IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~ / ~~NO.~~ Yes
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.
(3) REVISED.
DATE 3/03/2015 . SIGNATURE

CASE NO: 82542/2014

DATE: 4/3/15

IN THE MATTER BETWEEN:

CITICONNECT BUSINESS SOLUTIONS	**APPLICANT**
AND	
THE CITY MANAGER OF THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY N.O.	**FIRST RESPONDENT**
CITY OF TSHWANE METROPOLITAN MUNICIPALITY	**SECOND RESPONDENT**
SECURELINK INTERNATIONAL (PTY) LIMITED	**THIRD RESPONDENT**
BYTES SYSTEM INTEGRATION CC	**FOURTH RESPONDENT**
TELKOM SA SOC LIMITED	**FIFTH RESPONDENT**
DIMENSION DATA LIMITED	**SIXTH RESPONDENT**
PHATSIMA CONSORTIUM	**SEVENTH RESPONDENT**

JUDGMENT

KOLLAPEN J:

1. In this application, brought in two parts, the following relief is sought by the applicant:

In part A the relief sought is:

'That pending the final determination of the relief sought in part B of the application:

i. *The first and second respondents be and hereby are interdicted and restrained, with immediate effect, from in any way proceeding with the tender process or implementing the request for proposal for the provision of municipal broadband network infrastructure under tender reference number GICT01/2014/15;*

ii. *The first and second respondents be and hereby are interdicted and restrained, with immediate effect, from appointing a service provider or concluding a contract in any form with a prospective service provider in respect of the intended project for the provision of municipal broadband network infrastructure, whether under tender reference number GICT01/2014/15 or any other reference number.'*

2. In part B, the applicant seeks an order in the following terms:

i. *That to the extent necessary, the period of 180 days referred to in Section 7 of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA") be extended to the date of institution of this application in terms of Section 9(1)(b) and Section 9(2) of PAJA;*

ii. *That to the extent necessary, the applicant be exempted in terms of Section 7(2)(c) of PAJA from the obligation to exhaust internal remedies;*

iii. *That the decision by the first respondent taken on the 18th of June 2014, in terms of which the first respondent purported to cancel the tender process under tender reference number CB104/2013, be and is hereby reviewed and set aside;*

iv. *That a declarator be issued to the effect that the applicant has been awarded the tender under tender reference number CB104/2013;*

v. *Alternatively to prayer 4 above, that the first and second respondents be ordered to take all necessary steps to proceed with the tender process under tender reference number CB104/2013 to its conclusion;*

vi. *That the costs of part B of this application be paid by the first and second respondents, as well as by any other party that may seek to oppose the relief sought in part B of this application, jointly and severally with the second respondent*

vii. *Further and / or alternative relief.*

3. The first, second and seventh respondents oppose the application and the first and second respondents have, in addition, filed a counter application in which they seek an order that:

   i. The purported award of the tender in dispute to the applicant is declared invalid and set aside;

   ii. The costs of the counter-application be paid by the applicant.

THE FACTUAL BACKGROUND

4. The applicant describes itself as the fibre optic infrastructure and service arm of the Wired Corporation and as having expertise in the building and development of city wired broadband infrastructure projects.

5. The first respondent sought to implement a broadband network that would amongst other things improve the delivery of services and contribute to the economic upliftment of the city.

6. Sometime in mid-2013, the second respondent embarked on a tender process for its broadband project which commenced with a written request for proposal under tender reference number CB104/2013 ('the 2013 RFP'). This was published on the 27th of May 2013 and the closing date for the submission of tenders was the 6th of July 2013.

7. From amongst the various tenders submitted within the stipulated period, those of the applicant and the seventh respondent were selected to progress to the next phase of the technical evaluation process. The applicant was informed of this in writing on or about the 22nd of July 2013. It would appear that various committees of the second respondent's supply chain procurement process considered the then remaining tenders during the period after the tender closing date in July 2013 up and until the 25th of April 2014 when the executive acquisition committee ('EAC') of the respondent resolved, subject to the matter being referred to National Treasury on the question of whether the bid was a Public Private Partnership ('PPP') project, to accept the applicant's bid and that a resolution to this effect was signed by the acting chair of the EAC as well as the first respondent in his capacity as City Manager.

8. The written terms of the tender issued under the 2013 RFP provides that the tender validity period would be 180 days after the closing date – ordinarily this period would have expired on the 6th of January 2014.

