

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.: **17274/2017**

In the matter between:

RAPIVEST 12 (PTY) LTD

Applicant

and

**THE AIRPORTS COMPANY SOUTH AFRICA SOC LTD
BROWNS AIRSIDE CC
TOURVEST HOLDINGS (PTY) LTD**

First Respondent
Second Respondent
Third Respondent

AND

Case No.: **17946/2017**

In the matter between:

THE AIRPORTS COMPANY SOUTH AFRICA SOC LTD

Applicant

and

**RAPIVEST 12 (PTY) LTD
BROWNS AIRSIDE CC**

First Respondent
Second Respondent

JUDGMENT: 01 FEBRUARY 2018

INTRODUCTION

1. On 13 July 2014, the Airports Company South Africa Soc. Ltd (**“ACSA”**) advertised a request for bids in respect of a jewelry concession to be operated at shop DFS 13 at Cape Town International Airport (**“DFS 13”**).
2. Both Rapivest 12 (Pty) (Ltd) (**“Shimansky”**) and Browns Airside CC (**“Browns”**) submitted a bid in response to the request for bids advertised on 13 July 2014.
3. On 23 February 2015, the National Bid Adjudication Committee (**“the BAC”**) of ACSA determined that Browns should be awarded the jewelry concession. Pursuant thereto, and on 21 August 2017, ACSA and Browns concluded a lease agreement in terms whereof Browns would operate DFS13.
4. Before me is an application brought in accordance with the provisions of the Promotion of Administrative Justice Act, Act 3 of 2000 (**“PAJA”**) wherein Shimansky seeks to review and set aside ACSA’s granting of the award to Browns. Furthermore, Shimansky seeks an order declaring that the lease agreement concluded between ACSA and Browns on 21 August 2017 is invalid.
5. Shimansky also seeks an order in terms of section 9(2) of PAJA, extending the period of 180 days set out in section 7(1) thereof.

6. Prior to the hearing of the matter, Browns instituted a counter application wherein it sought the eviction of Shimanksy from DFS13, who is currently in occupation thereof.
7. Before addressing the merits of the applications before me, I set out a timeline of events.

TIMELINE

8. On 13 July 2014, ACSA advertises a request for bids to operate the jewelry concession at DFS13.
9. On 15 August 2015, Shimansky submits its response to the request for bids.
10. On 18 and 22 August 2014, ACSA extends the dates for submissions to its request for bids.
11. On 10 September 2014, ACSA sends out an addendum to the request for bids and the closing date for submissions is extended to 13 October 2014.
12. On 15 December 2014, ACSA's Bid Evaluation Committee ("**BEC**") recommends that the jewelry concession be awarded to Browns.
13. On 23 February 2015, ACSA's Bid Adjudication Committee ("**BAC**") awards the jewelry concession to Browns.

14. On 19 March 2015, Shimansky is informed that that its bid was unsuccessful and that the operation of the jewelry concession at DFS13 was awarded to Browns.
15. On 23 March 2015, Shimansky requests a debriefing session from ACSA following the rejection of its bid.
16. On 24 March 2015, ACSA responds to Shimansky advising that a debriefing session would take place, if required.
17. On 25 March 2015, Shimansky's attorneys directs correspondence to ACSA advising of their suspicion of irregularities in the tender process and places ACSA on notice not to conclude a lease with the successful bidder.
18. On 31 March 2015, Shimansky sends further, more detailed correspondence to ACSA. In this correspondence Shimansy, *inter alia*, sets out why it contends that the objective criteria applied to the bids were bad. Furthermore, Shimansky requests that it be furnished with ACSA's written reasons for granting the tender to the successful bidder and for rejecting its bid. These reasons were requested in terms of section 5 of PAJA.
19. On 10 April 2015, ACSA, via its attorneys, responds to Shimansky's correspondence and provides an undertaking that no lease agreement would be concluded with the successful bidder, alternatively implemented, or further implemented as the case may be, until:

