 3.6 The aforesaid forensic expert is independent from and unknown to the writer and our clients. The intention is to furnish you with an independent objective report.

4. We alerted the Commission to the fact that the untested "*evidence*" **may and will prejudice our clients' court case** especially under circumstances where the narrative seems to be that the "*investigation*" is done with sources directly opposed to our clients and preliminary reports are prepared without affording our clients an opportunity to present the ~~true and accurate facts. Our clients were not contacted nor invited to~~ participate in Mr Oellermann's investigation. We believe that the investigation required a fair and objective approach.
5. On a previous occasion you indicated that our correspondence did not reach the attention of the presiding officer, the Honourable Judge Zondo.
6. We request you to **ensure that the content of this letter is conveyed** to the presiding officer of the Commission. If you intend to call witnesses prior to affording our clients an opportunity to raise pertinent, pivotal and important facts with your investigators and/or prior to the date on which the court case is heard:
 - 6.1 any evidence presented as the truth without affording our clients a fair and reasonable opportunity to respond (even in advance) will be misleading and will adversely affect our clients' fair hearing in court in **August 2020**;
 - 6.2 we wish to submit evidence tendered at the Commission does not seem to be subject to the normal rules pertaining to admissibility ~~and although the Rules of the Commission provide for same we~~ submit that a fair process will include and incorporate the principles of *audi alteram partem* and, at least, a fair measure of balance and scrutiny, not only when evidence is presented, but also when the facts are investigated;

6.3 evidence will be allowed without presenting or at least affording our clients an opportunity to give their version with the result that an unbalanced perception will be created, as we noted in the media.

~~7. Our clients suspect that there is an effort to delay and derail our clients' court case by "*presenting evidence*" not only contrary to what is presented in the court papers but, also, to create an atmosphere of uncertainty, corruption and underhanded dealings.~~

8. To allow cross-examination of the witnesses at a later date will not remedy our clients' irreparable harm.

9. Since we are convinced that the report of Mr Oellermann (now called provisional report) is squarely based on hearsay and inaccurate information we submit that his evidence (if premised on his report) will cause our clients' court case, our client's reputation and our clients' business severe and irreparable harm.

10. We have requested the Commission to reconsider presenting the evidence and since we have recorded our clients' views we need to emphasise that our instruction is to hold witnesses liable for damages in the event of the aforesaid plea being ignored and evidence being presented under circumstances where we have emphasised (repeatedly) that our clients will be prejudiced as a consequence of unbalanced, untested and inaccurate "*evidence*" and investigation conducted biasedly.

11. We conclude to submit that the Commission and the Commission's investigators have a duty not to allow "*evidence*" to be presented under circumstances where we have indicated that it may cause **undue** irreparable harm.

12. As a consequence we request you to confirm that the presiding officer noted the contents of our letter whilst we tender our clients' full cooperation and participation in this regard.

Kind regards.

Gert van der Merwe

VAN DER MERWE & ASSOCIATES

"TD16"

Simone

From: Secretary <Secretary@commissionsc.org.za>
Sent: Sunday, 28 June 2020 14:14
To: simone@vdmass.co.za
Cc: Secretary
Subject: Oellermann//Ferreira//Evidence Date

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr Ferreira

Cc: van der Merwe and Associates

We refer to the Rule 3.3 Notice previously sent to you relating to the evidence of Mr Oellermann.

Please note that Mr Oellermann's evidence will commence on **2 July 2020 at 10h00** or as soon thereafter as his evidence may be heard. The hearing of this evidence will be livestreamed. In the event of a change of date, it will be announced on the Commission's website (www.sastatecapture.org.za) and in the media.

Please note: The venue for the hearings of the Commission:
 Old Council Chamber of the Municipality of the City of Johannesburg situated at:
 158 Civic Boulevard
 Braamfontein
 Johannesburg.

Please also note that there will be COVID-19 specific arrangements in place at the hearing.

Kindly contact the Secretariat regarding any queries that you may have.