   To the extent that the issue of whether there was a tacit extension of the validity period has been raised, the following is of importance:

   i. On or about the 22nd of January 2014, the applicant completed a written extension document which purported to extend the validity of the applicant's tender to the 30th of May 2014;
   ii. On or about the 12th May 2014, the applicant completed a further written extension document which purported to extend the applicant's tender to the 30th of June 2014;

iii. The seventh respondent also completed similar written extension documents during January 2014 and May 2014.

9. On the 18th of June 2014, the first respondent advised the applicant in writing of the cancellation of tender CB104/2013 with immediate effect. It indicated that it was doing so on account of the changed needs of the first respondent and intimated that it was planning to commence a new procurement process in this regard.

10. On the 12th of September 2014, the first and second respondents issued a request for proposal for municipal broadband network infrastructure under tender reference GICT01/2014/15 ('the 2014 RFP').

11. There have been various tenders submitted in response to the 2014 RFP including those from the applicant and the seventh respondent. While the tender validity period was due to expire on the 12th of January 2015, it has since been extended to the 12th of April 2015. It is in respect of this, the 2014 RFP, that the applicant seeks the relief in part A of this application.

THE STANCE OF THE APPLICANT

12. The relief sought by the applicant is premised on its stance that the purported cancellation of the 2013 RFP was invalid and unlawful and that it was either awarded the tender under the 2013 RFP, or ought to have been awarded that tender on the basis of the various processes undertaken by the first and second respondents, culminating in the resolution of the EAC of the 25th of April 2014, which resolution was also signed and approved by the first respondent.

13. To this extent it contends that it has a clear right to review the decision by the first respondent to cancel the 2013 RFP and that if the 2014 RFP, which it submits is substantially the same in content as the 2013 RFP, is allowed to run

its course and another tenderer is appointed, it may have the effect of rendering academic the applicant's right to review the decision of the first respondent, which it seeks to do in Part B of this application.

14. The applicant relies on a tacit agreement that in submitting the bids in response to the 2013 RFP, the various bidders as well the second respondent in accepting the tenders and subjecting it to the 2013 RFP process, tacitly agreed that the tender validity period be extended until the second respondent arrived at a decision as to whose bid should be accepted.

15. It further argues that in the event the Court concluded that the validity of the bid period expired on the 6th of January 2014 and in addition found that there was no tacit agreement to extend it, in such event the conduct of the first and second respondents in considering and awarding the tender after it had expired, while irregular, was not material and should not lead to the invalidation of the award of the tender.

THE STANCE OF THE RESPONDENTS

16. While the first and the second respondents in large measure do not dispute the factual matrix that led to the resolution of the EAC of the 25th of April 2014 and the subsequent cancellation of the tender on the 18th of June 2014, they contend that if regard is had to the tender validity period, then the validity of all tenders and in particular that of the applicant, expired on the 6th of January 2014.

17. They argue that as there was no extension of the validity period prior to the 6th of January 2014, the bids expired on the 6th of January 2014 and accordingly whatever may have followed thereafter, including the attempts of the 22nd of January 2014 and the 12th of May 2014 to extend the validity period, had no effect or consequence in law. In this regard they conclude that the resolution of

the 25th of April 2014 was based on an incorrect understanding that the tender was still valid and to that extent there could be no legal consequences that could conceivably attach to the resolution.

18. Simply put their stance is that all the processes around the 2013 RFP ended on the 6th of January 2014 and it could thus not be said that the applicant could be the holder of any rights that arose out of the EAC's resolution on the 25th of April 2014 as in law those processes were a nullity, carried no effect or consequence and accordingly could not generate any rights, particularly the one the applicant contends for.

19. With regard to the reliance by the applicant on a tacit term to extend the validity of the tender period, the respondents and in particular the seventh respondent, have argued that such a tacit term was not permissible in law given that it sought to contradict the express terms of the agreement and that in any event, on the facts and circumstances that existed at the time, it was extremely unlikely if not impossible for such an agreement to have been concluded. In addition the respondents intimate that in any event such a tacit agreement as contended for would be in contravention of the transparency requirement found in Section 217 of the Constitution.

