

**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION – BHISHO]**

CASE NO.: 84/2022

In the matter between: -

NMPS CONSTRUCTION CC	1ST APPLICANT
LONI'S BUILDING CONSTRUCTION CC	2ND APPLICANT
LZ SIDZIYA AND SONS CONSTRUCTION	3RD APPLICANT
GQOBA CONSTRUCTION CC	4TH APPLICANT
LINDA SDULI CONSTRUCTION CC	5TH APPLICANT
MEKI CONTRACTORS CC	6TH APPLICANT
SNO'S BUILDING CONSTRUCTION CC	7TH APPLICANT
TAU ETSHEHLA CONTRACTORS	8TH APPLICANT
TPSK BUILDERS CC	9TH APPLICANT
PAMMY CONSTRUCTION CC	10TH APPLICANT
INKI CONSTRUCTION CC	11TH APPLICANT
AMATENZA CONTRACTORS	12TH APPLICANT
HARVERST TIME DEVELOPERS CC	13TH APPLICANT
RES-DELIGHT PROJECTS CC	14TH APPLICANT

MANDLANGANGENDLOVU CONTRACTORS CC	15TH APPLICANT
MTHESA BUILDERS CC	16TH APPLICANT
FUNEZAKHO CONSTRUCTION CONTRACTORS CC	17TH APPLICANT
LETSHEPA BUILDING CONTRACTORS CC	18TH APPLICANT
SIYAGQWESA CONTRACTORS CC	19TH APPLICANT
MBUCWA CONTRACTORS CC	20TH APPLICANT
KHONJWAYO CONTRACTORS CC	21ST APPLICANT
PUMINO CONSTRUCTION CC	22ND APPLICANT
IZINKWALI BUILDING CONSTRUCTION AND CIVIL CC	23RD APPLICANT
QHOLO CIVILS CC	24TH APPLICANT
HOB CONSTRUCTION CC	25TH APPLICANT
NGALEKA BROTHERS CONSTRUCTION CC	26TH APPLICANT
VETO CONSTRUCTION CC	27TH APPLICANT
LZG CONSTRUCTION CC	28TH APPLICANT
LAMILA CONSTRUCTION CC	29TH APPLICANT
NDZAMELA CONSTRUCTION CC	30TH APPLICANT
ZILWA CONTRACTORS CC	31ST APPLICANT

GT MAJIYA CONSTRUCTION CC	32ND APPLICANT
GAMSKO CONSTRUCTION CC	33RD APPLICANT
DLAMBULO CONSTRUCTION CC	34TH APPLICANT
MNCEDUMNTU PROSPER SIGABI	35TH APPLICANT
TEMBUKAZI PAKADE	36TH APPLICANT
LINDUMZI SIDIYA	37TH APPLICANT
MZIYANDA GQOBA	38TH APPLICANT
BUYELWA MAYEKISO	39TH APPLICANT
SIPHELELE MEKI	40TH APPLICANT
MAYENZEKE FAKU	41ST APPLICANT
MOLEBOHENG TSOANANYANA	42ND APPLICANT
SIBONGILE KHAMBILE	43RD APPLICANT
PAMELLA DYANTYI	44TH APPLICANT
FUNEKA MGOBOZI	45TH APPLICANT
LITHA ZITSHU	46TH APPLICANT
SIVIWE DLOVA	47TH APPLICANT
VUYO NDLEBE	48TH APPLICANT

MLINDELI NOGEMANE	49TH APPLICANT
MTHETHO SANDA	50TH APPLICANT
ZUKO MAZWI	51ST APPLICANT
THEMBA MJIBA	52ND APPLICANT
LOMBE SEMANE	53RD APPLICANT
THEMBISA SIDINILE	54TH APPLICANT
LUYANDA MBALEKWA	55TH APPLICANT
PHUMELA TAFI	56TH APPLICANT
LOYISO METU	57TH APPLICANT
XOLANI FINCA	58TH APPLICANT
BONGEKILE DLEKEDLA	59TH APPLICANT
ATHI MTENGWANE	60TH APPLICANT
XOLANI TSHWATI	61ST APPLICANT
LUZUKO GWAZELA	62ND APPLICANT
NOSIPHO MSIMANGA	63RD APPLICANT
MONGEZI NDZAMELA	64TH APPLICANT
MKHANGELI ZILWA	65TH APPLICANT

GUGULETHU MAJIYA

66TH APPLICANT

ZOLA BULWANA

67TH APPLICANT

LUNGILE DLAMBULO

68TH APPLICANT

And

MINISTER OF PUBLIC WORKS & INFRASTRUCTURE

1ST RESPONDENT

**MEC FOR PUBLIC WORKS OF THE EASTERN
CAPE PROVINCE**

2ND RESPONDENT

**MEC FOR EDUCATION OF THE EASTERN
CAPE PROVINCE**

3RD RESPONDENT

COEGA DEVELOPMENT CORPORATION (PTY) LTD

4TH RESPONDENT

JUDGMENT

NORMAN J:

[1] The applicants sought in their amended notice of motion the following Orders:

“1. That the respondents are ordered to implement Phase 3 of the Eastern Cape School Building Expanded Public Works Programme which they had initiated in favour of the applicants, which is the final phase of that programme, which will enable the Construction Sector Education and Training Authority (CETA) to award the NQF Level 2 to the applicants.

2. *That the respondents are ordered to commence with the implementation of this order within thirty (30) days of the granting of this order.*

3. *That the respondents are ordered to report to this Honourable Court on the steps taken to comply with this order by submitting a progress report on the last day of every month after the granting of this order until the applicants are satisfied that the order has been fully complied with and that continued reporting may be concluded by an order of this Honourable Court on application by the applicants.*

4. *That the first, second and third respondents are ordered to pay the costs of this application on an attorney and client scale jointly and severally the one paying the other to be absolved.*

5. *Further and/ alternative relief."*

Parties

[2] The applicants, in the founding affidavit, deposed to by Mr Mncedumntu Prosper Sigabi, are described as trainee contractors under what was known as the Expanded Public Works Program (EPWP). This program was introduced by the first and second respondents. The first respondent is the Minister of Public Works and Infrastructure (the Minister) who is cited in his official capacity as the executive authority of the national department of public works.

[3] The second respondent is the Member of the Executive Council for Public Works for the Eastern Cape Province (the MEC for Public Works) , the executive authority of the provincial department. The third respondent is the Member of the Executive Council for Education for the Eastern Cape Province (MEC for Education), the executive authority of the provincial department of education. The fourth respondent is the Coega Development Corporation (Pty) Ltd (Coega), the implementing agent of the learnership program that is the subject of these proceedings.

[4] The applicants brought the application in their individual capacities; also acting as members of an interest group or class of persons; acting in the public interest, and in their capacities as business entities as envisaged in sections 38(a); 38(b) section and 38(d) of the Constitution, respectively.

[5] I hasten to state that the applicants initially withdrew the application against Coega but later joined it in these proceedings at the instance of the second and third respondents who complained about the non-joinder of Coega. No relief is sought against Coega.

[6] The application is opposed by the state respondents. Coega's opposition relates to costs only as they had not been tendered by the applicants at the time of withdrawal of the application against it.

The program

[7] The applicants were recruited for the purposes of developing them to become well equipped contractors. They state that the program was to be implemented in three (3) phases of training in order to enable the applicants to achieve NQF Level 2 accreditation. They complain that the training was abruptly, unilaterally and arbitrarily discontinued by the respondents and thus caused them prejudice.

[8] It is common cause that on 14 February 2003 the former President of the Republic of South Africa, President Thabo Mbeki when he was delivering his annual State Of The Nation Address (SONA) during the opening of Parliament stated, *inter alia*, the following:

“To address this investment in social infrastructure, the government has decided that we should launch an expanded public works programme. This will ensure that we draw significant number of the unemployed into productive work and that these workers gain skills while they work, and thus take an important step to get out of the pool of those who are marginalized.”

[9] It was a result of that address that in June 2004 the first respondent issued a consolidated program overview and a framework document for the implementation of the EPWP. The first respondent is quoted by the applicants as having stated the following:

“President Thabo Mbeki formally announced the EPWP in his State of the Nation Address in February 2003. The program was agreed to at the Growth and Development Summit in (GDS) held in June 2003. Cabinet finally adopted the program in November 2003 and the President launched the program in May 2004.”

[10] On 11 April 2005 an advertisement from the Independent Development Trust (IDT) entitled ‘Expression of Interest Eastern Cape Schools Body Expanded Public Works Program’, appeared in the Daily Dispatch. It reads as follows:

“EXPRESSION OF INTEREST

Eastern Cape School Building Expanded Public Works Programme

Background

The Independent Development Trust, on behalf of the Provincial Department of Public Works and Education is embarking on a contractor training programme that is part of the Expanded Public Works Programme. The programme is structured as a learnership and is a joint initiative between DPW (EC), DOE (EC), DPW (NATIONAL), CETA and the IDT. The programme attempts to enhance the ability of the emerging contractors and the youth aspiring to get into the construction industry with more future that will enable them to compete effectively in the construction market. It will assist aspiring building contractors to gain skills while they run projects and increase their capacity to earn income, all of which will result in them being fully fledged building contractors with requisite business and technical skills.

Selection criteria

(a) Requirements for applicants

The applying potential contractor must be willing to form a closed corporation for the purpose of the learnership and will have 100% ownership of the closed corporation formed.

Other critical requirements are the following:

- ✓ Have academic qualifications of Grade 10 (Standard 8) or higher (Applicants with qualifications below Grade 10 should obtain Recognition Prior Learning and submit before the closing dates).
- ✓ Be willing and available to enter into a fulltime programme and contract that runs over a period of two years for a construction Contractor NQF Level 2.
- ✓ Preference will be given to PDI.

In the event that the total number of applicants who meet the above requirements are less than the total number of available learnerships, the Independent Development Trust, National Department of Public Works, the Provincial Department of Public Works and the Constructions Education and Training Authority Services may shortlist applicants who do not meet the above criteria, to the learnership programme following transparent, objective and credible processes.

(b) Procurement scorecard – evaluation of applicants

Applicants will be evaluated according to the following affirmative action criteria. Empowerment points:

PDI status

- ✓ SMME
- ✓ Gender
- ✓ Disability
- ✓ Youth
- ✓ Locality
- ✓ Capacity
- ✓ Qualifications
- ✓ Relevant experience

NB: In addition to this and most critical, the following will be considered:

- ✓ At least 85% of the selected learners should be historically disadvantaged individual.
- ✓ At least 50% of the selected learners should be women and/or disabled.
- ✓ At least 50% of the learners should be youth (35 years and younger).

In the event that the total number of applicants who meet the above requirements are less than the total number of available learnership, the Independent Development Trust, National Department of Public Works, the Provincial Department of Public Works and the Constructions Education and Training Authority Services may shortlist applicants who does not meet the above criteria, to the Learnership Programme following transparent, objective and credible processes.

(c) Experience of the applicants

This learnership programme targets those people, within the affirmative action framework described above, that will have the best chances of succeeding as a small contractor. The following characteristics of applicants will therefore count in their favour in the selection process:

- ✓ Experience in the construction or contracting sector.
- ✓ experience in owning or managing a business.

- ✓ Higher qualifications than the minimum specified.
- ✓ Access or ownership of capital or assets that would be useful for contracting company.

(d) Completion of forms

All the forms listed on the application forms which will be issued on the briefing dates listed hereunder should be fully completed or filled in.

Non- completion, fully filling in or non-submission of these forms will result in disqualification.

(e) Written Assessments

Short-listed applicants will be required to sit for written assessments.

(f) Selection

Final selection will be done based on written test results and interviews.

(g) Compulsory briefing sessions:

The IDT has set aside the following dates for the briefing sessions to potential learners:

(Dates and venues omitted herein)

The closing date for the submission of application forms that will be issued on the dates of the briefing sessions is 29 April 2005 at 12:00.