Yours faithfully,

SECRETARIAT

COMMISSION OF INQUIRY INTO STATE CAPTURE

Hillside House, 2nd Floor, 17 Empire Road, Parktown,
 Johannesburg, 2193, Gauteng South Africa,

Email: Secretary@commissionsc.org.za

Website: www.sastatecapture.org.za



"TB17"

Simone

From: Secretary <Secretary@commissionsc.org.za>
Sent: Sunday, 28 June 2020 14:14
To: simone@vdmass.co.za
Cc: Secretary
Subject: Loubser//Ferreira//Evidence Date

Follow Up Flag: Follow up
Flag Status: Flagged

Ferreira / Zondo

Dear Mr Ferreira

Cc: van der Merwe and Associates

We refer to the Rule 3.3 Notice previously sent to you relating to the evidence of Mr Loubser.

Please note that Mr Loubser's evidence will commence on 1 July 2020 at 10h00 or as soon thereafter as his evidence may be heard. The hearing of this evidence will be livestreamed. In the event of a change of date, it will be announced on the Commission's website (www.sastatecapture.org.za) and in the media.

Please note: The venue for the hearings of the Commission:
 Old Council Chamber of the Municipality of the City of Johannesburg situated at:
 158 Civic Boulevard
 Braamfontein
 Johannesburg.

Please also note that there will be COVID-19 specific arrangements in place at the hearing.

Kindly contact the Secretariat regarding any queries that you may have.

Yours faithfully,

SECRETARIAT

COMMISSION OF INQUIRY INTO STATE CAPTURE
 Hillside House, 2nd Floor, 17 Empire Road, Parktown,
 Johannesburg, 2193, Gauteng South Africa,
 Email: Secretary@commissionsc.org.za
 Website: www.sastatecapture.org.za



"TD18"



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

1 July 2020

Messrs Van der Merwe Associates

simone@vdmass.co.za

Attention: Mr Gert van der Merwe

Dear Mr Van der Merwe

Re: MJ Ferreira: Notice in terms of Rule 3.3 of the Rules of the State Capture Commission

1. On behalf of the Commission, I acknowledge receipt of your letter of 30 June 2002 in connection with the above.
2. Your letter was referred to the Commission's Legal Team dealing with matters concerning the PRASA Stream.
3. In response to your request that the evidence of Mr Oellermann not be led as scheduled, they have requested me to advise you as set out hereunder.
4. The team has considered your letter.

5. They place on record that the report in question was served on your office on 18 June 2020. What was sent to Mr Ferreira on 26 June 2020 was simply a minor change to the title of the report and a few obvious errors.
6. In the circumstances, Mr Ferreira has already had thirteen (13) days to serve his response on the Commission.
7. Should you wish more time to furnish that response, you are required to bring a substantive application, in terms of the Commission's Rules, to be granted that time. Clearly, such application will have to be brought before Mr Oellermann is scheduled to testify. He is scheduled to testify at 10:00 on Thursday, 2 July 2020.
8. In the absence of an application, and the grant of an extension of time by the Chairperson, kindly be advised that the evidence of Mr Oellermann will be led as scheduled on Thursday.
9. Kindly inform the Commission by the end of today, 1 July 2020, whether you intend to bring such an application.
10. Insofar as matters that have not been addressed in this letter are concerned, the position of the legal team is that they have largely been addressed in previous correspondence between your office and the Commission.

Yours faithfully



K.B. Shabalala

Acting Secretary: State Capture Commission

"T519"

Simone

From: Simone <simone@vdmass.co.za>
Sent: Wednesday, 01 July 2020 13:50
To: 'Brigitte Shabalala'
Cc: 'Secretary'; 'Baitseng Rangata'; 'Warren Redcliffe'; 'Shannon S. Van Vuuren'; 'Andre J. Lamprecht'; VasS@commissionsc.org.za; 'ClintO@commissionsc.org.za'
Subject: RE: MJ FERREIRA: NOTICE ITO RULE 3.3 OF THE RULES OF THE STATE CAPTURE COMMISSION
Attachments: F115 COMMISSION OF INQUIRY 8.doc
Importance: High

Dear Sir/Madam,

Kindly find appended hereto a letter for your attention.