THE ISSUES FOR DETERMINATION:

- Whether the matter is urgent in the manner in which it was brought?
- Did the 2013 RFP validity period lapse on the 6th of January 2014 or was there a tacit agreement to extend it as contended for by the applicant?
- If there was a tacit agreement to extend, then has the applicant satisfied the other requirements for the grant of the interim relief it seeks?
- If there was no tacit agreement, did the ongoing consideration of the tender and the award constitute a non-material irregularity that militates against the invalidation of the award?

➤ URGENCY:

20. The case for urgency that the applicant relies on is that while it became aware of the cancellation of the tender during August 2014, it only became aware of the award of the tender to it on the 15th of October 2014 when the second respondent made available the record relating to the EAC decision of the 25th of April 2014. From that point onward it took all reasonable measures to obtain legal advice, consult with counsel and attend to the preparation of papers culminating in the launch of the application on the 11th of November 2014.

21. The respondents in disputing that the matter is urgent, point out that the applicant, as far back as the 27th of August 2014, took issue with the decision of the 18th of June 2014 cancelling the 2013 RFP and that the application could and should have been launched earlier.

22. In my view the relevant time period is from the 15th of October 2014, when the applicant became aware of the EAC decision. Whatever the legal status of that resolution may be, from the perspective of the applicant, it was a significant factor in the way it interpreted its position, concluded that it had acquired rights out of that process and then sought relief. I am satisfied that it took all reasonable measures to prosecute its case timeously and in enrolling it as it did for the 2nd of December 2014.

23. There are disputes relating to the ongoing urgency of the matter after that but they relate largely to the question of costs and I will address that if it becomes necessary. In addition, there were various developments after the 2nd of December 2014 which relate to joinder and the extension of the validity of the bids in respect of the 2014 RFP which then had the effect of rendering the matter less urgent than it originally was and which culminated in the hearing of the matter on the 11th of February 2014.

24 . I am accordingly satisfied that a proper case has been made out with regard to urgency.

> **THE VALIDITY OF THE TENDER BEYOND THE 180 DAY PERIOD:**

25 . It is not in dispute that in terms of the provisions of the 2013 RFP the validity period of bids would be 180 days and that ordinarily the bids would no longer be valid after the 6th of January 2014 unless they were extended. The 2013 RFP also created a mechanism for the extension of the validity of bids whereby the bidders could be requested to extend the period of validity and they could then elect whether to do so or not. If they did not then the validity of the bid would expire if not extended.

26 . In advancing the case for a tacit extension of the validity period, the applicant argues that considering that historically, the first and second respondents were never able to finalise a tender within the 180 day period, it was, at the time the various bids were submitted (presumably in July 2013), tacitly agreed between all the bidders and the second respondent in accepting and processing the various bids, that the validity period would be extended until such time as the second respondent made a final decision on the tender. The applicant also suggests that the respondents have raised the lapsing of the 2013 RFP as an afterthought as it emerged as being their stance for the first time in the opposing affidavits filed in these proceedings and was never raised at any time earlier as a factor justifying the cancellation of the 2013 RFP.

27 . In ***TELKOM SA LIMITED v MERID TRADING AND OTHERS*** (case number 27974/2010), an unreported judgment of the North Gauteng High Court of the 7th of January 2011, the Court in dealing with a set of facts which are strikingly similar to those in the matter on hand, made the following observations:

i. The decision to award a tender is an administrative process and therefore the provisions of the Promotion of Just Administrative Action Act apply.

ii. The tender process is also regulated by Section 217 of the Constitution which requires that the process must be 'fair, equitable, transparent, competitive and cost effective'.

iii. As soon as the validity period of the bids had expired without the award of a contract the tender process was complete. Any attempt to continue with the tender process would no longer be transparent, equitable or competitive.

iv. The requirements of transparency, equity and competitiveness would require that in the event a tender was not awarded within the validity period, all interested parties should be offered a further opportunity to tender (presumably under a new tender).

v. If the tender process was irregular because it did not comply with the required procedure, the organ of State was obliged to ignore the award of the tender and resist any attempt to enforce it.

vi. To the extent that reliance is placed on the existence of a tacit agreement to extend the validity of the tender, the existence of such an agreement must be inferred from all the relevant facts and circumstances.

Here, SOUTHWOOD J accordingly reviewed and set aside the award of the tender.