- (i) Shimansky received the written reasons and information and records requested in its letter of 31 March 2015, and had a reasonable opportunity to respond thereto; or
 - (ii) in the event that ACSA determines that it is not obliged to provide the requested reasons and information and records, Shimansky would be furnished with written notification of such determination and afforded a reasonable opportunity to respond thereto.
- 20. On 13 April 2015, the BEC recommends that the award by the BAC on 23 February 2015 to Browns be rescinded and cancelled and that the bid be awarded to Shimansky.
- 21. On 1 September 2015, Tourvest Holdings (Pty) Ltd (**“Tourvest”**), which was also an unsuccessful bidder for the operation of DFS13, launches an application reviewing the award of the tender to Browns in the Gauteng Division, Pretoria of the High Court of South Africa (**“the Pretoria proceedings”**).
- 22. The original notice of motion instituting the Pretoria proceedings did not cite Shimansky as a party thereto. Tourvest duly amended its notice of motion to cite and join Shimasky to the Pretoria proceedings. This amended notice of motion was served on Shimansky on 26 February 2016.
- 23. On 13 April 2016, ACSA concedes the merits of the Pretoria proceedings.

24. On 11 July 2017, Shimansky receives notice that the hearing of the Pretoria proceedings had been set down for 24 August 2017.
25. On 14 July 2017, Shimansky receives copies of both ACSA and Browns' answering affidavits in the Pretoria proceedings.
26. On 27 July 2017, the ACSA board approves the conclusion of a settlement agreement with Tourvest.
27. On 3 August 2017, Shimansy is informed that the ACSA board resolved to conclude a settlement agreement with Tourvest.
28. On 4 August 2017, Tourvest's attorneys advise Shimansky's attorneys that it is unaware of any settlement and that it would revert on 7 August 2017.
29. On 7 August 2017, Shimansky's attorneys advises ACSA that it would be opposing the Pretoria proceedings.
30. On 7 August 2017, ACSA delivers a notice of termination of its lease with Shimansky in respect of its current occupation of DFS13.
31. On 10 August 2017, ACSA concludes the settlement agreement with Tourvest following the ACSA's board's resolution of 27 July 2017.

32. On 11 August 2017, Shimansky files an answering affidavit in the Pretoria proceedings and seeks condonation for the late filing of its Rule 35 notice.
33. On 16 August 2017, the attorneys for Tourvest request that the matter be removed from the roll of 24 August 2017.
34. On 21 August 2017, ACSA concludes a lease agreement with Browns in respect of DFS13.
35. On 24 August 2017, Shimansky launches a counter application in the Pretoria proceedings.
36. On 25 August 2017, Shimansky launches an urgent interdict application pertaining to the conclusion of the lease agreement between Browns and ACSA in the Western Cape High Court.
37. On 1 September 2017, the urgent application is heard before Mr. Acting Justice Sher (as he then was) (**“Sher”**).
38. On 8 September 2017, the urgent application is dismissed by Sher.
39. On 18 September 2017, Browns is scheduled to take beneficial occupation of DFS13 in terms of the lease it concluded with ACSA.

40. On 22 September 2017, Shimansky launches these proceedings in the Western Cape High Court.
41. On 4 October 2017, ACSA launches eviction proceedings against Shimansky pertaining to its continued occupation of DFS13.
42. On 20 November 2017, ACSA concedes the merits of the review application launched in the Western Cape High Court and withdraws the eviction application.
43. On the same day (20 November 2017) Browns launches a counter application to evict Shimansky from DFS13.

THE REVIEW APPLICATION

44. Section 7(1) of PAJA reads as follows:

“(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) ...

(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.”

45. Shimanksy was informed on 19 March 2015 that its bid to operate the jewelry concession at DFS13 was rejected.
46. On 31 March 2015, Shimansky requested written reasons for this rejection in terms of section 5 of PAJA.
47. Section 5 of PAJA reads as follows:
 - “(1) Any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reasons for the action.*
 - (2) The administrator to whom the request is made must, within 90 days after receiving the request, give that person adequate reasons in writing for the administrative action.*
 - (3) If an administrator fails to furnish adequate reasons for an administrative action, it must, subject to subsection (4) and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.”*

48. In accordance with the provisions of section 9 of PAJA, the 180-day time period provided for in section 7 and the 90-day period provided for in section 5 may be extended for a fixed period between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned. A court or tribunal may grant an application to extend the time period referred to in section 5 or where the interests of justice so require.
49. It does not appear that the parties agreed to either extend the 90-day period within which ACSA had to furnish Shimansky with written reasons or the 180 days within which the review application had to have been brought.
50. Therefore, taking into account the time period set out in section 5 for the request and furnishing of written reasons, Shimansky had to bring the review application before the end of December 2015 if it were to bring it within the 180-day period prescribed in section 7(1) of PAJA.
51. It failed to do so.
52. Given that ACSA has conceded the merits of the review application and withdrawn the eviction application, there is no longer any dispute between ACSA and Shimansky. Generally, this would have brought an end to the matter. However, Browns opposition to the review application remains, as does its eviction application against Shimansky.