Applications shall be submitted in sealed envelopes and endorsed with:
(address given)

(h) Place of submission: IDT – Mthatha office

Mqondiso Makupula

Regional Administration Manager”

[11] It is common cause that the applicants responded to this advertisement. They attended the compulsory briefing sessions at venues which were closest to them. At those briefing sessions it was emphasized that successful applicants would be compelled to avail themselves on a full-time basis for a minimum period of two years for the learnership program. Some of the applicants were employed teachers who decided to leave their full-time employment to join the program. The applicants were also required to register their own close corporations wherein they would hold 100% interest. Some of them abandoned their companies that already had a higher CIDB grading in order for them to start new close corporations and to work their way up again to attain CIDB grading. Successful learner contractors were expected to sign learner contracts of employment with the first respondent and a learnership agreement with the Construction Education and Training Authority (CETA). They were also advised during the briefing that a stipend of R50 per day would be paid to each learner whilst they were attending classes for the theoretical part of the training sessions.

[12] They were further advised that the learnership program comprised of three (3) phases which a learner had to successfully complete in order for them to be awarded the NQF Level 2 qualification by CETA. The three (3) phases were made up of: 30% theoretical training and 70% practical training. Each phase was allocated 10% for theoretical training and 23.3% for practical training. Only when a learner had completed all three phases was she or he eligible to be awarded a certificate of completion by CETA. The theoretical training was conducted from Queenstown and Gqeberha. It was when they attended these training sessions that each learner would be paid a stipend of R50 per day. The practical training comprising of 70% of the entire program had to be performed through allocation of building construction projects. The learner contractor was expected to successfully implement and complete the allocated project. The projects were to be provided by the third respondent primarily in the form of school building projects throughout the province.

[13] They stated that during this practical component the learner contractors would draw salaries of R15 000 a month during Phase 1 and R30 000 during phase 2 and 3 to sustain themselves and their businesses. It was also emphasized that each of the learners were to open bank accounts with Absa bank as it had been enlisted to support the program by extending overdraft facilities to the learners to assist them in their rollout of the 70% practical work. They were further advised that the learners would be allocated mentors who would provide mentorship throughout the program especially during the practical implementation phases to ensure success. Phase 2 was completed in February 2010. There were various interactions with officials of the first to fourth respondents on numerous challenges the learners experienced in relation to phase 2 and lack of implementation of phase 3. Those interactions are not disputed.

[14] The applicants attached to their founding affidavit two agreements. One agreement is between the provincial Department of Public Works in Bhisho and Mr Meki Siphelele. That contract is referred to as the learner contract of employment. A confirmatory affidavit from Mr Meki was filed. The other one is between CETA and Mr Zolani Soji, which is a learnership agreement. Applicants rely on both agreements *‘as evidence copies of such agreements that were signed by two of the successful applicants’*. It recorded the learnership registration number as *‘Construction Contractor NQF 2. 20813.’* I shall record some of the terms of the agreement in the learner contract of employment agreement concluded on 06 March 2006, to the extent that they are relevant to the issues before me. Those are clauses 3, 4 and 5.

“3. TERMINATION OF CONTRACT

This contract of employment terminates when the learner has completed a learnership or when the learnership agreement has been cancelled.”

4. SHORT TIME

Employment under a learnership is based on the reasonable expectation of continuing work availability to the employer for the duration of the learnership period, linked to the provisions of the relevant employment contract.

It is possible that, for reasons beyond the control of either the employer or the learner, the continuing availability of work relevant to the learner may not be available, with the consequence that contractual work relevant to learner experience requirements may not be available.

It is an express condition of employment that the learner employee may be placed on unpaid short time for such period as may be necessary pending resumption of contract work, provided that the completion date of the learnership agreement shall be extended by a similar period where necessary.

5. EMPLOYMENT PERIOD

5.1 Commencement date of Employment Contract: (blank)

5.2 Termination date of Employment Contract: Completion of qualification or termination date of learnership contract, whichever date is the later.”

[15] I shall return to the terms of the agreement of Mr Meki later. The applicants complain that they have been fighting for 12 years for the implementation of phase 3. They relied, amongst others, on the letters dated 27 September 2013, written by the Director-General (DG) of the first respondent, Mr Mziwonke Dlabantu, to the CEO of Coega, Mr Pepi Silinga, to Mr J. Mlawu, Head of Department of the provincial department of Public Works; to the Deputy Director – General: Regions, Mr B Matutle and to Mr Ngongo, the Superintendent – General, provincial department of Education. In each of those letters the DG emphasized, amongst others, the negative effect that the incomplete learnership programme was having on the learner contractors; failure of the departments to identify adequate construction and

maintenance projects due to budgetary constraints; and failure to deliver phase 3. The applicants contend that the learnership programme consisted of three phases and failure to implement phase 3 projects renders it incomplete.

[16] On 10 June 2015, a letter was addressed to the learners by Ms Irene Nemasetoni: Director EPWP Enterprise Development, national department of Public Works wherein she gave feedback to learners on the progress made in relation to the implementation of the 3rd phase of the contractor development program. She recorded therein that the DG for the national Department of Public Works had approved the implementation of the 3rd phase of the program. She further recorded that the implementation of the 3rd phase was kept in abeyance due to investigations of allegations of fraud relating to the implementation of the program. The learners were urged to prepare themselves for the program and have their portfolios of evidence of work or training completed. They were advised that upon completion of the investigations the department would communicate with them on progress and plan of action.

[17] On 21 December 2015 they attended a meeting with the Minister in East London at the Premier Hotel ICC. The deponent was advised by Ms Abrahams that the fraud investigation had been completed and it was found that the fraud allegations were unsubstantiated. At the meeting the Minister committed his department to the implementation of phase 3. Nothing happened and on 23 March 2017 the deponent received communication from the Deputy Director – General of the national department of Public Works, Mr Samuel Thabakgale, which was addressed to Coega. That communication withdrew an allocated list of projects that had been submitted to Coega for the Eastern Cape EPWP. The reason advanced for the withdrawal was due to some of the department's clients, namely, the South African Police Services, Department of Defence, Department of Correctional Services and the Department of Justice, who were delaying in signing off the budgets for the 2017/2018 financial year.

[18] The applicants engaged services of RM Sodo Inc. in Mthatha who addressed letters to the President of the country requesting his intervention and assistance. The office of the President referred them to the Premier of the Eastern Cape Province.

Their legal representative contacted the office of the Premier. They were referred to the Portfolio Committee on Public Works. All those efforts came to nought.

[19] The deponent describes in detail the traumatic experiences they suffered as a result of the non – implementation of phase 3. Their lives were ruined for 16 years. Some of their colleagues died leaving their families destitute. Some had their properties sequestrated by Absa Bank. The applicants contend that the 3rd phase would enable them to acquire NQF Level 2 qualification. They stated that a similar incident occurred to the learners in the North West Province whose matter was investigated and settled with the first respondent.

[20] The applicants relied on the **Biowatch Trust v Registrar, Genetic Resources and Others**¹, for their contention that if they are successful the State should bear their costs and that there should be no costs orders against them if they are not successful. They contend that it was the State that provoked the litigation by failing to fulfil its statutory duties. They contend that the matter is constitutional in nature and is in the public interest. They state that they have met all the requirements for a mandamus, namely, a clear right, reasonable apprehension of harm and absence of other satisfactory relief. They state that they have been prejudiced by the respondents' non-compliance with the terms of their commitment to train and have them accredited as NQF Level 2 qualified contractors. They further complain that the democratic principles applicable to public administration as enshrined in section 195 of the Constitution were never observed by the respondents. They contend that they made out a case for the relief sought.

Minister's opposition

[21] The Minister authorized the Deputy Director-General, Ms Carmen-Joy Abrahams (Ms Abrahams) to depose to the answering affidavit. She raised certain points *in limine*, namely, that the applicants lacked *locus standi* to bring the application as learners were natural persons and not entities. This point was abandoned during argument because the natural persons had since been joined to

¹ Biowatch Trust v Registrar, Genetic Resources and Others [2009] ZACC 14 delivered on 3 June 2009.

the application. The second point in *limine* was the non-joinder of CETA. The applicants abandoned the relief sought against CETA and as a result the second point in *limine* also fell away. The third point was that the applicants failed to make out a case because they failed to prove the material terms of the contract relied upon. The applicants' reliance on the doctrine of legitimate expectation must fail because they failed to prove any reasonable expectation based on a well-established practice where an expressed promise by an administrator acting lawfully, was made. The Minister further contended that the department is not a party to any contracts concluded with learners and with learner contractors and consequently any rights obtained by the learners and learner contractors are not enforceable against the department.

[22] She stated that the duration of the learnership program was for a period of 2 to 3 years. It was also envisaged that at the end of the learnership, the successful learners would obtain an NQF Level 2 new venture creation qualification/NVCF4/CC02. It is common cause that the learners signed learnership agreements. The learnership program consisted of appropriate mix of instructional learning and structured practical training. The instructional learning component would be provided through three separate classroom sessions. The practical component would be provided through three separate and independent practical training projects. The program would be structured as follows: There will be three (3) stages of classroom component which would take approximately six to eight (6-8) weeks each. The practical component consists of three (3) components of three to six (3-6) months each.

[23] It is common cause that the applicants referred to these components as three (3) phases, whereas the respondents referred to them as three (3) stages. There were 51 learners who were eventually selected to participate in the program. The Minister contended that the second respondent was the employer in terms of the learnership agreements concluded with the learners.

[24] The first respondent admitted that he only facilitated the selection process. He referred to Mr Meki's agreement as an example of one of the learnership agreements concluded between the second respondent and one of the 51 learners.

[25] In terms of the Memorandum of Agreement (MOA) between the state respondents, the national department of Public Works was responsible, amongst others, for the provision of guidelines and processes for the program in terms of the management plan; to facilitate the selection process of learners and the appointment of accredited training providers in consultation with CETA and the second respondent.

[26] CETA , as the SETA responsible for the development of skills in the construction sector as contained in the MOA had the following obligations : to allocate sufficient funds from the Skills Development Levy for on-site training projects to the fifty one learners during the learnership program as contractors capable of carrying out construction works and sustainable SMMEs; to appoint a training provider to facilitate the training of the learners and together with the department process payments to the training providers; ensure that the accredited training providers conduct the training and that all training is properly certified; and to facilitate the implementation of the learnership in a management team consisting the national and provincial Departments of Public Works.

[27] The second respondent in consultation with the third respondent decided on the projects that form part of the Eastern Cape school building projects to be allocated to learner contractors for training purposes. Coega was appointed by the second respondent as an implementing agent to manage the school building program and to manage the allocation of projects to learner contractors.

[28] The first respondent contends that the school building projects program have higher contract values than what Grade 1 and Grade 2 contractors may lawfully perform and higher values than the department's recommended guidelines for training projects for learner contractors. As a result, the project awarded to the learners exceeded the recommended values for learnership programs. They further contend that phase 1 ranged between R1 292 111.00 and R1 658 658.00 and phase 2 ranged between R1 471 984.00 and R11 174 490.00. Due to budgetary constraints and unavailability of suitable construction projects in the schools program, the third project could not be awarded.

[29] Only two projects instead of three were allocated to each of the learner contractors. The first respondent acknowledged the fact that the learner contractors were unhappy about the non- allocation of a third project. They lodged complaints with the Minister, the Premier as well as with the Public Protector.

[30] The learner contractors raised various concerns about phase 2 and the respondent's failure to implement the third project. The first respondent and Mr Dlabantu, prevailed on the second and third respondents to comply with their obligations in terms of the MOA. Several meetings were held with all the stakeholders. At a meeting held on 07 August 2013 it was resolved that suitable projects from other programs be identified in order to award the third project to the learner contractors. Letters were directed to the second, third and fourth respondents to identify relevant projects for the third training project.

[31] The deponent stated that any reference to phase 3 of the program is a reference to the third and final practical component of the program; namely, the last of the three projects to be awarded to the learner contractors.