23 . In ***JOUBERT GALPIN SEARLE INC AND OTHERS v ROAD ACCIDENT FUND AND OTHERS*** **2014 (4) SA 148 (ECP)**, PLASKET J followed the approach taken by SOUTHWOOD J in ***TELKOM*** (supra) and took the view that once the bid validity period of a tender had expired, there was nothing to extend because the tender process was concluded.

29. When one has regard to the facts before this Court, clearly there was no written or express extension of the bid validity period beyond the 6th of January 2014 and certainly on the basis of the reasoning in ***TELKOM*** and the ***JOUBERT*** cases with which I associate myself, the validity of the bid was not expressly extended before it expired and accordingly all the processes and decisions purported to be taken after the 6th of January 2014 would have no effect or consequence.

30. It was suggested by the applicant that the stance adopted in ***TELKOM*** and ***JOUBERT*** was incorrect in that the conclusion of invalidity was cast in stone and was immutable, as it were. It failed to consider whether notwithstanding the irregularity or the deviation, there was still compliance with the principles set out in Section 217 of the Constitution. It argued that if ultimately the irregularity or the deviation did not impact on the fairness, transparency, cost-effectiveness or equity of the process, invalidation should not follow.

31. My view is that creating such a distinction is fraught with difficulty and danger. The tender process that has developed cannot be insulated from the requirements of fairness, transparency or equity. On the contrary, it has not been raised in these proceedings that the content of those processes can and do stand apart from the prescripts found in Section 217. In this regard the conclusion by SOUTHWOOD J in ***TELKOM*** that the doctrine of legality requires that a contract of this nature be preceded by compliance with the prescribed tender processes failing which invalidity will result, is not an immutable proposition but rather one that carefully considers and gives effect to the requirements of Section 217 as they manifest themselves in the intricacies and the detail of the tender process.

32. Accordingly my conclusion on this aspect of the argument is that upon the expiration of the tender validity period and in the absence of an award being made within the validity period, the tender would ordinarily have expired, except of course if there was a tacit agreement to extend the validity of the bid which is an issue I now proceed to deal with.

➢ **THE 'TACIT TERM' THAT EXTENDED THE BID VALIDITY PERIOD:**

33 . I now proceed to deal with the applicant's argument that there was a tacit extension of the bid validity period. In this regard the applicant's case is that at the time the bids were submitted, a tacit agreement to extend the validity period of all the bids submitted came into existence and the tacit agreement was to the effect that the validity period would be extended until the final decision on the tender was taken by the first and second respondents.

34 . Before dealing with the merits of this submission, it may be useful to state the legal principles that should guide the Court and be applicable in adjudicating this aspect of the matter.

A tacit term is an unexpressed provision of a contract that is derived from the common intention of the parties, which is inferred from the express terms of the contract and from the surrounding circumstances.

In ***MULTILATERAL MOTOR VEHICLE ACCIDENTS FUND V THABEDE*** **1994 (2) SA 610 (N)**, MAGID J drew attention to the difficulty of reading a tacit term into an offer, since a tacit term depends on the common intention of the parties and 'there can be no such 'common intention' in a unilateral document like an offer'. MAGID J went on to say (at 614B):

> *'It seems to me, therefore, that, save for an implied term properly so-called (that is to say one implied by law), it is impossible to read into a unilateral document such as an offer a tacit term unless there are surrounding circumstances which are relied on by the offeror and pleaded and proved in the course of the litigation in question.'*

35 . Given that both the first and the seventh respondents deny that such a term was tacitly agreed upon at the time of the submission of bids, it is inconceivable how the Court can arrive at a conclusion that the common intention of the parties

supported the tacit agreement contended for. In addition all that is said with regard to the surrounding circumstances is that it was common knowledge that the tender process would not be complete within 180 days and all those submitting bids, and the first respondent in accepting them, accepted and consented to participate in the process until the first respondent arrived at a final decision

36 .. Given both the denial by the respondents of this understanding of the circumstances, their specific denial of the tacit term contended for and the extremely vague and generic nature of the circumstances relied upon to advance the case for a tacit term, I would be extremely reluctant on such a speculative scenario articulated by only the applicant to place too much reliance on those alleged circumstances in order to advance the argument for a tacit term having come into existence for those reasons. In this regard one must also be guided by the caution expressed by our Courts that a Court should not readily import a tacit term

(See ***ALFRED MCALPINE & SON (PTY) LTD v TRANSVAAL PROVINCIAL ADMINISTRATION* 1974 (3) SA 506 (A)**)

37 .. There are with respect no facts provided to support the conclusion the applicant contends for. Whatever the history of the second respondent may be in dealing with and deciding on tenders, that can hardly be decisive of the issue. It is quite a far-reaching proposition to state that such a history on its own stands to support the conclusion of a tacit agreement. In my view there has been no case made out for the existence of a tacit agreement by reference to the surrounding circumstances that existed at the time the alleged agreement was to have been arrived at .