53. I turn now to the question whether it would be in the interests of justice to grant the application for the extension of the 180-day period as I may only consider the review application should I grant the application for the extension.¹
54. Expeditious and diligent compliance with constitutional obligations are enshrined in section 237 of the Constitution and are based on sound judicial policy that takes cognizance of the strong public interest in both legal certainty and finality.²
55. It has also been recognized that courts should be slow to allow procedural obstacles to hinder it from considering a challenge to the lawfulness of an exercise of public power.³
56. In determining whether it would be in the interests of justice to consider a challenge to the lawfulness of an exercise of public power notwithstanding that the review application is brought outside the 180-day period regard would have to be had to the facts and circumstances of each case.⁴
57. These facts and circumstances would, *inter alia*, include:
- (i) whether a full and adequate explanation for the delay is furnished;
 - (ii) to what extent, if any, the impugned decision has been give effect to;

¹ Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality 2017 (6) SA 360 (SCA)

² State Information Technology Agency SOC Ltd v Gijima Holdings 2017 (2) SA 63 (SCA)

³ *ibid* at para 47.

⁴ Aurecon South Africa (Pty) Ltd v Cape Town City 2017 (4) CC 223 at paras 41-45

- (iii) whether and to what extent the delay has caused prejudice to those affected by the decision;
- (iv) the impact of the delay on the public interest considerations of certainty and finality; and
- (v) a consideration of the merits of the review application.

THE REASONS FOR THE DELAY IN INSTITUTING THE REVIEW APPLICATION

58. Twelve days after it was notified that its bid was refused, Shimansky requested written reasons for this refusal.⁵
59. Just over three weeks after being advised that its bid was unsuccessful, Shimansky received an undertaking from ACSA that it would either be furnished with written reasons and information and records and given a reasonable time to respond thereto. Alternatively, it would be advised that ACSA determined that it was not obliged to provide such reasons and information and records and would be given a reasonable time to respond to this determination.
60. Up until August 2015, ACSA took no steps to implement the impugned decision and the undertaking furnished to Shimansky remained in place.

⁵ Shimansky was notified of the decision rejecting its bid on 19 March 2015 and on 31 March 2015 it requested written reasons for the decision.

61. On 13 April 2016, in an affidavit deposed to in the Pretoria proceedings, ACSA conceded the merits thereof and stated that it would reverse the impugned decision and remit it back for re-adjudication.
62. Given ACSA's position as at 13 April 2016, together with its undertaking provided to Shimansky, there was no need to approach the courts to review the decision awarding DFS13 to Browns.
63. Had Shimansky, at that stage, launched review applications it would have been met with the charge that:
 - (i) ACSA had furnished an undertaking to Shimansy; and
 - (ii) ACSA had determined to reverse the impugned decision and to remit the matter for re-adjudication.
64. Shimansky is only informed on 3 August 2017 that the ACSA board rejected the recommendation to reverse the decision and remit the matter for re-adjudication and that, instead, it resolved to conclude a settlement agreement with Tourvest.
65. As a result, hereof, Shimansky deems it necessary to actively participate in the Pretoria proceedings and files an answering affidavit.