[32] On 27 May 2010 the Chief Director, Mr Ignatius Ariyo, EPWP Infrastructure Sector wrote to the National Treasury and sought approval for the implementation of the Limpopo learnership program which allows for the allocation of projects to learners on a negotiated basis. On 02 June 2010 the Chief Directors: Norms and Standards, Mr Jan Breytenbach responded and gave advice in the following terms:

"The Chief Director

EPWP Infrastructure Sector

Department of Public Works

Private Bag X 65

PRETORIA

0001

Attention: Mr Ignatius Ariyo

Fax: 012 337 3040/012 324 6349

REQUEST FOR APPROVAL FOR THE ALLOCATION OF PROJECTS AS ON-SITE TRAINING PROJECT TO EMERGING CONTRACTORS AS PART OF A SETA REGISTERED LEARNERSHIP PROGRAMME

1 *The letter dated 27 May 2010 has reference.*

2 *The National Treasury is in support of Department of Public Work's infrastructure learnership programmes intended to train emerging contractors and their supervisors to implement infrastructure projects through labour intensive methods.*

3 *Accounting officers and authorities are empowered in full to procure all goods and services directly in terms of the Public Finance Management Act (PFMA) and the Treasury Regulations.*

4 *The National Treasury cannot grant approval to deviate from the prescribed competitive bidding processes as the Treasury Regulations already delegates the approval to deviate from the competitive bidding process to the accounting officer or authority of an institution.*

5 *In particular, Treasury Regulation 16A6.4 makes provision for instances when it would be impractical to invite competitive bids. This provision allows accounting officers or authorities to dispense with the official procurement processes and to procure services through any convenient process, which may include direct negotiations in, among others, exceptional cases where it is impractical or impossible to follow the official procurement processes.*

6 *The accounting officer or authority takes full responsibility and accountability for this decision. Therefore, if and when this provision is utilized, the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or authority.*

7 *It is a requirement that accounting officers or authorities must report within ten working days to the relevant treasury and the Auditor-General, all*

cases where goods and services above the value of R1million were procured in terms of Treasury Regulation 16A6.4.

8 *It is trusted that this advice is of help to you. (my underlining)*

Kind regards

JAN BREYTENBACH

CHIEF DIRECTOR NORMS AND STANDARDS

DATE: 2010/06/02”

[33] On 7 August 2013 a meeting was held with all the relevant stakeholders. Thereafter and on 27 September 2013, the DG requested the provincial department of Public Works to identify projects for the allocation of a third training project to each learner contractor. The third respondent was requested to identify projects for allocation of a third training project to each learner and to provide documentation detailing final settlements of the final accounts on the projects allocated in phase 2. Similarly, Coega, was requested to identify projects for the third training project, to provide reports on the implementation of the phases 1 and 2 learner assessment reports and to make payment of all outstanding amounts to the learner contractors.

[34] The first respondent highlighted the challenges that were presented by the allocation of the training projects without following the procurement processes. The national department of Public Works persisted in its efforts to prevail on the other respondents to comply with the obligations in terms of the MOA as it had complied with all of its obligations. It was working on finding solutions for the implementation of phase 3. Some of the interventions were made in 2017 and 2018 where the department approached the National Bid Adjudication Committee for approval to refinance projects for allocation to the learner contractors and to appoint Coega as the implementing agent. These engagements culminated in a letter dated 24 May 2021 from the National Treasury where it expressed support for the award of projects in order to implement the contractor development programs under the auspices of the CIDB framework.

[35] That support was conditional upon fulfillment of certain requirements. One of the requirements was that the total value of the allocation of projects for the program may not exceed R3 million and must be within the CIDB limits. The allocation should be under the auspices of the CIDB Framework. The Minister contends that the limit set by the National Treasury has been exceeded and it is thus not practical to allocate any further projects to the learner program. He further contends that based on the values of the projects completed by the learner contractors, they should have been able to upgrade their CIDB grading after completion of phases 1 and 2 if they had completed the projects successfully.

[36] The limit of R3 million per learner made it impractical for the department to allocate any further projects to learner contractors as the approximate cumulative value of the contracts already allocated in phase 1 and phase 2 ranged between R2 900 000 to R11 900 000.

[37] The first respondent contends that many of the applicants herein are already established contractors with CIDB grading above the grades contemplated by the learnership programs. The Minister listed applicants with higher CIDB grades as the 9th and 12th applicants - 4GB contractors, 15th – 4CE and 5GB, 17th - 5CE and 5GB , 21st - 4GB, 24th 5GB and 3CE, 25th 4GB , 27th 6 CE and 6 GB , 30th -4GB , 31st 3SQ AND 3 GB , 32nd 4GB and 33rd- 3CE and 4GB and 34th -4GB applicants. He further stated that even though it was envisaged that a 3rd component was to be allocated to the learner contractors, they had been awarded the maximum values which may lawfully be allocated to learner contractors in terms of the CIDB framework. Even though the management plan envisaged the allocation of a 3rd project, departments are not permitted to allocate a 3rd project to learner contractors if such allocation is in conflict with the CIDB Framework and the procurement processes. The Minister contends that the practical training of the learnership has been completed. What remains of the learnership program is for the learners to be assessed by an accredited training provider and if they qualify to be awarded a competency certificate for the award of NQF Level 2 qualification from CETA.

[38] The National Treasury had granted permission that contracts may be awarded to emerging learner enterprises in the learnership program as training projects on a

negotiated price bases. The purpose of the learnership program was to enable the learners to complete actual contracts as part of the learnership and to obtain relevant practical experience which was an essential element of a learnership program.

[39] The first respondent further contends that the 6th, 8th, 10th and 13th applicants have been deregistered. The following entities, at the time the affidavit was deposed to, were in the process of being deregistered: 5th; 11th; 14th; 15th; 16th; 20th; 21st; 22nd; 29th; 31st; 32nd and 33rd. These applicants, according to the first respondent, have no corporate legal identity and thus lack legal standing to bring the application.

[40] The first respondent also confirmed that the fraud allegations relating to the program were not substantiated. He admitted the allegations that the department expressed a commitment to facilitate the implementation of phase 3 of the program within the context of the legal prescripts. The learner contractors were only entitled to the rights stipulated in their construction contracts concluded with Coega. The learners are only entitled to the rights stipulated in the contract of employment and learnership agreements concluded with the second respondent. None of those agreements entitle the applicants to a 3rd project and on this basis the application must fail with costs.

Second and third respondent's case

[41] The second and third respondents' opposition is contained in an affidavit deposed to by Mr Thandolwethu Lwandile Manda who is the Head of Department for the provincial department of Public Works and its accounting officer. Their opposition may be summarized as follows: They raised certain points in *limine* relating to, *inter alia*, lack of jurisdiction; non-compliance with the provisions of Rule 18(6) of the Uniform Rules of Court; the applicants' claims and/or debts against the respondents had prescribed; and the failure of the applicants to join Coega. None of these points were pursued in argument but they were not abandoned either.

[42] These respondents admit that the learnership project consisted of three (3) phases. They raised the point that the full implementation of the project was subject to, *inter alia*, the availability of contractual work relevant to the learner experience on

the one hand and to the availability of funds contemplated in the Skills Development Levies Act No. 9 of 1999, the Public Finance Management Act No.1 of 1999 as well as the Preferential Procurement Policy Framework Act No.5 of 2000 and section 217 of the Constitution which relate to procurement of government services. They denied that the alleged legitimate expectation amounted to a breach of contract that could give rise to a cause of action. They contend that the applicants in the light of the legislative framework referred to, above, were advised of the challenges relating to implementation of the third phase of the project.

[43] They contend that the applicants have failed to make out a proper case for the relief sought and therefore the court should dismiss the application with costs. These respondents contended that in monetary values the phases were structured as follows:

“48.1 The programme was designed into three phases in respect of which values in monetary terms were attached as follows:

48.1.1 phase 1: R250 - R500 000,

48.1.2 phase 2: R500 000 - R2, 000 000;

48.1.3 phase 3: R1m - R5m.”

[44] The respondents also align themselves with the first respondent's opposition that the value of the work that was awarded to the applicants in relation to phases 1 and 2 far exceeded the monetary value of the project work that would have to be attained in phase 3. They also contend that even though phase 3 has not materialized for reasons already set out, the intended values of the 3rd phase have been achieved by the applicants. In this regard, these respondents attached a spreadsheet of values awarded to some of the applicants. I raised with Mr Poswa in argument that the spreadsheet lacked details and had columns for liability, contract amount, lapsed, amount etc. and what it intended to convey was not explained. In any event, the spreadsheet relates only to 21 of the learner contractors and nothing is said about the remaining contractors and learners.

[45] The second respondent disputed the agreement relating to Mr Meki on the basis that it purported to be an agreement between Mr Meki and the second respondent. In relation to that of Mr Soji, the second respondent disputed it on two grounds. First, that Mr Soji is not a party to this application. Second, that the agreement purports to be between Mr Soji and Brembo Investments (Pty) Ltd in the Province of Gauteng. I need to address this issue out of turn because the agreement makes it clear that the employer is the “*Department of Public Works*” and Brembo Investments (Pty) Ltd is the training provider. The respondents are clearly wrong in this regard.

[46] These respondents associated themselves with the stance adopted by the first respondent that the application must fail with costs.

Applicants reply

[47] In reply the applicants persisted in their contention that the original approval of the program by the national treasury remains extant and applicable to the program. The 2010 letter relied upon by the first respondent is irrelevant and does not impede the implementation of the outstanding phase which the applicants seek. They further contend that reliance on the 2005 treasury regulations is misplaced. They stated that the purpose for which the programme was approved, namely, developing contractors to be elevated to a level where they can compete successfully in the open market was never realized by the program. They complain that instead of pursuing the purpose of the program, all the learners without exception were left in a destitute position, saddled with heavy debt which resulted in their sequestration, the legacy of financial ruin with the attendant health related stresses that led to death of some.

[48] They further contend that one of the conditions was that the learners must graduate from the learnership program and none of them graduated. Instead, the program was discontinued without any explanation and to their detriment. They further argue that the award of a qualification by CETA will not happen if the program remains incomplete. It is for that reason that the applicants seek the completion of the learnership by the three respondents as approved by the national treasury in

2003. They relied on the admission made by the former Minister of the first respondent Mr Thulasi Nxesi where he stated, *inter alia*, that “the EPWP phase 1 (project 1) of this learnership program was undertaken fairly successfully. EPWP phase 2 (project2) of this learnership program was not well implemented and managed. They contend that all the respondents are responsible for the unlawful cancellation of the program.

[49] The applicants challenged the allegation that the 3rd phase cannot be implemented due to budgetary constraints and in this regard they referred to interviews held with one Mr Tsepo Phefole on 01 August 2023. Mr Phefole is a Director: Infrastructure in the third respondent’s department. He spoke about the budget which runs into billions of rands of the public mud schools that they needed to eradicate in the province going back many years. His interview was for the opening of a multi-billion rand Gobinamba Technical and Commercial School in the province. At that time he had also mentioned that there was just over 400 of such projects which still needed to be rolled out running beyond a previously set deadline of the year 2030. The applicants contend that this confirms not only that there are projects that will run up to 2030 but that there is also a budget running into billions of rand that will be allocated to those projects. In this regard, they contend that the allegations by the respondents are accordingly false.

[50] Relying on a draft proposal by the fourth respondent in Annexure “G”, the applicants contend that as far back as 2016 the same respondents had a budget of about R400million which they had to spend within three months to avoid it being forfeited to national treasury as unspent funds. If that were to occur it would in turn result in the reduction of the budget allocation for the following financial year. The fourth respondent proposed that an amount of R16million would suffice in the implementation of phase 3. The applicants further relied on an advert published on 6 May 2016 in the Daily Dispatch for construction works of 17 schools throughout the province. They contend that these projects could have been used to implement phase 3. The applicants further raised reliance on several documents being a Daily Dispatch newspaper article published on 28 February 2023 with an article entitled: ‘*BHISHO FORFEITS R100 MILLION WHILST SCHOOL SUFFER.*’ It was reported in the article that *the Eastern Cape Department of Education was to forfeit R100million*

intended for infrastructural development because it was not able to spend the money within the financial year. The forfeiture of the R100 million was announced by the Minister of Finance, Mr Enoch Godongwana.