Kindest regards / Vriendelike groete.

Simone Taljaard
Van der Merwe & Ass Inc
0876540209
62 Rigel Avenue
Waterkloof
Pretoria



van der Merwe
 &
 Associates Incorporated

From: Brigitte Shabalala [mailto:BrigitteS@commissionsc.org.za]
Sent: Wednesday, 01 July 2020 08:44
To: simone@vdmass.co.za
Cc: Secretary; Baitseng Rangata; Warren Redcliffe; Shannon S. Van Vuuren; Andre J. Lamprecht
Subject: MJ FERREIRA: NOTICE ITO RULE 3.3 OF THE RULES OF THE STATE CAPTURE COMMISSION

Dear Sir/Madam

Find the attached letter for your urgent attention.

Kind regards
 K.B Shabalala

Acting Secretary



COMMISSION OF INQUIRY INTO STATE CAPTURE | Hillside House, 3rd Floor, 17 Empire Road, Parktown,
Johannesburg, 2193 | Gauteng | South Africa | email: secretary@commissionsc.org.za | www.sastatecapture.org.za; |
Mobile +27(0)71320 8293



van der Merwe
&
Associates Incorporated

Attorneys • Notaries • Conveyancers • Prokureurs • Notarisse • Aktevervaardigers

Director / Direkteur:
Gert van der Merwe (BLC, LLB)

Associate/Assosiaat
Ilze Rauch (B.Com, LLB, LLM)

Assisted by / Bygestaan deur:
Ilze van der Merwe (LLB)
Danie Malan (B.Com, LLB)

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Fax/Faks: 012 343 5435
Email/Epos:
simone@vdmass.co.za

Our Ref: **MR GT VD MERWE/st/F115**

Your Ref: **MR KB SHABALALA**

1 July 2020

URGENT

**The Judicial Commission of Enquiry
into allegations of State Capture,
Corruption and Fraud in the Public
Sector including Organs of State**
BrigitteS@commissionsc.org.za
Secretary@commissionsc.org.za

CC: Mr Vas Soni

VasS@commissionsc.org.za

CC: Mr Clint C. Oellermann

ClintO@commissionsc.org.za

CC: Mr Bait seng Rangata

BaitsengR@commissionsc.org.za

CC: Mr Warren Redcliffe

WarrenR@commissionsc.org.za

CC: Mrs Shannon S. Van Vuuren
ShannonV@commissionsc.org.za

CC: Mr Andre J. Lamprecht
AndreL@commissionsc.org.za

Dear Sirs,

NOTICE TO FILE APPLICATION TO CROSS-EXAMINE:

CLINTON OELLERMANN
NJ LOUBSER

1. We refer to the abovementioned matter and your letter to us received earlier this morning.
2. Our understanding of the Rules of your Commission is that on receipt of a notice under Rule 3.3 our client is entitled to apply in writing to the Commission for the relief provided in Rule 3.3.6.
3. It will be common cause that we received a notice under Rule 3.3 (referencing the evidence of Mr Oellermann) on **18 June 2020 at 21h48** in the evening whilst we received a similar notice for Mr NJ Loubser on **19 June 2020 at 13h42** in the afternoon.
4. The fourteen day period has not expired.
5. On **28 June 2020** we received your correspondence advising that Mr Loubser will give evidence on **1 July 2020** whilst Mr Oellermann will give evidence on **2 July 2020**.

6. Your letter received earlier this morning encumbered us with an obligation (we could not find authority for the aforesaid) to "*inform the Commission by the end of today, **1 July 2020**, whether we intend to bring such application*".

7. Although we believe there is no obligation to do so we confirm that we intend to apply (within the timeframes stipulated in the Rules or any such extended time decided by the Commissioner on application) for cross-examination of:
 - 7.1 Mr Loubser; and
 - 7.2 Mr Oellermann.