66. On 16 August 2017, Tourvest requests that the Pretoria proceedings be removed from the roll of 24 August 2017 and on that day (24 August 2017), Shimanksy launches a counter application.
67. On 22 September 2017, Shimansky launches these proceedings.
68. In light of ACSA'S undertaking furnished to Shimansky, together with the affidavit deposed to on 13 April 2016 wherein it stated that the impugned decision would be reversed and the matter remitted for re-adjudication, I agree with Sher's sentiments that:
- "Given these circumstances, and the various concessions which were made by ACSA in its answering papers in the review, Shimansky no doubt thought that it was in a strong position and that the tender would either be set aside and the Shop DFS 13 concession awarded to it, or that it would be remitted for reconsideration afresh by the adjudication committee. Be that as it may, although it was criticized by the respondents for not having taken active steps to protect itself prior to the launch of this application there were cogent reasons why it adopted the approach it did."*⁶
69. In the circumstances, I find that a full and adequate explanation for the delay in instituting these review proceedings has been furnished.

⁶ Paragraph 9 of Sher's judgment, pg 571 of the review record.

TO WHAT EXTENT HAS THE IMPUGNED DECISION BEEN GIVEN EFFECT TO?

70. ACSA concluded the lease agreement with Browns on 21 August 2017. In terms of this lease agreement, Browns was to take beneficial occupation of DFS13 on 18 September 2017.
71. At the time of concluding the lease agreement, Shimansky had already filed its answering papers in the Pretoria proceedings. Consequently, both ACSA and Browns were aware that Shimansky would be actively challenging the impugned decision, given the change in ACSA's position since deposing to its affidavit on 13 April 2016.
72. Given Shimansky's opposition to the award to Browns it refused to vacate DFS 13 and Browns was not able to take beneficial occupation of DFS13 by 18 September 2017.
73. By 20 November 2017, ACSA again changes its stance and concedes that the lease agreement with Browns cannot stand as it attempts to give effect to an admittedly invalid decision.
74. Therefore, save for the conclusion of the lease agreement with Browns that was not implemented, it cannot be said that the impugned decision was given effect to.

HAS THE DELAY IN INSTITUTING THE REVIEW PROCEEDINGS CAUSED PREJUDICE TO ANY PARTY?

75. Although Tourvest was cited in the proceedings it filed no papers. Therefore, it is assumed that it suffered no prejudice.
76. In its answering affidavit, Browns avers that Shimansky disregarded the prejudice which Browns would suffer if the late launching of the application were to be condoned. Furthermore, Browns avers that it would be in the public interest in the finality of administrative decisions and the exercise of administrative functions that the late launching of the application not be condoned.⁷
77. However, Browns does not provide any details of the prejudice that it would suffer as a result of the late bringing of the application.
78. Therefore, based on the papers in the review application, it can be accepted that neither Tourvest nor Browns will suffer any prejudice as a result of the late bringing of the application.
79. In its eviction application, which is brought as a counter application, Browns sets out the prejudice it would suffer from the failure of Shimansky to vacate DFS13. Therefore, any prejudice experienced by Browns results from Shimansky's failure to vacate DFS13 and not from any delay in bringing these review proceedings.

⁷ Para 60 of Browns' answering affidavit.

80. In this regard, it bares mentioning that Browns concluded the lease agreement with ACSA on 21 August 2017. At this stage, ACSA had already conceded the merits of the Pretoria proceedings and advised that it would issue a fresh request for proposals or that it would re-adjudicate the award of the tender on 13 April 2016.⁸
81. Therefore, the validity of the award to Browns that led to the conclusion of the lease agreement had been conceded at the time the lease agreement was concluded.
82. Furthermore, Shimansky had filed its answering affidavit in the proceedings on 11 August 2017 setting out its opposition to the award to Browns.
83. Any prejudice experienced by Browns as a result of Shimansky failing to vacate DFS13 must be viewed against this background. Furthermore, Browns may have recourse against ACSA which failed to provide it with beneficial occupancy in terms of the lease agreement it concluded with it.
84. In the circumstances, condonation for the late bringing of the application will not be refused as a result of the prejudice suffered by Browns arising from Shimansky failing to vacate DFS13.