[51] The article also alluded to the fact that this was not the first time that the province had forfeited a portion of its grants as it did so during March 2022 when it forfeited R200million because it was not able to spend the money. The Minister of Finance had indicated that it wanted to stop the flow of funds to provinces that could not spend them and re-allocate those monies to other provinces that were in a position to spend. The applicants listed a sample of articles from various Eastern Cape province tender bulletins in the Sunday Times about the school projects which they believe could have been made available for the 3rd phase. They also made reference to a News24 article which was published online on 11 August 2023 which reported on the handover of Mdunyelwa Nguntyi Primary School at Lower Ngqungqu in Mqanduli. The handover was done by the MEC Ms Ntombovuyo Nkophane of the second respondent to the third respondent MEC Mr Fundile Gade.

[52] They further allege that Mr Gade had alleged that out of the 200 schools built through the Accelerated School Infrastructure Delivery Initiative (ASIDI) in the country, 165 are currently in the Eastern Cape meaning the province is a major beneficiary of the ASIDI project. According to Mr Gade since 2019 they have handed over more than 58 schools and there were 7 schools that still needed to be handed over between the time of the announcement being made and January 2024. The applicants allege that they have sufficiently demonstrated that the claim by the respondents that there was no budget or projects to implement phase 3, is clearly false, and must be rejected by this court. They also contend that should the respondents persist at the hearing with these contentions, that would create a dispute of fact which can only be resolved through oral evidence. In this regard, they have listed names of the witnesses should they wish to be called to testify in support of the allegations that are made by the respondents, including the two MECs mentioned above.

[53] The applicants state that the second respondent had an obligation to make prompt payments to learner contractors in respect of the training projects and would

be liable to pay penalties if they failed to do so. They contend that the second respondent failed to honour those obligations in respect of both the first and second phases. As a result of those failures the applicants fell behind on the repayments of their bank overdrafts with Absa and one of them was sequestered. Five of the learners died especially after the unlawful cancellation of phase 3. They list some of the applicants who had not received their final payments and their retention amounts for phase 2 and one of them being the 38th applicant, the owner of the 4th applicant. For example, the 37th applicant (owner of the 3rd applicant), 44th applicant (owner of the 10th applicant) and 62nd applicant (owner of the 28th applicant) were all paid their financial account for phase 2 in 2016 which is 5 years after the completion of those works. The 40th applicant (owner of the 6th applicant) was paid 6 years later.

[54] They contend that the damage suffered by these applicants at the hands of the respondents was detrimental to some of the learners who actually died and who are listed in the affidavit as: *Mr Zola Buqwana, Mr Khuluwa Zonyana, Ms Ntombizonke Mayaba, Ms Thembeke Mqoli and Ms Zodwa Kilman*. They refer to correspondence that Mr Dlabantu had written to address their concerns and acknowledged the validity of their claim in relation to phase 3 and moved for the implementation of the outstanding phase. He even wrote to Absa begging it to stop sequestration of the learners. They contend that the letter from the national treasury did not grant permission and is irrelevant because the approval was made way back in 2003 and therefore there was no need for another approval.

Issues for determination

[55] The parties agreed that the issues for determination is whether the applicants are entitled to the implementation of Phase 3 a learnership program, in particular whether they are entitled to be awarded a third construction contract in terms of the learnership program on the basis of a contract or legitimate expectation.

Legal submissions

[56] Ms Ntsepe, appeared for the applicants. She submitted that the applicants have the requisite standing to bring the application. She relied on the provisions of

section 195 (1) of the Constitution for her submission that public administration must be governed by the democratic values and principles, which include amongst others, accountability, transparency, efficiency and economic and effective use of state resources.

[57] She submitted that: there is one approval and that is the 2003 one from the State Tender Board. The program has been implemented in terms of that approval. The applicants have made out a case that there was phase 3 that was authorized but has not been implemented. On the evidence before court the theory leg of the program has been finalized only the practical leg has to be completed. After the completion thereof then the applicants will be in a position to approach CETA to finalize the program. The program was budgeted for and endorsed by all stakeholders. The state respondents do not contend that phase 3 was precluded. The applicants have no other alternative remedy but to approach court. There was a valid contract concluded although it did not specify the 3rd phase but there was an oral agreement whose existence is supported by the subsequent conduct of the respondents acting in concert. If the court were to have regard to all the documents, such as the MOA which was about the applicants and for their benefit, the subsidiary contracts and the attachments, it must find that there was a valid contract between the parties². She relied on **Norvatis v Maphil** for the submission that:

“[35] The argument that the words of the document, signed by Van Jaarsveld and Van der Spuy on 14 October 2004, must be examined only linguistically, and that the genesis of the document, subsequent conduct and other facts relevant to the conclusion of the contract be ignored, is directly contrary to the decisions of this court cited above, and many others. But, as I have said, the issue here is not what the parties intended their contract to mean, but whether they intended to bind themselves contractually. That inevitably requires an examination of the factual matrix – all the facts proven that show what their intention was in respect of entering into a contract: the contemporaneous documents, their conduct in negotiating and

² Norvatis v Maphil (20229/2014) [2015] ZASCA 111 (3 September 2015) para 35.

communicating with each other, and, importantly, the steps taken to implement the contract.”

[58] She further submitted that the applicants have established a clear right to the relief they are seeking. This court may grant a supervisory order or a structural interdict in order to ensure that the program is completed. On the issue of costs she argued that the first to third respondents must be ordered to pay costs on a punitive scale.

[59] Mr Rocke SC together with Ms Appels appeared for the first respondent. They advanced the following legal arguments: Mr Rocke conceded that after the joinder of the natural persons the issue of standing had to a large extent fallen away. The applicants who have been deregistered and liquidated have no *locus standi* to bring this application. The applicants have not proven that a contract existed between them and the first respondent which entitles them to the relief sought. They did not allege and or prove that the requirements of the doctrine of legitimate expectation have been met. Even if the applicants have proven the requirements of a legitimate expectation, a legitimate expectation does not entitle the applicants to the relief sought.

[60] This application and the program should be understood in the context of the Skills Development Act No.97 of 1988 and the statutory rights and obligations that are binding on learners, employers, skills development providers and the relevant SETA. The rights of the learners accepted into the program are defined by the learnership agreements and the Skills Development Act. The application should also be understood in the context of the statutory framework which is applicable to public procurement and the awarding of contracts by the Organs of State. Although the relief is couched in a manner that it only seeks implementation of a learnership program, in essence what is being sought is the awarding of construction contracts to the juristic persons who have originally instituted this application, that is the 1st to the 34th applicants. There was conflation of policy and contractual rights by the applicants. The applicants do not establish a right to phase 3.

[61] Relying on section 217 of the Constitution, he submitted that, any procurement policy which gives preference to certain categories of persons in the allocation of contracts must comply with the provisions of the Preferential Procurement Policy Framework Act No.5 of 2000 (PPPFA) in particular the provisions of section 21 which provides for the preference point system in respect of price and preference in the evaluation of tenders. The program was designed to allocate contracts to learner contractors without complying with section 2 of the PPPFA based on exemption provided by the national treasury in terms of section 3 of the PPPFA. The permission granted by the national treasury in 2003 related to construction of projects which were to be awarded on a negotiated basis to learner contractors for training purposes. The terms of the exemption provided by treasury made it clear that it is aimed at training contractors to a level where they can compete in the open market for a predetermined period of time and that once they are so developed they should exit the program.

[62] This exemption, he argued, was intended to apply to new entrants to the construction industry and not to established contractors with experience and had an established track record in the construction industry. The exemption was further limited in respect of the value of projects which may be allocated for training purposes and the total value for the allocation of projects per learner in the program may not exceed R3million. The awarding of the contract in violation of the procurement prescripts would be unlawful and in breach of the legality principle. In awarding construction contracts to contractors, the respondents were also bound by the CIDB Act and its Regulations.

[63] In terms of the CIDB Act all construction contractors operating in South Africa must, in terms of the Regulations thereof, register with the CIDB in order to qualify to be awarded construction contracts by Organs of State. In this regard, reliance was placed on sections 16(3) to (5) of the CIDB Act.

[64] In compliance with section 16 of the CIDB Act, the Minister made Regulations in terms of the Construction Industry Development Regulations GN692 of 09 June 2004 (Government Gazette No. 26427). The Regulation reads:

“1. The contractor grading designation of a contractor is determined by determine the list of:

(a) The financial capability of the contractor in accordance with sub-regulation 2; and

(b) The work’s capability of the contractor in accordance with sub-regulation 5.

2. The financial capability of a contractor is determined by establishing whether:

(a) The contractor’s best annual turnover over the 2 financial years immediately preceding the application equals or exceeds the minimum annual turnover in the third column of table 1 determined in the financial capability designation contemplated in Regulation12(1);

(b) The contractor during the five years immediately preceding the application has completed at least one construction works contracts of which the total value equals or exceeds the amount in the fourth column of table 1 of the financial capability referred to in Regulation 12(1)(c). The contractor has available capital calculated in accordance with sub-regulation; 3, equal to or exceeding a value determined in relation to the financial capability designation as contemplated in Regulation 12(1).”

[65] In this regard the Minister attached to his heads of argument a Table which shows the designation, the upper limits of tender value, best annual turnover, largest contract of upper limits tender value, available capital. It was submitted that a copy of the Table 1 referred to in Regulation 11 indicates that a contractor grading designation is a measure of the stage of development the contractor has reached and its capability to compete in the open market. The grading is also based on annual turnover contract works, track record and available capital. Capital relates to funds presumed available to a contractor to start a new project. It also certifies a

contractor as capable of delivering projects up to a predetermined contract value in a given task of works. A contractor's CIDB grading designation is inextricably linked to its development, level of training, ability to compete for projects in the open market and by implication whether any further practical training experience is required.

[66] It was further argued that the advertisement for the learnership program inviting aspiring building contractors to participate in the program, should therefore be understood in the context of the CIDB grading system. The purpose of the program was to develop new contractors, that is contractors that are only able to register in the lower grades 1 and 2 of the CIDB register and to develop them to a stage where they can compete in the open market. Learner contractors that have upgraded their status to grade 3 or higher are able to compete in the open market and should be able to meet the requirements of an NQF Level 2 qualification. No further training is required. In this regard, the first respondent argued that it should be noted that for a contractor to be able to register in grade 3, Table 1 stipulates best annual turnover of R1million and available capital of a R100 000. Any learner contractor that has attained grade 3 status is no longer entitled to be awarded construction contracts for training purposes in terms of the program.

[67] The department complied with all of its obligations in terms of the MOA. It also funded the mentorship of the learners during phase 1, when the second respondent was not in a position to meet its obligations in terms of the MOA.

[68] The continued availability of suitable training projects to allocate to learner contractors was a key determinant of the success of the program and therefore each learner contract concluded with the individual learners contained a clause which stipulated that employment under a learnership is based on a reasonable expectation of continuing work availability to the employer for the duration of the 'learnership period'. Learnership agreements concluded between the learners and the second respondent did not refer at all to the three phases of the program nor did it bestow a right on the learners to be awarded three training projects.

[69] The first respondent acknowledges that during 2017 and 2018 it approached its national bid adjudication committee for approval to refinance projects for

allocation to the learner contractors and to appoint the fourth respondent as the implementing agent. This, it was argued it did, in an effort to assist the award of a third project to the learner contractors for the purposes of the learnership program. The NBAC declined to provide such approval and instead required that the department engage national treasury for approval to allow a deviation from the prescribed procurement processes.

[70] As a result of the limitation placed by the national treasury in its letter of 24 May 2021, which is referred to above, it became impractical and unlawful to allocate any further projects to learner contractors as the approximate cumulative value of the contracts already allocated in phases 1 and 2 ranged between R2 900 000 and R11 900 000. The first respondent concedes that the department through its management plan has envisaged the allocation of a third project. However, the first respondent is not permitted to allocate contracts to learner contractors as such allocation is in conflict with the exemption provided by the national treasury. The provisions of the management plan are not contained in the learnership agreement concluded between the second respondent and the learners and the learners have no contractual rights in respect thereof.