8. We request you to ensure that the contents of our correspondence be brought to the attention of the Commissioner whilst we, again, reserve our clients' rights *in toto*.

Kind regards.

Gert van der Merwe
VAN DER MERWE & ASSOCIATES

Number of Shares

SHARE CERTIFICATE

PRECISE TRADE AND INVEST 02 (PTY) LTD

2013/059374/07

This is to certify that the under mentioned is the Registered Holder of ONE HUNDRED Fully Paid Shares in the Company as shown herein, subject to the Memorandum and Articles of Association of the Company

NAME OF REGISTERED SHARE HOLDER	NUMBER OF SHARES	REFERENCE
JAN ADRIAAN VAN DER WALT ID: 7305185010085	100	1 - 100

Given on behalf of the Company at PRETORIA on 10 APRIL 2013

SECRETARY

DIRECTOR

DIRECTOR

1
TB
20
11

p121
"TDS21" NJL - 4
"NJL 4"

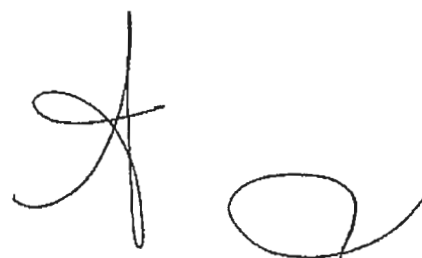
20 Oktober 2015

Onlvang 22/10/2015


Aan: Loubser van der Walt Ingelyf
Vir aandag: Die Direkteure

Na aanleiding van die vergadering gehou op 12 Oktober 2015, en die media / facebook inskrywing, reageer J.A van der Walt as volg op die vrae, soos gestel aan Mnr van der Walt:

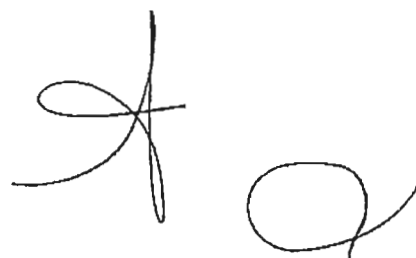
1. Die volgende eiendomme is tans geregistreer in die maatskappy, Precise Trade and Invest 02 (Pty) Ltd:
 - 1.1 313 Nicholsonstraat, Brooklyn;
 - 1.2 315 Nicholsonstraat, Brooklyn;
 - 1.3 10 Newport Road, Parkwood, Johannesburg;
 - 1.4 119 Empire Place, Sandhurst, Johannesburg; #
 - 1.5 225 Rose Avenue, Waterkloof, Pretoria.
2. Vind hierby aangeheg die Koopoooreenkomste van bogemelde transaksies.
3. Vind hierby aangeheg die CCMA Investec Bankrekening, ter bevestiging van betalings gemaak rakende kostes en koopprys van eiendomme.
4. Betalings is gemaak in Precise Trade and Invest 02 (Pty) Ltd se rekening, vanaf TMM, sowel as beleggers, naamlik Americo Pimentel en Mark Clancy. Vind hierby aangeheg die ooreenkomste soos gesluit met TMM, Pimentel en Clancy.
5. JA van der Walt is die enigste Direkteur en Aandeelhouer in Precise Trade and Invest 02 (Pty) Ltd. Vind hierby aangeheg die Maatskappy stawende dokumentasie.
6. Oor 'n periode van bykans 8 (agt) jaar is daar op verskeie aangeleenthede, en op verskeie tydperke, so vroeg soos 06h00 en na-ure met TMM, ESS, TMM Rental (Pty) Ltd en Siyangena Technologies (Pty) Ltd, tesame met Advokate gekonsulteer.