38 .. In addition, the applicant sought to rely on the purported written extensions during January and May 2014 to which reference has already been made, to support the argument that a tacit extension was agreed upon in July 2013. This proposition is also unsustainable. If indeed there was a tacit agreement to extend the bid validity until a decicion was taken, there would be no need to effect the purported

extensions until the end of May 2014 and June 2104 respectively. Those purported extensions far from advancing the case for the existence of a tacit term, strongly militate against its existence. It must certainly be eminently arguable that the need for the written extension existed precisely because there was no prior agreement on the bid validity as contended for by the applicant. That can be the only reasonable explanation for these purported extensions. The suggestion in argument that the purported written extensions constituted a variation of the tacit term already agreed upon is with respect contrived and convoluted.

39 . A tacit term cannot be irreconcilable with the express terms of the contract. It is well established that a tacit term cannot be inferred if it would be irreconcilable with the express terms of the contract. In ***FIRST NATIONAL BANK OF SA LTD v TRANSVAAL RUGBY UNION AND ANOTHER*** **1997 (3) SA 851 (W)** the Court stated that (at 864G):

> *'It is trite that an implied term which conflicts with the express wording of an agreement cannot be maintained. A useful restatement of the relevant legal principles is to be found in* Robin v Guarantee Life Assurance Co Ltd *1984 (4) SA 558 (A) at 567C-F, where Trengove JA, as he then was, stated the following:*
>
> > *'A tacit term cannot be imported into a contract in respect of any matter to which the parties have applied their minds and for which they have made express provision in the contract. As was said by Van Winsen JA in* SA Mutual Aid Society v Cape Town Chamber of Commerce *1962 (1) SA 598 (A) at 615D:*
> >
> > > *'A term is sought to be implied in an agreement for the very reason that the parties failed to agree expressly thereon. Where the parties have expressly agreed upon a term and given expression to that agreement in the written contract in*

unambiguous terms no reference can be had to surrounding circumstances in order to subvert the meaning to be derived from a consideration of the language of the agreement only.'

40 . Similarly in ***KELVINATOR GROUP SERVICES (PTY) LTD v MCCULLOH* 1999 (4) SA 840 (WLD)**, NUGENT J stated that:

> *'A tacit term is not merely one that would have been reasonable, or convenient, for the parties to have included in their agreement...but is rather a term which, by necessary implication, the parties must have intended would form part of their agreement or would have so intended if they had turned their minds to the particular issue. It follows that there can be no room for such a term if it would be in conflict with the express provisions of the agreement.'* (at 844B)

41 . It must also be noted that Courts are generally slow to import a tacit term into a contract. CORBETT JA reiterated this principle in ***ALFRED MCALPINE & SON (PTY) LTD v TRANSVAAL PROVINCIAL ADMINISTRATION* 1974 (3) SA 506 (A)** (at 532H-533A):

> *'The Court does not readily import a tacit term. It cannot make contracts for people; nor can it supplement the agreement of the parties merely because it might be reasonable to do so. Before it can imply a tacit term the Court must be satisfied, upon a consideration in a reasonable and businesslike manner of the terms of contract and the admissible evidence of surrounding circumstances, that an implication necessarily arises that the parties intended to contract on the basis of the suggested term.'*

42 . Under these circumstances the content of the alleged term, namely that bids would be open-ended until acceptance, stands in stark contrast to Tender Notice and

Invitation and the provisions of Clause F 2.16.1 of the Tender which states that tenders must remain valid for a period of 180 days and that the tenderer, if requested by the employer, could consider extending the validity period for an agreed additional period.

43. Clearly what was contemplated was an extension and this can only mean an agreement to extend the 180 day period that is arrived at after the submission of bids and before the expiration of the 180 day period. The case for the applicant does not constiutute an extension but rather from the very outset an amendment to the tender conditions.

44. The alleged tacit term is accordingly clearly in conflict with the express provisions of the tender and cannot be maintained.