[71] The applicants who are cited in the application are already established contractors with CIDB grading above the grades targeted by learnership programs and are registered in multiple classes of construction work and have received the full benefit of the department contracts development program. There is, according to the first respondent, no reason to allocate a third project to them for training purposes. He submitted that the practical and theoretical training of the learnership has in essence been completed. What remains of the learnership program is for the learners to be assessed by an accredited training provider and they should be regarded as competent to be awarded a competency certificate to stipulate that they have met the requirements to be awarded the NQF Level 2 qualification.

[72] In support of the first point in *limine* of lack of *locus standi* the first respondent argued that the 6th, 8th, 10th and 13th applicants have been deregistered and therefore have no *locus standi* to bring this application. The 5th, 11th, 15th, 16th, 20th, 21st, 29th, 31st, 32nd, 14th, 22nd and 33rd applicants were in the process of being

deregistered. It was argued that by virtue of the fact that the abovementioned applicants have been deregistered or are in the process of deregistration, they have no corporate legal identity and accordingly they have no legal standing to bring this application. On this basis alone, their applications should be dismissed with costs. It was further argued that the applicants have failed to prove the existence of a contract concluded with the first respondent. The first respondent is not the employer in terms of the learnership agreements that have been concluded with the learners who have been accepted into the program. The terms of the learnership agreements do not bestow a right on the learners to be awarded three construction contracts. Their rights in terms of the program are defined by the terms of the learnership agreements and by the provisions of the Skills Development Act. It was argued that only the 40th applicant, Mr Siphelele Meki has proven that he is a learner entitled to the rights as set out above. His agreement with the second respondent and the 40th applicant has been attached to the founding affidavit. He submitted that because none of the other applicants have attached their learnership agreements to prove that they are entitled to the rights flowing from acceptance into the program their applications should be dismissed.

[73] He further argued that the first respondent is not a party to any of the abovementioned contracts concluded with the learners or with the learner contractors, any rights obtained by the learners and the learner contractors in terms thereof are not enforceable against the first respondent. The terms of the MOA are enforceable inter-governmentally and not by third parties who are not privy to the agreement between the department and the other parties to the MOA. The reliance by the applicants on some utterance at various meetings by the officials of the department do not alter the terms of the learnership agreements and do not confer more rights in the learners than what they are entitled to in terms of that learnership agreements and the Skills Development Act.

[74] Lastly, it was argued that the requirements of the doctrine of legitimate expectation have not been met. If a party relied on the doctrine of legitimate expectation he should allege and prove a reasonable expectation based on a well-established practice or an express promise by an administrator acting lawfully. A legitimate expectation only arises when the practice or promises are clear,

unambiguous, unqualified and most importantly lawful. In this regard, reliance was placed on **National Director of Public Prosecutions v Phillips**³; and on **South African Veterinary Council and Another v Szymanski**⁴ and **Duncan v Minister of Environmental Affairs & Tourism**⁵. It was argued that the legal protection afforded by a legitimate expectation takes the form of ordering that a fair procedure be followed before a decision is made in respect of the expected conduct. It does not entitle the applicant to substantive relief. In this regard, the first respondent relied on **Administrator, Transvaal v Traub**⁶ and in **Minister van Korrektiewe Dienste**⁷.

[75] It was argued that this court is not empowered to order the first respondent to award a third construction contract to the applicants on a negotiated basis as such an order will breach the principle of legality and will exceed the powers of the relief that the court may grant, even if the requirements of legitimate expectation have been met. He argued that it is not the function of the courts to implement policy, that is the function of the executive. It was argued that the applicants are not entitled to the relief sought against the first respondent and their application should be dismissed with costs. He further relied on **ACSA v Imperial Group**⁸, for the contention that the allocation of the construction awards was not done in accordance with the provisions of section 217 of the Constitution. He argued that the learners to the programme had already received work to the value of more than 3 million. He conceded that the information given by the respondents in this regard is not detailed. He submitted that costs should follow the result and that any reliance on the *Biowatch* principle is misplaced.

Second and third respondents

[76] Mr Poswa made the following submissions: That the applicants failed to satisfy the **Duncan**⁹ requirements on the doctrine of legitimate expectation. Where

³ *National Director of Public Prosecutions v Phillips and Others* 2002 (4) SA 60 (W) para 28.

⁴ *South African Veterinary Council and Another v Szymanski* 2003 (4) SA 42 (SCA) at para 20.

⁵ *Duncan v Minister of Environmental Affairs and Tourism and Another* 2010 (6) SA 374 (SCA) at para 15.

⁶ *Administrator, Transvaal v Traub* 1989 4 SA 731(A).

⁷ *Nortjie v Minister van Korrektiewe Dienste* 2001 (3) SA 472 (SCA) para 14.

⁸ *ACSA v Imperial Group* 2020(4) SA 17 (SCA).

⁹ *Duncan v Minister of Environmental Affairs and Tourism* 2010 (6) SA 374 at para 15 and also on *Administrator, Transvaal and Others v Traub and Others* [1989] 4 All SA 929

the alleged expectation is based on no more than a newspaper advertisement calling for interested persons to respond to an intended contractor training program, no such representation inducing expectation exists or has been established so as to justify reliance on the doctrine. Any reliance on the doctrine of legitimate expectation has no basis and must accordingly fail.

[77] If one had regard to the minutes of the meeting held in December 2015, not all of the applicants have CIDB registration. For that reason, he argued, they fall short of proving entitlement to the relief they sought. He relied on the principle of privity to the contract for the submission that the applicants are not parties to the MOA and cannot therefore seek to enforce its terms. The agreement relied upon by the applicants does not entitle them to phase 3.

[78] The advertisement does not amount to an offer and acceptance. In this regard he relied on **Hottentots Holland Motors (Pty) Ltd v R**¹⁰. The applicants failed to prove the existence of a contract. He further argued that it is not for these respondents to prove or justify why phase 3 has not been implemented. In any event, he argued, the volume of work that has been done in phases 1 and 2 exceeds the threshold value of what was to be attained in phase 3.

[79] The second and third respondents concede that there was going to be phase 3 to the value of R1m to R5m. Applicants have failed to make out a case for the relief they are seeking and the application must fail with costs.

Fourth respondent

[80] The fourth respondent, Coega, represented by Mr Macozoma submitted: That it is common cause that the applicants abandoned any relief sought against the fourth respondent. The only issue that the applicants failed to address is the issue of costs. Initially relief was sought against Coega and it was compelled to put up a defence and by so doing it incurred costs. After Coega filed its answering affidavit

¹⁰ *Hottentots Holland Motors (Pty) Ltd v R* 1956 1 PH K22 (C) ; and also on *Hayter v Ford* (1895) 10 ECD 61 for the contention that the applicants failed to establish any unconditional offer made by the second and third respondents.

and opposed the application the applicants withdrew the application against it. The second and third respondents raised a point of non-joinder of Coega which prompted the applicants to bring a joinder application in to address that point in *limine*. On 27 September 2022, Coega was again joined to the proceedings and a court order was granted in that regard.

[81] When the applicants delivered their amended notice of motion dated 25 October 2022, they did not distinguish between the respondents. They simply sought the orders against all the respondents which included Coega, save for the order that related to costs. Again, Coega delivered its answering affidavit and confirmed that there was no contractual *lis* between it and the applicants. Therefore, no order compelling the fourth respondent to implement phase 3 could be obtained. It was only on 21 August 2023 when the applicants filed their replying affidavit that they indicated unequivocally that they were not seeking relief against Coega.

[82] Mr Macozoma relied on **Bowman N.O. v De Souza Roldao**¹¹ for the submission that:

“an applicant must stand or fall by his petition and the facts alleged therein in that although sometimes it is permissible to supplement the allegations contained in the petitions, still the main foundation of the application is the allegations of fact stated therein, because those are the facts which the respondent is called upon either to affirm or deny.”

[83] He submitted that the applicants should be mulcted in costs. When a court awards costs to a successful litigant, it must strive to indemnify in so far as possible that litigant for the expenses it has been put in by being compelled to initiate or defend litigation. In this regard, he relied in **Zeelie v General Accident Insurance Co Ltd**¹². He also referred to the decision of the Appellate Division in the *locus classicus* **Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging (Nel)**¹³ where the court held that something more underlies the practice of awarding costs

¹¹ *Bowman N.O. v De Souza Roldao* 1988 (4) SA 326 T; see also *Director of Hospital Services v Mistry* 1979 (1) SA 625 (A) at 635; *Pountas' Trustee v Lahanas* 1924 WLD 67 at 68.

¹² *Zeelie v General Accident Insurance Co Ltd* 1993 (2) SA 776 (E) at 779 D-F.

¹³ *Nel v Waterberg Landbouwers Ko-operatiewe Vereeniging* 1946 AD 597 at 607.

as between attorney and client than mere punishment. He submitted that Coega should not be out of pocket in respect of the expenses caused to it by the litigation.

[84] He relied on the principle raised in **Karoo Meat Exchange Ltd v Mtwazi**¹⁴ where the court remarked that

“... in the first place it seems to me important that the judicial officer should be in control of proceedings in his court. Once a case has been set down for hearing the court has an interest to see that justice is done, both in regard to the merits of the dispute and then in regard to the costs. When the case has progressed to the stage of being set down for hearing, the parties can longer do as they please. The court cannot be deprived of its control merely by reason of the fact that the plaintiff has served a notice of withdrawal. In the second place it seems to me wrong, in principle, that the plaintiff having initiated the proceedings and put his opponent to inconvenience, trouble and expense, should, subject only to the payment of costs at his mere whim have the right to withdraw the action at any time before the hearing.”

[85] He also relied on the English principle that has been approved in the South African jurisprudence which is normally referred to as the ‘Bullock costs order’¹⁵. He argued that the court must dismiss any relief that is sought against Coega with costs on an attorney and client scale.

Discussion

Points in limine

(a) Standing

[86] Mr Rocke correctly conceded that the standing point fell away to a large extent when the natural persons were joined as applicants. However, the point

¹⁴ *Karoo Meat Exchange Ltd v Mtwazi* 1967 (3) SA 356 (CPD).

¹⁵ *Orphanides v Stratton* 1953 (1) SA 152 (SR) approved in *Olivier v Botha & Another* 1960 (1) SA 678 (O).

needs to be addressed in relation to those applicants that have been deregistered. Mr Perino Pama, in his article entitled : *‘Debt collecting against a deregistered close corporation or company’*¹⁶ dealt with the consequences of deregistration of a company or close corporation. The applicants admitted that the applicants that were identified by the first respondent were indeed de- registered. The effect of deregistration is that a company or close corporation is deprived of its legal existence.

[87] In **Miller and Others v Nafcoc Investment Holdings Co. Ltd**, Cloete JA stated:

“Deregistration, on the other hand, puts an end to the existence of the company. Its corporate personality ends in the same way that a natural person ceases to exist on death¹⁷. Once there has been deregistration there is obviously no purpose in a corporate postmortem and no – one would have the authority to conduct one.”

[88] It terminates the authority of a person who was a lawful agent of the company or a close corporation prior to deregistration and an attorney who continues to act for the company or close corporation may be held personally liable for the costs of the application from the date of deregistration. There is an onerous duty on members and directors of corporate entities as well as attorneys acting on behalf of such company or close corporation, to ensure that the entities are registered at all times when they engage in litigation. There is currently no application for the restoration of any of those entities¹⁸ and I need not pronounce on what may or may not happen if that occurs. There is accordingly merit in the objection raised by the first respondent in this regard.

[89] It follows that the following applicants: 5th, 6th, 8th, 10th, 11th, 13th, 14th; 15th; 16th; 20th; 21st; 22nd; 29th; 31st; 32nd and 33rd, have been deregistered and have no

¹⁶ DR, August 2013: 38 [2013] DE REBUS 150 by Perino Pama, BA LLM (UCT) attorney at Mosdell Pama and Cox Inc. in Plettenberg Bay.