⁸ Paragraph 5 of the first respondent's answering affidavit in the proceedings (pg 60 of the record)

**THE IMPACT OF THE DELAY IN BRINGING THE REVIEW APPLICATION ON
THE PUBLIC INTEREST CONSIDERATIONS OF CERTAINTY AND FINALITY**

85. Although the decision to accept Browns' bid was made on 23 February 2015⁹, ACSA took no steps to give effect thereto until 7 August 2017, when it gave notice of termination of its lease agreement with Shimansky.
86. Questions were raised about the validity of the impugned decision within days of it being communicated to Shimansky.
87. As a result of these questions being raised, ACSA provided Shimansky with the undertaking set out in paragraph 19 above.
88. Until such time that the undertaking was fulfilled by ACSA, it cannot be said that there was any certainty or finality in respect of the impugned decision.
89. Even after ACSA filed its answering affidavit in the Pretoria proceedings, it could not be said that there was certainty or finality in respect of the impugned decision. In its answering affidavit, ACSA conceded the merits of the Pretoria proceedings and indicated that it would set aside the decision and remit it for a reconsideration. This was the position recommended by both the BEC and BAC of ACSA.

⁹ The BEC recommend the award to Browns on 15 December 2014 and the BAC determined the award on 23 February 2015

90. However, the ACSA board determined not to accept these recommendations and opted to conclude a settlement with Tourvest and proceed with the awarding of the bid to Browns.
91. As at 29 September 2017, ACSA's position was that it would oppose these review proceedings and that it would seek to evict Shimansky from DFS13. By 20 November 2017, this position again changed in that ACSA withdrew its opposition to the current review proceedings as well as its application to evict Shimansky from DFS13.
92. Therefore, up until 20 November 2017, it cannot be said that there was any certainty or finality pertaining to the decision taken. Furthermore, it cannot be said that this lack of certainty and finality resulted from the delayed institution of these review proceedings.

THE MERITS OF THE REVIEW APPLICATION

93. In considering the merits of the review application with a view to determining whether or not the application to extend the 180-day period should be granted, it suffices to state that ACSA has conceded the merits and to the relief sought by Shimansky.
94. In the circumstances and on the facts placed before me, I find that it would be in the interest of justice to grant the extension of the 180-day period within which to bring the review application.

THE REVIEW APPLICATION

95. Having determined to extend the 180-day period, I turn now to determine the merits of the review application.
96. Browns opposes the merits of the review application on four grounds. These are:
- (i) the failure to bring the application within the 180-day period;
 - (ii) *lis pendens*, which is based on the Pretoria proceedings;
 - (iii) the failure of Shimansky to make out a case for the review and setting aside of the award to Browns; and
 - (iv) as a matter of justice and equity, this court ought to order the eviction of Shimansky from DFS13 and allow Browns to take occupation thereof.
97. I have already addressed the failure to bring the application within the 180-day period when considering the application to extend the 180-day period within which to bring the review application.
98. *Lis pendens* was not a substantial issue before me. At the time of the hearing of the matter, Shimansky had withdrawn its counter-application in the Pretoria High Court and those proceedings were no longer alive to be determined.

99. Consequently, there was no merit in opposing this review proceedings on the basis of *lis pendens*.
100. Given that ACSA has conceded the merits of the review application and agrees that its decision should be reviewed and set aside and remitted for a fresh determination, it can hardly be said that Shimansky failed to make out a case for these review proceedings.
101. On the facts before me, Browns has failed to show that it would be just and equitable to evict Shimansky from DFS13.
102. In its answering papers, Browns argued that it would be in the public interest to evict Shimansky from DFS13 and to allow Browns to take occupation thereof as it would generate a higher rental income to ACSA.
103. This is not the case.¹⁰
104. In furtherance of its just and equitable argument, Browns submitted that Shimansky currently occupies DFS13 without having complied with the provisions of section 217(1) of the Constitution. Therefore, it follows that it cannot be allowed to continue with its illegal occupation and that it would be just and equitable to evict it from the premises.

¹⁰ Paragraph 120.5 to 120.8 of the replying affidavit.

105. Browns continues that, as it has a valid lease agreement, it would be in the public interest for it to take occupation of DFS13. However, the very validity of the lease agreement is called into question as it originates from an invalid award. In light of ACSA's concession that the award to Browns was invalid, it cannot be said that the lease agreement is in accordance with a system that is fair, equitable, competitive and cost effective.¹¹
106. In the circumstances to evict Shimansky and to allow Browns to take occupation of DFS13 would simply be a round a bout way of side stepping the review application, as it would allow Browns to take occupation of DFS13 in terms of a lease rendered invalid by virtue of the fact that it originates from an admittedly invalid award.
107. This cannot be said to be a just and equitable result.
108. In the circumstances, I find that the award to Browns is reviewed and set aside.
109. Shimansky is not persisting with its prayer for substitution but now seeks to have the matter remitted for a fresh determination.
110. In the circumstances, this court will not substitute the decision to grant the award to Browns but remits the matter to ACSA for a fresh determination.