7. Ronel Wardhaugh, Carlos Sanchez, Rui Ferreira, Mario Ferreira, Sheilo Dos Santos, Tom Dubek, Alvin Wilsnach, Manny Marques, Martino Marques, Anton Verster, Jacques Verster, Jacques van Jaarsveld ensovoorts het op verskeie aangeleenthede oor 'n periode van 8 (agt) jaar, gekonsulteer by Loubser van der Walt Ingelyf, en weens die feit dat Loubser van der Walt Ingelyf deur Tanya Kruger en Dina Boshoff verskeie oordragte hanteer het, namens TMM Rental (Pty) Ltd, is oordragdokumentasie by Loubser van der Walt Ingelyf deur laasgenoemde persone afgelewer. Verder is verskeie litigasie aangeleenthede, oorspronklike getekende Eedsverklarings en/of stawende dokumentasie deur verskeie werknemers van TMM Groep by Loubser van der Walt Ingelyf afgelewer.
8. Vind hierby aangeheg die skrywes soos gerig aan Myburgh en sy Prokureur welke self-verduidelikend is.
9. Ons plaas op rekord dat hierdie skrywe, en die aangehegde dokumentasie gepriviligeerde inligting heet van Precise Trade and Invest 02 (Pty) Ltd en JA van der Walt, en word laasgenoemde dokumentasie oorhandig aan u, met die spesifieke onderneming ontvang vanaf NJ Loubser en RP van Wyk, dat geen een van die partye enige van hierdie dokumentasie aan enige derdeparty, sonder die toestemming van JA van der Walt sal oorhandig, of afskrifte daarvan, aan enige derdeparty sal lewer nie.
10. Ons versoek dat daar binne 7 (sewe) dae na ontvangs van hierdie skrywe, 'n opvolg facebook / webwerf inskrywing moet plaasvind, en sal die bewoording van laasgenoemde goedgekeur word deur JA van der Walt, voor plasing daarvan.



Die uwe
Riaan van der Walt



Transactional History

2015

"TD 22"



Investec Private Bank
 100 Grayston Drive, Sandown, Sandton, 2196
 PO Box 785700, Sandton, 2146, South Africa
 Telephone: 0860 335 677

Corporate Cash Manager

Loubser van der Walt Inc
 PRECISE TRADE AND INVEST 02 PTY LTD
 PO Box 1935
 Brooklyn Square
 0075

Transactional History

From : 7 June 2014 To 28 February 2015
 Printed : 14 September 2015 5:15:19 PM
 Available balance 60,108.57
 Current balance 60,012.39 CR
 Reserved balance 0.00
 Account type CCM Call Account

Electronic account number 50008085165 A Client number 1100201106082
 Investec branch number 580105 Client reference PRECISE

Posted date	Description	Debits	Credits	Balance
18/06/2014	Switch Value Date 18Jun14 BP00233339271 1100201106085 PRECISE 1100201106082		1,850,000.00	1,850,000.00
18/06/2014	Switch Value Date 18Jun14 BP00233339031 1100201106086 PRECISE 1100201106082		4,000,000.00	5,850,000.00
18/06/2014	Withdrawal ACB Value Date 18Jun14 P0017862040 Precise/Riaan loan	2,250,000.00		3,600,000.00
30/06/2014	INTEREST Value Date 01Jul14		5,128.76	3,605,128.76
02/07/2014	CCM Guarantee Fees Value Date 02Jul14 GF00051230 1100201106001 1100201106082 PRECISE	500.00		3,604,628.76
18/07/2014	Withdrawal ACB Value Date 18Jul14 P0017959787 MONTANA PYMENT	110,800.00		3,493,828.76
18/07/2014	Withdrawal ACB Value Date 18Jul14 P0017959758 MONTANA PAYMENT	350,000.00		3,143,828.76
24/07/2014	Withdrawal ACB Value Date 24Jul14 P0017977908 TLM	400,000.00		2,743,828.76
31/07/2014	INTEREST Value Date 01Aug14		11,467.80	2,755,296.56
31/08/2014	INTEREST Value Date 01Sep14		9,945.49	2,765,242.05
23/09/2014	Switch Value Date 23Sep14 BP00244258741 1100201106086 PRECISE 1100201106082		3,500,000.00	6,265,242.05
23/09/2014	Withdrawal ACB Value Date 23Sep14 P0018183419 minor property trust loan	3,500,000.00		2,765,242.05
29/09/2014	Withdrawal ACB Value Date 29Sep14 P0018201886 Tim du Toit	600.00		2,764,642.05
30/09/2014	INTEREST Value Date 01Oct14		9,659.27	2,774,301.32
31/10/2014	INTEREST Value Date 01Nov14		10,014.09	2,784,315.41
06/11/2014	EFT-Transaction-PMC-Inboonds Value Date 06Nov14 DETAIL - 50008085165 Bankserv-Live PRECISE LOAN		5,000,000.00	7,784,315.41
07/11/2014	Withdrawal ACB Value Date 07Nov14 P0018350148 pam golding 119 Empire place	5,000,000.00		2,784,315.41
12/11/2014	Withdrawal ACB Value Date 12Nov14 BP00250500101 LWV TRUST	514,328.00		2,269,987.41
21/11/2014	Withdrawal ACB Value Date 21Nov14 P0018397298 precise Im	250,000.00		2,019,987.41
30/11/2014	Interest Value Date 01Dec14		8,879.27	2,028,866.68
03/12/2014			2,745,000.00	4,773,866.68