¹⁷ *Miller and Others v Nafcoc Investment Holdings Co. Ltd and Others* 2010 (6) SA 390 (SCA) at para 11.

¹⁸ *Insamcor (Pty) Ltd v Dorbyl Light and General Engineering (Pty) Ltd* 2007(4) SA 467 (SCA) at 475C.

legal standing to continue with this application unless their registration has since been restored.

[90] The following persons are deceased. They are: Mr Zola Buqwana, Mr Khuluwa Zonyana, Ms Ntombizonke Mayaba, Ms Thembeke Mqoli and Ms Zodwa Kilman. They do not appear as applicants in this application. Whatever order is made they have no right to benefit therefrom. This also applies to the entities they formed in terms of the program. Their learnership came to an end when they died. Nothing more needs to be said about them.

Jurisdiction point

[91] On the issue of jurisdiction, the second and third respondents contend that the parties in the MOA agreed that where there was a dispute such dispute would be referred to arbitration. This point may be disposed of by referring to the actual MOA. It is attached to the first respondent's answering affidavit as Annexure A. There were three parties only that concluded it, namely, the national Department of Public Works, provincial Department of Public Works and CETA. The arbitration clause related specifically to the parties that concluded the agreement and no other. There is accordingly no merit in the lack of jurisdiction point.

(c) Non-compliance with the provisions of Rule 18(6) of the Uniform Rules of Court

[92] The second and third respondents contend that the applicants failed to comply with the provisions of Rule 18 (6) because they did not attach the contracts relied upon for the alleged breach of contract. On this basis they submitted that the application must be dismissed with costs. The applicants relied on two agreements as evincing agreements that the successful learner contractors were expected to sign. They alleged that those agreements were signed by two of the applicants who were parties to this application. The second and third respondents denied the agreements relating to Mr Meki and to Mr Soji. As aforementioned Mr Meki filed a confirmatory affidavit.

[93] In **ABSA Bank Ltd v Zalvest Twenty (Pty) Ltd**¹⁹, Rogers J, in dismissing an exception based on Rule 18 (6) held:

“9. The rules of court exist in order to ensure fair play and good order in the conduct of litigation. The rules do not lay down the substantive legal requirements for a cause of action nor in general are they concerned with the substantive law of evidence. The substantive law is to be found elsewhere, mainly in legislation and the common law. There is no rule of substantive law to the effect that a party to a written contract is precluded from enforcing it merely because the contract has been destroyed or lost. Even where a contract is required by law to be in writing (eg a contract for the sale of land or a suretyship), what the substantive law requires is that a written contract in accordance with the prescribed formalities should have been executed; the law does not say that the contract ceases to be of effect if it is destroyed or lost.

*10. In regard to the substantive law of evidence, the original signed contract is the best evidence that a valid contract was concluded and the general rule is thus that the original must be adduced. But there are exceptions to this rule, one of which is where the original has been destroyed or cannot be found despite a diligent search. In such a case the litigant who relies on the contract can adduce secondary evidence of its conclusion and terms (see *Singh v Govender Brothers Construction* 1986 (3) SA 613 (N) at 616J-617D). There are in modern law no degrees of secondary evidence (ie one does not have to adduce the ‘best’ secondary evidence). While a photocopy of the lost original might be better evidence than oral evidence regarding the conclusion and terms of the contract, both forms of evidence are admissible once the litigant is excused from producing the original. In *Transnet Ltd v Newlyn Investments (Pty) Ltd* 2011 (5) SA 543 (SCA) a defendant, in opposing its eviction from certain premises, relied inter alia on a written addendum to the lease agreement. The defendant did not annex the*

¹⁹ *ABSA Bank v Zalvest Twenty (Pty) Ltd* 2014 (2) SA 119 (WCC) at para 9; See also: *Absa Bank Ltd v Kapuda Properties 14 CC and Others* (2019/16373)[2023] ZAGPJHC 209 (23 March 2023) (judgment by Tsautse AJ).

*addendum to its plea, alleging that a copy of the addendum was not in its possession and was last in the possession of the plaintiff. The original addendum was not adduced in evidence. The question whether an addendum had ever been concluded was hotly disputed. The Supreme Court of Appeal held that in the circumstances of the case the defendant was excused from producing the original and found that the execution and terms of the addendum had been sufficiently proved by oral testimony (see particularly at paras 4-5 and 17-19). Even in the case of wills, the loss or destruction of a deceased's will does not preclude an interested party from proving that a valid will was executed and what its terms were, and upon such proof the court will under its common law powers direct that the estate be administered in accordance with such terms (see, for example, *Nell v Talbot* NO 1972 (1) SA 207 (D) at 209H-210E; *Ex parte Porter* 2010 (5) SA 546 (WCC) para 12).*

11. *That then is the substantive law. The rules of court exist to facilitate the ventilation of disputes arising from substantive law. The rules of court may only regulate matters of procedure; they cannot make or alter substantive law (*United Reflective Converters Pty Ltd v Levine* 1988 (4) SA 460 (W) at 463B-E and authority therein cited). The court is, moreover, not a slave to the rules of court. As has often been said, the rules exist for the courts, not the courts for the rules (see *Standard bank of South Africa Ltd v Dawood* 2012 (6) SA 151 (WCC) para 12). The following passage from *Khunou & Others v M Fihrrer & Sons (Pty) Ltd & Others* 1982 (3) SA 353 (W) at 355F-356A bears repetition:*

'The proper function of a Court is to try disputes between litigants who have real grievances and so to see to it that justice is done. The rules of civil procedure exist in order to enable Courts to perform this duty with which, in turn, the orderly functioning, and indeed the very existence, of society is inextricably interwoven. The Rules of Court are in a sense merely a refinement of the general rules of civil procedure. They are designed not only to allow litigants to come to grips as expeditiously and as inexpensively as possible with the real issues between them, but also to ensure that the Courts dispense justice

uniformly and fairly, and that the true issues which I have mentioned clarified and tried in a just manner.” (my emphasis)

[94] The sentiments expressed by the Court in *Zalvest* apply equally to the facts of this case. This point too, must accordingly fail.

(d) *Applicants’ claims and/or debts against the respondents had prescribed:*

[95] The respondents did not allege any facts upon which the prescription point is based. To the extent that the respondents regard applicants as creditors, it suffices to state that the applicants did not place before me a complete cause of action, meaning that every fact they had to prove to support their entitlement to judgment on a monetary claim that must have occurred by the time of issue, or at least service, of the process initiating the recovery proceedings.²⁰ This application is not a claim for damages. No such relief is sought. There are sweeping allegations made in relation to Absa Bank overdraft facilities, non- payment or late payments of the learners’ accounts. None of the parties addressed those issues in argument.

[96] In the event that the point relates to a debt to perform contractual obligations, that will generally become due in accordance with the contract, and interpretation of its terms will, in the absence of other relevant indicators, indicate when the debt is due. In **Munnikhuis v Melamed NO**²¹ , Wunsh J, stated:

“If a debtor fails or refuses to perform some time after the debt becomes due, the failure or refusal does not give rise to a fresh or different debt unless the creditor then cancels the agreement. If the creditor does not, it remains entitled to sue for performance. The breach of contract does not, however, create a new cause of action for specific performance. It may well create a new cause of action for cancellation, and even for damages (see the discussion in Van der Merwe et al (op cit at 240- 2). The authors make a related point in a different context in regard to a claim for performance against a party which has committed a breach of contract. (foot notes omitted):

²⁰ Christie's Law of Contract , 8th Edition, page 594.

²¹ Munnikhuis v Melamed NO ,1998(3) SA 873(W) 887 E -888D

“A claim for specific performance in terms of a contract, though instituted upon breach, is based on the contents of the contracts and not on the breach as such.”²²

[97] The respondents did not set out any facts to support the prescription point. As indicated in this judgment it is not their case that the agreement was cancelled. The fact that the second phase was finalised some five years after the agreement was entered into, the approval of the third phase as communicated by Ms Nemasetoni during 2015, defeats any suggestion that the agreement was to endure only for two years. In **Makate v Vodacom (Pty) Ltd**²³, Jafta J: stated:

“[92] However, in present circumstances it is not necessary to determine the exact meaning of “debt” as envisaged in section 10. This is because the claim we are concerned with falls beyond the scope of the word as determined in cases like Escom which held that a debt is an obligation to pay money, deliver goods, or render services. Here the applicant did not ask to enforce any of these obligations. Instead, he requested an order forcing Vodacom to commence negotiations with him for determining compensation for the profitable use of his idea.

[93] To the extent that Desai went beyond what was said in Escom it was decided in error. There is nothing in Escom that remotely suggests that “debt” includes every obligation to do something or refrain from doing something apart from payment or delivery. It follows that the trial Court attached an incorrect meaning to the word “debt”. A debt contemplated in section 10 of the Prescription Act does not cover the present claim. Therefore, the section does not apply to the present claim, which did not prescribe.”

[98] In my view, for as long as the program remains incomplete prescription cannot arise. To hold otherwise would amount to a failure to promote the values that

²² Munnikhuis, above, page 887 para I – J.

²³ **Makate v Vodacom (Pty) (Ltd)** (CCT52/15) [2016] ZACC 13; 2016 (6) BCLR 709 (CC); 2016 (4) SA 121 (CC) (26 April 2016).

underlie an open and democratic society based on human dignity, equality and freedom as enshrined in section 39 of the Constitution. Any failure by the State to fulfil a program such as this one, whose main purpose is to upskill the citizens to alleviate unemployment and poverty, impacts on the dignity of those selected learners who have not achieved the purpose for which the program was designed. I accordingly find that the prescription point must accordingly fail.

(e) Joinder of Coega

[99] This point was cured by the formal joinder of Coega and it is therefore not necessary to consider it further.

Merits

Are the agreements valid?

[100] The second and third respondents made no effort to state the grounds upon which they denied the existence of the two contracts relied upon by the applicants. They simply alleged that the agreement relied upon by the applicants “*purported to be an agreement between Mr Meki and the second respondent*”. This denial flies in the face of the learnership employment agreement being on the letterhead of the second respondent. These respondents admit that phases 1 and 2 have been concluded. If there were no agreements such as those that have been put up by the applicants, how did they contract with them for the finalised phases 1 and 2? The first respondent who was instrumental in the conception and formation of the program, the selection of learners and in facilitation of its implementation, recognised the agreements as similar to those entered into between the learners and the second respondent.

[101] Those are the agreements attached to the founding affidavit and relied upon by the applicants. There is simply a bare denial from the second and third respondents with no facts pleaded in challenging the agreements. They do not allege, for example, that no such agreements exist, or that they are fraudulent documents or any allegations made that would cast doubt on the authenticity of the

agreements. These agreements were relied upon in the implementation of phases 1 and 2. This takes me to the next point of whether this issue constitutes a genuine dispute of fact. The agreements, according to the MOA were to be concluded with the second respondent. It is provided:

‘7. OBLIGATIONS OF DEPARTMENT OF PUBLIC WORKS OF THE EASTERN CAPE

7.1 Department of Public Works of the Eastern Cape will ensure that suitable contracts, in accordance with the conditions of the EPWP are designed timeously and that sufficient funding as specified in the management plan is available for the execution of these Learner Contractors.”

[102] Although they deny the agreements, these respondents rely on them for their contention that phase 3 is not stipulated therein. The respondents’ stance, in this regard, can be summarized in the well-known phrase that *‘a litigant cannot both approve and reprobate’*. More simply it cannot blow hot and cold at the same time- deny the contract whilst for other purposes seeking to rely on it.²⁴

[103] I accordingly find that the denial of the existing agreements by the second and third respondents of the actual agreements that have been put up, fall into the category of bald, uncreditworthy denials designed to create fictitious disputes of fact²⁵. The fact that the first respondent recognised the agreements corroborated the applicant’s version in material respects and is consistent with the probabilities. The version of a bare denial by the second and third respondents in this regard does not raise a bona fide factual dispute. I find that the agreements are valid. This finding relates to the first leg of the issues relating to the agreements.