¹¹ Section 217(1) of the Constitution. The rental generated from leasing DFS 13 to Browns would be less than the rental generated from leasing DFS 13 to Shimansky.

THE EVICTION APPLICATION

111. I turn now to consider the eviction application brought by Browns as a counter application.
112. As this application is brought as a counter application, the provisions of Rule 24 are applicable thereto.
113. Consequently, the eviction application had to be brought at the time of filing the answering papers, or failing which with the consent of the other parties.
114. Should the consent of the other parties not be forthcoming, then the late bringing of the counter-application could only be brought with the consent of the court.
115. In this matter, neither the consent of the parties nor that of the court was sought in respect of the late bringing of the counter-application. Therefore, the counter-application is not properly before me.
116. However, even had the counter-application been properly before me, Browns would have had an even more fundamental problem with the bringing of the eviction application.
117. ACSA no longer seeks the eviction of Shimanksy and is in agreement that the lease it concluded with Browns cannot stand.

118. Although Browns was due to take beneficial occupation of the premises on 19 September 2017, it did not do so. Therefore, Browns is not in occupation of DFS13.
119. Only persons who are in occupation of the property or who have a real right thereto may claim the ejection of an unlawful occupier.¹²
120. As Browns is not in occupation of DFS 13, it would only have the necessary *locus standi* to evict Shimansky if it had a real right to the occupied property.¹³ Browns has not demonstrated such a real right.
121. Further, as ACSA no longer seeks the eviction of Shimansky and seems agreeable for it to continue with its occupation of DFS13, it has not been shown that it Shimansky is in illegal occupation of the property.
122. Much has been made of the allegation that Shimansky's occupation of DFS13 contravenes section 217 of the Constitution. However, this argument fails to take into account that Shimansky's initial occupation of DFS13 was lawful and that its continued occupation of DFS13 was in terms of two extensions granted to it. Furthermore, in terms of the lease agreement concluded between Shimansky and ACSA, it was agreed that should the lease agreement expire by the effluxion of time and the lessee (Shimansky) dispute

¹² Reddy v Decro Investment CC t/a Cars for Africa and Others 2004(1)(SA 618 (D)

¹³ *ibid*

the tender process carried out by the lessor, then it could continue with its occupation of the premises.¹⁴

123. As Browns has failed to prove that it has *locus standi* to bring the application or that Shimansky is in unlawful occupation of DFS13, its eviction application would in any event have been unsuccessful had it been properly before me.

124. In the circumstances, I make the following order:

- (i) the application to extend the 180-day period in terms of section 9(2) of PAJA is granted;
- (ii) the award of the tender to Browns to operate the jewelry concession at DFS13 is reviewed and set aside;
- (iii) the award of the tender to operate the jewelry concession at DFS13 is remitted back to ACSA for fresh determination. In such determination, the equity preference criteria in clause 7 of the request for bids are to be disregarded in the adjudication process;
- (iv) the lease agreement concluded between ACSA and Browns on 21 August 2017 is declared invalid;
- (v) in respect of costs:
 - (a) with regard to Shimansky and ACSA, each party shall pay its own costs;

¹⁴ See clause 21.3 of the lease agreement between ACSA and Browns. In argument, I was advised that the lease agreement between Shimansky and ACSA would also contain this clause.

- (b) with regard to Shimansky and Browns, Browns shall pay the costs of the application on a scale as between party and party, the costs whereof are to include the costs of two counsel; and
- (vi) the eviction application is dismissed with costs, which costs are to include the costs of two counsel.

H SLINGERS

ACTING JUDGE OF THE HIGH COURT

Counsel for Applicants: Adv. S Rosenberg (SC)

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(3) Tourvest Holdings (Pty) Ltd

c/o Macroberts Inc ref: Mr G K Hay

Court resumed Monday, 4 December 2017 and Thursday 1 February 2018.

Date of Judgment: 01 February 2018.