TMM Loan

Guarantee

TMM Loan

Amended JV

March JV

Transactional History

	EFT Transaction PMC Inbounds Value Date 03Dec14 DETAIL - 50008085165 Bankserv-Live PRECISE LOAN			
03/12/2014	EFT Transaction PMC Inbounds Value Date 03Dec14 DETAIL - 50008085165 Bankserv-Live PRECISE LOAN		5,000,000.00	9,773,866.88
03/12/2014	EFT Transaction PMC Inbounds Value Date 03Dec14 DETAIL - 50008085165 Bankserv-Live PRECISE LOAN	<i>Permitted SV</i>	574,200.00	10,348,066.88
05/12/2014	Withdrawal ACB Value Date 05Dec14 P0018458243 TLM		400,000.00	9,948,066.88
31/12/2014	Interest Value Date 01Jan15		34,157.38	9,982,224.06
14/01/2015	EFT Transaction PMC Inbounds Value Date 14Jan15 DETAIL - 50008085165 Bankserv-Live PRECISE LOAN	<i>Permitted SV</i>	5,000,000.00	14,982,224.06
15/01/2015	Withdrawal ACB Value Date 15Jan15 P0018563881 TL		300,000.00	14,682,224.06
15/01/2015	Withdrawal ACB Value Date 16Jan15 BP00257717351 WETLANDS/TRIPLE TRADE		1,300,000.00	13,382,224.06
19/01/2015	Withdrawal ACB Value Date 19Jan15 P0018574944 REPAYMENT OF LOAN		350,000.00	13,032,224.06
20/01/2015	Withdrawal ACB Value Date 21Jan15 P0018580872 Wetlands/Twin City		1,197,000.00	11,835,224.06
31/01/2015	Interest Value Date 01Feb15		41,432.49	11,876,656.55
04/02/2015	Switch Value Date 04Feb15 BP00260418641 1100201106078 PRECISE 1100201106082		250,000.00	12,126,656.55
04/02/2015	Withdrawal ACB Value Date 04Feb15 P0018641927 SNYMAN KOSTE/EMPIRE PLACE		1,105,537.30	11,021,119.25
05/02/2015	Switch Value Date 05Feb15 BP00260814921 1100201106066 PRECISE 1100201106082		300,000.00	11,321,119.25
05/02/2015	Withdrawal ACB Value Date 08Feb15 P0018648817 TLM		300,000.00	11,021,119.25
20/02/2015	Withdrawal ACB Value Date 21Feb15 P0018702540 Erf 369 Parkwood		2,000,000.00	9,021,119.25
25/02/2015	Switch Value Date 25Feb15 BP00262704111 1100201106049 PRECISE 1100201106082	<i>THAN Loan</i>	1,105,084.92	10,126,204.17
25/02/2015	Withdrawal ACB Value Date 25Feb15 P0018717239 Borchardt Hansen		1,105,084.92	9,021,119.25
28/02/2015	Interest Value Date 01Mar15		34,402.84	9,055,521.89