45. If one has regard to the tender document and the bids submitted, they clearly reflect the position that the parties had applied their mind to the matter and the particular issue of the validity period and therefore it could never be said that the tacit term is one which the parties by necessary implication must have intended to be part of their agreement.

46. For all of the above reasons there can be no basis to uphold the applicant's assertion that a tacit agreement came into existence under the circumstances contended for. From this it must follow that the purported award of the tender was invalid and that the applicant could not be said to have acquired any rights as a result thereof.

47. The final argument of the applicant was that even if there was no tacit term proved, the conduct of the parties in continuing to deal with and consider the tender and ultimately awarding it, was a non-material deviation from the agreed process and should not result in the invalidity of the award. Reliance was placed on the *dicta* in ***ALLPAY CONSOLIDATED INVESTMENT HOLDINGS (PTY) LTD AND***

***OTHERS v CHIEF EXECUTIVE OFFICER, SOUTH AFRICAN SOCIAL SECURITY AGENCY, AND OTHERS* 2014 (1) SA 604 (CC).**

48. In this regard the deviation could hardly be described as non-material or inconsequential. The consideration of a tender after it had lapsed is a serious matter. Even more serious is that once the tender had lapsed there could be no justifiable reasons to have continued considering the tender of only two bidders. At that stage, if there was to be any ongoing consideration, it would have had to include all the original bidders. Fairness and transparency would have required nothing less. In my view the deviation was material and there can be no room for the Court to condone what was simply an ongoing illegality in the consideration of a lapsed tender.

49. For all of these reasons, it cannot be said that the applicant has established a *prima facie* right (even one open to some doubt) in its reliance on the award made to it on the 25th of April 2014. No rights could have flowed from the process which had become fatally flawed after the 6th of January 2014 when the tender lapsed. The application must accordinglty fail on account of this.

COSTS

50. While costs should ordinarily follow the result, the Court has a discretion with regard to costs which discretion must be judicially exercised. When one has regard to the conduct of the first respondent then from the common cause facts, it hardly acted in a manner commensurate with a public body entrusted with the responsibility of managing large tenders. It remained in control of the tender process and it set the conditions for the tender and the timeline for the submission of bids and their validity. Despite this it allowed a process that had lapsed to simply continue and even when advised of the implications of its conduct by reference to the ***TELKOM*** decision, it continued to process the tender and make an award.

51. More must and should be expected of it and indeed the Supply Chain Management Policy of the first respondent enjoins it to be efficient, effective, and conform to all legal requirements. It certainly did not in this instance if one has regard to the events after the 6th of January 2014 and the stance that the tender had lapsed was adopted for the first time in the opposing affidavits in this application.

52. Under these circumstances my view is that even though it has been successful, it should not on account of its conduct be awarded any costs. Mr Tsatsawane objected to the Court making any adverse costs order in this regard on the basis that it was not the case the first and second respondents was required to meet. I have noted and considered the objection but believe that to the extent that I have relied on common cause facts to sustain the conclusion I have arrived at, the first and second respondents cannot complain of any prejudice in this regard.

53. There was some discussion as to whether the applicant's failure to obtain relief in Part A disposes of Part B and the counter application and while it may well appear to be so, Part B is not before me and the applicant may well wish to consider its position in respect of part B after considering this judgment. I accordingly see no need to make any order in respect of Part B or the counter application.

ORDER

54. I make the following order:

   i. Part A of the application is dismissed with costs;

   ii. The applicant is ordered to pay the costs of the seventh respondent which shall include the costs of two counsel.

N KOLLAPEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

82542/2014

HEARD ON: 11 FEBRUARY 2015

FOR THE APPLICANT: ADV. J J BRETT SC (assisted by ADV. E KROMHOUT)

INSTRUCTED BY: DAVID KAHN & ASSOCIATES (ref: Kahn/BWI 1/0001)

FOR THE FIRST AND SECOND RESPONDENTS: ADV. K TSATSAWANE

INSTRUCTED BY: GILDENHUYS MALATJI INC. (ref: H Chaane/KM/01738038)

FOR THE SEVENTH RESPONDENT: ADV. R BHANA SC (assisted by ADV. E WEBBER)

INSTRUCTED BY: NORTON ROSE FULBRIGHT (ref: C van Eetveldt/DM/MAT33442)