Is there a valid contract of learnership to implement three phases of the program?

²⁴ TwentyThird Century Systems (Pty) Ltd and Another v SAP Africa Region (Pty) Ltd (4095320) 2022 ZAGPJHC 306 (16 May 2022) para 26.

²⁵ In African National Congress v Ezulweni Investments (Pty) Ltd²⁵, (979/2022) [2023] ZASCA 159 (24 November 2023).

[104] This question has been dealt with in a two- pronged fashion by the respondents. First, the respondents denied that there was going to be a third phase at all. Second, they contended that if there was a third phase there is no need to implement it due to the fact that the applicants have reached the threshold values in phase 3 and their CIDB grading would render any negotiated award unlawful or that their CIDB grading points to the completion of the learnership.

[105] On record the respondents vacillated in dealing with this issue. The more they dealt with the implementation issues raised by the applicants their dispute of a three-phased program was either conceded or termed differently. For example, they referred to it as three stages. I shall refer to a few examples just to demonstrate the point I make herein:

105.1 Ms Abrahams for the Minister stated:

‘ 30. Unfortunately, after a diligent search, I was not able to obtain a copy of the specific management plan which the MOA contemplates would be attached to it. However, generally in accordance with management plans that were formulated for learnership programmes during 2005 and 2006, learnership programmes were typically structured as follows:

30.1 The programme would consist of an appropriate mix of theoretical and practical components. The theory component would be provided through three separate classroom sessions.

30.2 Three separate projects would be awarded to each of the learner contractors by the participating provincial public works department to enable them to complete actual contracts for training purposes and to obtain the relevant experience to advance as emerging contractors.

31. In this regard, I attach hereto a copy of a management plan dated September 2005 that was applied by the Department to EPWP learnership programmes during that period, marked Annexure E.

32. I pause hereto mention that any reference to phase 3 of the Programme in the Applicant's founding papers and in this affidavit, is a reference to the third and final practical component of the Programme referred to above, i.e .the last of the three projects to be awarded to the learner contractors. (my emphasis)

105.2 What is contained in paragraphs 30 to 32, quoted above, support the applicants case that there was a third phase to the program.

105.3 In a letter addressed by the DG to Mr Silinga, Mr Mlawu and others which is referred to under the background facts, he stated, *inter alia*, when describing the program:

“In terms of the learnership, each learner contractor was to receive three (3) onsite training projects and undergo the National Certificate in Construction Contracting at NQF level 2. To date, the learner contractors have received two (2) of the three (3) onsite training projects. NDPW as the coordinator of the EPWP would hereby like to enquire when the third (3rd) project will be made available. The second (2nd) projects were completed in 2010 already.” (my emphasis)

105.4 A similar letter was addressed to the Head of Department of the second respondent, Mr J. Mlawu and the exact wording was used.

105.5 Ms Irene Nemasetoni conveyed to the applicants that the Director – General of the national department of Public Works had “*approved the implementation of the 3rd(third) phase of the learnership programme.*” It was clearly the understanding of the state respondents and the learners that there was a 3rd phase to the program.

105.6 The second and third respondents stated:

“48.1 The programme was designed into three phases in respect of which values in monetary terms were attached as follows:

48.1.1 phase 1 : R250 - R500 000,

48.1.2 phase 2 : R500 000 - R2, 000 000;

48.1.3 phase 3 : R1m - R5m.” (my underlining)

105.7 At a meeting held at Coega on 12 December 2011 between Coega, the second respondent, third respondent and Absa Bank. The meeting itself was described as: EPWP Phase 3 Project Meeting”. As a way forward there were certain resolutions but the one that is important for the purposes of this case is “*CDC had already sent correspondence to consultants to send recommendations to CDC on performance base on Phase 3.*”

[106] All the evidence before me demonstrates that there was no separate contract that had to be concluded with the learners that would specify phase 3. Phase 3 just like phases 1 and 2 relates to implementation of the program. That is an issue that falls within the powers of the state organs. The state organs would not have agreed with the learners on that issue except to convey to them how the program would be structured. There is correspondence that confirms that position. The fact that phase 2 was completed in 2010 is demonstrable of the fact that the parties continued on the same trajectory with the program as it was in 2006. There is no evidence at all to suggest that in 2008, after two years of the signing of the agreements, that new or further agreements were signed between the provincial department of Public Works and the learners. It is common cause that phase 2 was completed during 2010.

[107] The management plan encompassed everything, namely, the role of the state entities or public bodies or the stakeholders, the purpose of the learnership, recruitment and selection of learners, the duration of the learnership, access to finance, mentorship etc. To single out the learner agreements to the exclusion of all the other agreements that related to the program is to ignore the purpose of the program, namely, to develop 51 contractors from the Eastern Cape through a learnership program. Any attempt to ignore all the other relevant documents placed before me that were intended to give effect to the desired purpose of the program would amount to viewing the program out of context and is, with respect,

mischievous. In **Natal Joint Municipal Pension Fund v Endumeni Municipality**²⁶, Wallis JA stated:

“[24] The sole benefit of expressions such as ‘the intention of the legislature’ or ‘the intention of the parties’ is to serve as a warning to courts that the task they are engaged upon is discerning the meaning of words used by others, not one of imposing their own views of what it would have been sensible for those others to say. Their disadvantages, which far outweigh that benefit, lie at opposite ends of the interpretative spectrum. At the one end they may lead to a fragmentation of the process of interpretation by conveying that it must commence with an initial search for the ‘ordinary grammatical meaning’ or ‘natural meaning’ of the words used seen in isolation, to be followed in some instances only by resort to the context. At the other it beguiles judges into seeking out intention free from the constraints of the language in question and then imposing that intention on the language used. Both of these are contrary to the proper approach, which is from the outset to read the words used in the context of the document as a whole and in the light of all relevant circumstances.³⁴ That is how people use and understand language and it is sensible, more transparent and conduces to greater clarity about the task of interpretation for courts to do the same.”

[108] Phase 3 was not only conceded by the second and third respondents as demonstrated in the table with values but was supported by the Director- General in his correspondence to the various respondents and communicated to the applicants. The authority of the Director- General to, *inter alia*, convey the existence of the third phase to the applicants and to request the other respondents to give effect thereto is not challenged.

[109] In **Chisuse v Director – General, Department of Home Affairs**²⁷, the Constitutional Court was dealing with statutory interpretation and held that it is now settled approach that interpretation is a unitary exercise. This means that

²⁶ Natal Joint Municipal Pension Fund v Endumeni Municipality (920/2010) [2012] ZASCA 13; [2012] 2 ALL SA 262 (SCA) ;2012(4) SA 593 (SCA) (16 March 2012) at para 24.

²⁷ Chisuse v Director – General, Department of Home Affairs 2020 (6) SA 14 (CC) para 52.

interpretation is to be approached holistically; simultaneously considering the text, context and purpose. The same approach applies herein.

[110] Both the course of conduct of the parties including those of Coega, the implementing agent, their dealings, and oral agreements, demonstrate that there was going to be a third phase to the program. I accordingly find that the learnership, based on all the evidence and the respondents' versions included phase 3 in order for it to be complete. Any purported dispute of the 3rd phase is not supported by the respondents' own version and the facts relied upon by them. It does not, in my view, taking all the evidence in its totality, constitute a genuine dispute of fact and is accordingly rejected. To direct that evidence must be led on an issue that, the respondents have admitted, as demonstrated above, will serve no purpose instead will prolong this litigation and escalate costs unnecessarily.

Legitimate expectation

[111] Invitations to members of the public, such as the one that was issued herein whose goal was to invite members of the public to , inter alia, participate in the state programs which are designed to achieve specific identified goals for the good of the country , with the aim to implement policies that relate to, amongst others, attempts to enhance the ability of the emerging contractors and the youth aspiring to get into the construction industry with more future that will enable them to compete effectively in the construction market; and to assist aspiring building contractors to gain skills while they run projects and increase their capacity to earn income, all which will result in them being fully fledged building contractors with requisite business and technical skills, are never to be viewed lightly.

[112] That becomes even more important when the whole purpose of the invitation is to level the playing fields so that there is no monopoly within the construction industry, to alleviate levels of unemployment, most importantly to build requisite skills for participation in that industry.

[113] Where the State abandons such a publicly made commitment without achieving the desired outcomes, it is not wrong, to hold the State to that invitation

whilst keeping the boundaries insulating the executive from the separation of powers harm²⁸. **In Economic Freedom Fighters and Others v Speaker of the National Assembly and Another, the Constitutional Court held:**

“[22] Similarly, the National Assembly, and by extension Parliament, is the embodiment of the centuries-old dreams and legitimate aspirations of all our people. It is the voice of all South Africans, especially the poor, the voiceless and the least- remembered. It is the watchdog of State resources, the enforcer of fiscal discipline and cost-effectiveness for the common good of all our people. It also bears the responsibility to play an oversight role over the Executive and State organs and ensure that constitutional and statutory obligations are properly executed. For this reason, it fulfils a pre-eminently unique role of holding the Executive accountable for the fulfilment of the promises made[33] to the populace through the State of the Nation Address, budget speeches, policies, legislation and the Constitution, duly undergirded by the affirmation or oath of office constitutionally administered to the Executive before assumption of office. Parliament also passes legislation with due regard to the needs and concerns of the broader South African public. The willingness and obligation to do so is reinforced by each member’s equally irreversible public declaration of allegiance to the Republic, obedience, respect and vindication of the Constitution and all law of the Republic, to the best of her abilities. In sum, Parliament is the mouthpiece, the eyes and the service-delivery-ensuring machinery of the people. No doubt, it is an irreplaceable feature of good governance in South Africa.” (foot notes omitted).

[114] Although the details of the implementation of the program do not form part of the agreements signed with the learners, they appear on the body of the evidence relied upon by the parties. The fact that there were no grading requirements at the invitation stage is consistent with the purport of the program. The uncontroverted evidence is that although the agreements did not specify the implementation of the

²⁸ In *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017) at para 22.

program, the state respondents communicated to the applicants the three phased program in various forms as indicated above, the Minister communicated that to them, the DG communicated that, the senior officials did too. The applicants do not dispute that the third phase will mean an award of projects to them. That, of necessity enjoins the powers that only the DG and the executive possess. Those powers do not reside with the court. The third phase was not only approved by the DG but a list of projects for the third phase were submitted to Coega but were subsequently withdrawn on the basis that the stakeholders were awaiting their budgets. Taking into account those approvals and identification of projects there would be no harm to the separation of powers doctrine if this Court orders that steps must be taken to implement the third phase. It had been approved already and there is no need to reinvent the wheel.

[115] Clause 4 of the Learner contract of employment refers:

Employment under a learnership is based on the reasonable expectation of continuing work availability to the employer for the duration of the learnership period, linked to the provisions of the relevant employment contract. (my emphasis)

[116] Clause 4 also deals with termination of that agreement of the Learnership agreement. It provides, amongst others, that it would terminate if the learner successfully completes the learnership.

[117] In **Duncan v Minister of Environmental Affairs and Tourism**²⁹, Brand JA defined the requirements for legitimate expectation as:

“[15] Reliance on the doctrine of legitimate expectation for any purpose presupposes that the expectation qualifies as legitimate. The requirements for the legitimacy of such expectation have been formulated thus:

²⁹Duncan v Minister 2010 (6) SA 374 SCA and para 15 ; (See : eg National Director of Public Prosecutions v Phillips 2002 (4) SA 60 (W) para 28; South African Veterinary Council v Szymanski 2003 (4) SA 42 (SCA) para 19; Woolf, J Jowell, A Le Sueur, De Smith's Judicial Review 6 ed (2006) paras 12-029 et seq.)”

(a) The representation inducing the expectation must be clear, unambiguous and devoid of any relevant qualifications.

(b) The expectation must have been induced by the decision maker.

(c) The expectation must be reasonable.

(d) The representation must be one which is competent and lawful for the decision-maker to make.