Investec Disclaimer

The account holder authorises Investec to deal exclusively with the above recorded agent on all matters relating to this account and to treat all instructions as duly authorised. The account holder shall be subject to any agreements concluded between Investec and the agent in respect of this account. Investec Private Bank, a division of Investec Bank Limited Reg. No. 1969/004763/06. Investec Private Bank is committed to the Code of Banking Practice as regulated by the Ombudsman for Banking Services. Copies of the Code and the Ombudsman's details are available on request or visit www.investecprivatebank.co.za. An authorised financial services provider. A registered credit provider registration number NCRCP9.

Transactional History

TB 23



Investec Private Bank
 100 Grayston Drive, Sandown, Sandton, 2188
 PO Box 786700, Sandton, 2146, South Africa
 Telephone: 0880 335 677

Corporate Cash Manager

Loubser van der Walt Inc
 PRECISE TRADE AND INVEST 02 PTY LTD
 PO Box 1935
 Brooklyn Square
 0075

Transactional History

From : 1 March 2015 To 14 September 2015
 Printed : 14 September 2015 5:15:59 PM
 Available balance 60,108.57
 Current balance 60,012.39 CR
 Reserved balance 0.00
 Account type CCM Call Account

Electronic account number 50008085165 Client number 1100201106082
 Investec branch number 580105 Client reference PRECISE
 08 9 055 621,89

Posted date	Description	Debits	Credits	Balance
08/03/2015	Switch Value Date 08Mar15 GP00056371 PRECISE TRADE AND INVEST 02 PTY LT R2091 PRECISE	8,900,000.00		155,521.89
09/03/2015	EFT Transaction PMC Inbounds Value Date 09Mar15 DETAIL - 50008085165 Bankserv-Live 119 EMPIRE PLACE		12,278.17	167,800.06
23/03/2015	EFT Transaction PMC Inbounds Value Date 23Mar15 DETAIL - 50008085165 Bankserv-Live ALASTAIR PONTON		5,000,000.00	5,167,800.06
23/03/2015	Withdrawal ACB Value Date 24Mar15 BP00266196651 WETLANDS/TRIPLE TRADE	880,000.00		4,287,800.06
23/03/2015	Withdrawal ACB Value Date 24Mar15 P0018814844 PAYMENT 12 Montrose	2,000,000.00		2,287,800.06
25/03/2015	RTL Transaction D824CV150171 Value Date 25Mar15 1400050039400 50008085165 D824CV150171 /REC/DTCUSALASTAIR PONTON		5,000,000.00	7,287,800.06
31/03/2015	Interest Value Date 01Apr15		12,408.09	7,300,208.15
02/04/2015	Withdrawal ACB Value Date 02Apr15 P0018856441 RATHMOR LONE	3,475,867.82		3,824,340.33
02/04/2015	Withdrawal ACB Value Date 02Apr15 P0018856338 morbel/	500,000.00		3,324,340.33
22/04/2015	Withdrawal ACB Value Date 22Apr15 P0018916364 NEWCO INVESTMENT	500,000.00		2,824,340.33
28/04/2015	Withdrawal ACB Value Date 28Apr15 BP00270615191 WETLANDS/TRIPLE TRADE	1,000,000.00		1,824,340.33
29/04/2015	Withdrawal ACB Value Date 29Apr15 BP00270878081 WETLANDS/TRIPLE TRADE	200,000.00		1,624,340.33
30/04/2015	Interest Value Date 01May15		11,155.50	1,635,495.83
05/05/2015	Withdrawal ACB Value Date 05May15 P0018959254-NEWCO LOAN	350,000.00		1,285,495.83
12/05/2015	Withdrawal ACB Value Date 12May15 BP00272572421 MOEJELIK	1,200,000.00		85,495.83
31/05/2015	Interest Value Date 01Jun15		2,008.60	87,504.43
30/06/2015	Interest Value Date 01Jul15		308.67	87,810.10
31/07/2015	Interest Value Date 01Aug15		321.77	88,131.87
17/08/2015	Withdrawal ACB Value Date 17Aug15 P0019318299 QPRO	1,800.00		86,331.87
25/08/2015	Withdrawal ACB Value Date 25Aug15 P0019348145 EMPIRE/ESKOM	26,530.00		59,701.87

Transactional History

Page 2 of 2

31/08/2015



Interest Value Date 01Sep15

310.52

60,612.39

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"TS 24"



Investec Private Bank

100 Grayston Drive Sandown Sandton 2196

Private Bag 3003 Randburg 2125

Telephone 0860 335 577

Facsimile 0861 468 468

Website www.investecprivatebank.co.za

NB

To whom it may concern

Investec Private Bank confirms that your intermediary, Loubser van der Walt Inc, has opened the following account on your behalf:

Client name	TMM Holdings Pty Ltd
Client account number	1100201106066
Electronic account number	50007038652
Account type	CCM Call Account
Client reference	TMMHoldings GEN
Account legal status	
Identity/Passport number/Entity registration number	2004/027098/07
Physical address	375 Justice Mahomed Street, Brooklyn, Brooklyn, Pretoria, ZA, 0075
Postal address	PO Box 1935, Brooklyn Square, ZA, 0075

To facilitate efficient processing of electronic and cheque payments into your Corporate Cash Manager account, you need to use the unique electronic account number allocated to this account.

For an electronic transfer, the electronic account number must be inserted as the bank account number and the Investec branch code of 580105 as bank branch.

If a cheque deposit is made, the electronic account number must be inserted in the reference field on the deposit slip. The account number to be used is 4059749310, which is Investec's Corporate Cash Manager account at ABSA Bank.

Should there be any problems with the account or deposit procedure above, please contact Loubser van der Walt Inc on 0124601915.

Investec Private Bank, a division of Investec Bank Limited registration number 1989/004783/06.

An authorised financial services provider. A registered credit provider registration number NCRCPB.

Directors: F Tili (Chairman), D M Lawrence* (Deputy Chairman), S Koseff (Chief Executive).

B Kantor* (Managing), S E Abrahams, G R Burger*, M P Malungani, K X T Socikwa, B Topnick*,

P R S Thomas, C B Tshili.

*Executive

Company Secretary: B Coetsee

"TD 25"

Tom Dubek

From: Riaan van der Walt <riaan@louwalt.co.za>
Sent: 12 March 2014 11:25 AM
To: Tom Dubek; Mario Ferreira
Subject: FW: Investec Corporate Cash Manager account confirmation
Attachments: 1394611351356.pdf

Hi Tom

Hierby aangeheg die TMM HOLDINGS INVESTMENT ACC.

Sal jy asb alle toekomstige betalings rakende Wetlands/ Wakkerstroom plaas direk in die Investec Investment acc maak .
Gebruik asb verwysing vir inbetaling as TRIPLE TRADE

Fin Ooreenkoms moet daar begin Maart n bedrag R8 321 000.00 BETAAL word ; Mario het bevestig dat
000 000.00 vandag en R4 321 000.00 vgl week betaal kan word .

Ek sal elke einde van maand die vgl betaling met jou bevestig

Groete

Kind Regards
Vriendelike Groete
Riaan van der Walt



LOUBSER VAN DER WALT INC/ING

Attorneys – Notaries Conveyancers

Prokureurs – Notarisse – Aktevervaardigers

Justice Mahomed Street, Brooklyn, Pretoria / Justice Mahomed Straat 375, Brooklyn, Pretoria
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