[118] These requirements have been met by the applicants. The learners were selected with a view to upskill them by assisting them to get into the construction with more future that will enable them to compete effectively in the construction industry. They would be fully fledged building contractors with requisite business and technical skills. They would get certification or will graduate upon completion of the project. The two phases were completed and only phase 3 is outstanding. These expectations were induced by the state organs, the first, second and third respondents in their representations to the selected learners. They were reasonable and consistent with the purpose of the program. The learnership is competent in law and consistent with the powers that the Director – General has and it was duly approved by the State Tender Board. In my view, the applicants met all the *Duncan* requirements on the legitimate expectation point.

[119] Heher JA, in **Phillips and Others v National Director of Public Prosecutions**³⁰ found that the reason why the representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification' is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril. The court found that the first question is factual – whether in all the

³⁰ Phillips and Others v National Director of Public Prosecutions (202/2002) [2003] ZASCA 74; [2003] 4 All SA 16 (SCA); 2003 (6) SA 447 (SCA); 2003 (2) SACR 410 (SCA) (4 September 2003).

circumstances the expectation sought to be relied on is reasonable. That entails applying an objective test to the circumstances from which the applicant claims the expectation arose. Only if that test is fulfilled does the further question – whether in public law the expectation is legitimate – arise.

Are all 68 applicants before court entitled to the 3rd phase?

[120] The starting point will be to examine the request by the Director – General (DG) for the national Department of Public Works dated 8 September 2003 and the approval dated 15 October 2003, by the National Treasury relied upon by the Minister. The Director- General requested from the Office of the State Tender Board, National Treasury *‘approval for the allocation of infrastructure projects as on- site training projects for emerging contractors as part of structured SETA- registered learnerships.’*

[121] In motivating for the request the DG highlighted that the approval was sought in order to develop contractors to a level at which they can compete successfully in the open market. He sought approval for the departments to enter into negotiated contracts with learner contractors for the on-site training elements of their learnership. The DG set out certain conditions, namely, as long as:

- a) the learners are part of a structured learnership programme under a departmental, municipal, provincial or national emerging contractor development programme;
- b) there has been an open and transparent process of selecting the learners for the learnerships;
- c) the learners participate in the learnership programme for a predetermined limited period of time, following which they must either graduate or exit from the learnership programme;
- d) the learnerships are formally registered with the relevant Sector Education and Training Authority (SETA)

[122] National Treasury informed the DG, Dr SD Phillips, *inter alia*, that his request served before the Board on 09 October 2003 where the Board approved the submission in its entirety.

[123] During November 2003, Cabinet approved the conceptual framework of the Expanded Public Works Programme (EPWP). The objective of the EPWP was to utilize public sector budgets to create additional work opportunities coupled with training. The Management plan was formulated and was applied with effect from September 2005. The Minister also relies on the MOA referred to earlier in this judgment, which was concluded in March 2006.

[124] The parties contemplated a three- phased implementation approach of the program. Although they differ in how they refer to it, the record reveals that the difference of opinion in this regard is, with respect, more imaginary than real. The third phase is regarded by the respondents as the third and final practical component of the program. It must follow therefore that it must be implemented to finalize the program.

[125] According to the learner contract of employment, there are two grounds that would lead to the termination of the agreement between the provincial department of Public Works and the learners. Those are contained in clause 3 of the agreement. They are that: the contract would terminate when the learner has completed a learnership or when the learnership agreement has been cancelled. It is not the second and third respondents' defense that they either cancelled the agreements or that the learners completed the learnership.

[126] The respondents submitted that the applicants who are cited in the application are already established contractors with CIDB grading above the grades targeted by learnership programs and are registered in multiple classes of construction work and have received the full benefit of the department's contracts development program. In my view, if there are such applicants, they would fall outside the program and they would not be entitled to benefit from the 3rd phase. There must be proper identification of those applicants, the nature of the work given to them, the duration,

their performance etc. Those applicants must be assessed by the training providers and be issued with the necessary certificates. If any of the applicants are already competing in the industry that would mean that what was sought to be achieved by the learnership program has been achieved. Steps would have to be taken by the respondents to award to those applicants the necessary certification.

[127] The respondents, as stated above, identified some of the learners as not qualifying for further practical training but are silent about those who do not have higher CIDB grading. Those must be identified properly so as to assess their level of competence in relation to the learnership program. The respondents must also take steps to have the learners assessed by an accredited training provider. Should they be regarded as competent they should be awarded a competency certificate to stipulate that they have met the requirements to be awarded the NQF Level 2 qualification.

[128] The applicants raised many issues relating to budget and projects for the third phase in their replying affidavit. Those are all matters that fall within the powers of the respondents. It is not open to this court to dictate to the respondents how they should implement the third phase. They need to be afforded an opportunity come up with a plan to deal with those applicants who qualify for the practical leg of the third phase and details of how they will implement the third phase. In my view, “*how*” the implementation process of the third phase is to be done, and how many of the applicants should participate therein, are issues that constitute a genuine dispute between the parties.

[129] That means that these disputed facts cannot be resolved on these papers. It is an elementary rule of motion proceedings that an applicant cannot succeed in the face of a genuine dispute of fact that is material to the relief sought. Conflicting averments under oath cannot be tested on affidavit but only by oral evidence as decided in **Plascon-Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd**³¹.

³¹ *Plascon -Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd* (53/84) [1984] ZASCA 51; [1984] 2 All SA 366 (A); 1984 (3) SA 623; 1984 (3) SA 620 (21 May 1984).

[130] The respondents contend for the dismissal of the application with costs. I am not persuaded that this is a case that must be disposed of in that fashion because the program was approved by Cabinet and the State Tender Board. It is expected that where the State has embarked on a learnership for noble reasons, such as this one, the learnership programme must be completed. The applicants are protecting the rights that accrued to them when they were selected for the project and upon the implementation of phases 1 and 2. Those rights are not absolute. The program was not designed to do more than what it was intended for. Where the applicants are no longer suited for the 3rd phase of the program due to their high CIDB grading, amongst others, the respondents must indicate how they will be dealt with so as to enable them to receive relevant certification.

CIDB grading

[131] As soon as projects were allocated to the learners their status changed and their performance had to be measured. It appears that the State respondents applied the CIDB grading. How the programme was to be implemented depended on the policies of the state. The applicants seem to think that they have a say in this regard, to dictate, amongst others, that the CIDB grading should not apply. This aspect cannot be regarded as a real dispute because implementation of the program was never agreed to with the applicants. It is the State respondents that agreed in the MOA and the management plan, how it would be implemented. That responsibility, with respect, remains with the State respondents and not the applicants.

[132] The first respondent relied on the CIDB grading and contended that from 2005 government departments were constrained by the Treasury Regulations 16 A in the manner in which construction projects were allocated to learner contractors.

[133] It appears from the evidence that there was both technical and financial benefits to the learners in phases 1 and 2. A schedule of each project given to the learners and the values thereof, in annexure 'H', were not challenged by the applicants. However, they dispute the allegation that as a result of their monetary benefit in phases 1 and 2 they are not entitled to the third phase. As aforementioned

the schedule addresses only issues relating to 21 learners and is silent about the rest of the learners who are part of this application. The schedule does depict a landscape that has changed from the one that existed when the agreements were entered into. It is also apparent from the schedule attached by the Minister that there was CIDB grading of the contractors.

[134] According to the applicants there should be no CIDB grading. That is not their call to make. The designers and implementers of the program deemed it fit to subject learners to CIDB grading. The CIDB grading was not a novel consideration because the applicants themselves were alive to it. They stated, *inter alia*, “Some of them abandoned their companies that already had a higher CIDB grading in order for them to start new close corporations and to work their way up again to attain CIDB grading.” If the purpose was to upskill the learners to reach a point where they would be able to compete fairly in the construction industry, it is axiomatic that they had to be measured by using the same tool used for each and every player in that industry, being, the CIDB grading.

[135] Although phase 3 was contemplated by all the parties concerned, as I have found, there are deceased learners, deregistered contractors, those learners that are regarded as having exceeded the phase 3 thresholds. Who participates in phase 3 is an issue that cannot be decided on these papers. A finding that all 51 learners would be entitled to be awarded contracts for phase 3 is not a matter that falls within the province of this court. Having said that the programme must be finalised to enable the learners to receive their certification by CETA. It is within the powers of the state respondents to design a plan for the third phase in a manner that will be compliant with the applicable legal prescripts.

[136] The letter of Mr Jan Breytenbach, relied upon by the first respondent, does not in anyway prohibit negotiated contracts and any suggestion that it does is, with respect, misleading. In any event the letter was addressing a request from the Limpopo province and not from the Eastern Cape. Section 217 (2) of the Constitution provides:

“217 (1)

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

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

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

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

[137] I do not believe that the Director – General, who is the accounting officer of the national department of Public Works, would have approved the third phase, according to Ms Nemasetoni, a senior official, if he possessed no such powers and had no budget for it. In **GNA Automation CC and Another v Provincial Tender Board, Eastern Cape and Another**³²the following was said:

“Powers may be presumed to have been impliedly conferred because they constitute a logical or necessary consequence of the powers which have been expressly confirmed because they are reasonably required in order to exercise the powers expressly confirmed or because they are ancillary or incidental to those expressly confirmed.”

[138] There is another reason why the project must be completed. The completion thereof displays commitment on the part of the State to upskill the learners. For as long as the learnership remains incomplete, there will be no certification and that will undermine what was intended by former President Mbeki and the Cabinet: to ensure that these learners *“through the programme are drawn into productive work and that they gain skills while they work and thus take an important step to get out of the pool of the marginalised”*.

³² GNA Automation CC and Another v Provincial Tender Board, Eastern Cape and Another 1998(3) SA 45 SCA at 51H.

[139] Failure to complete the learnership would also mean that the State expended millions of rands in the programme and thus invested in the social infrastructure that had no certification in the end. That is not empowerment as it was envisaged by the government. To leave it incomplete undermines the learners and the purpose for which the programme was intended. I am aware that there was a threshold of R1m to R5 million for the third phase. The respondents' stance that the phase 3 threshold values have been exceeded are made in a general manner without sufficient detail. To the extent that most of the learners have done work equivalent to the values prescribed for phase 3, the respondents must detail a plan on how they intend to deal with them in relation to their certification to signify completion of the program in so far as it relates to them. I trust⁰ that the order I intend to make will lead to those issues being addressed sufficiently.

[140] Lagrange J, in *Mtimkulu v The CCMA and others*³³, stated :

“There was no subsequent written contract concluded which sets out in any detail the terms governing the relationship after the expiry of the initial contracts on 31 March 2006. It is also noteworthy that the sole basis advanced in the memo for extending the relationship is related to the expectation that might have been created in relation to payment for the learner’s studies: no mention is made of the need for them to still have more practical exposure to the work environment or to acquire some level of expertise in a particular area of work relating to their academic qualifications.

The arbitrator also failed to require the employer to prove that the object of the learnership contract had been achieved at the time it was terminated. The arbitrator ought also to have required proof of prior proceedings relating to the employer’s allegation that he was not at work.”

[141] The above sentiments apply equally herein. Evidence must be led to determine and identify, *inter alia*, the number of applicants who qualify for phase 3

³³ *Mtimkulu v The CCMA and others*, Case no. JR 1212-08, Labour Court, Johannesburg.

and to deal with all the matters that will be listed in the Order to be made as there is dearth of information in relation to those matters. In **Black Sash Trust v Minister of Social Development**³⁴, the Constitutional Court when it was faced with a situation where there was insufficient information from SASSA, it directed that the Minister and SASSA file, *inter alia*, reports setting out their plan for payment of social grants. In order to ensure a speedy finality of this litigation I shall direct a hearing, if it still proves to be necessary, after the plan has been submitted in terms of the order I intend to make.

[142] These issues are inextricably linked to the implementation of the third phase. I intend to grant the implementation relief but suspend it pending submission of the plan on the implementation of the third phase by the respondent, which plan must encompass all the matters I have raised herein. Upon submission of the plan to this Court the parties will be afforded an opportunity to comment thereon. Should there be a need for oral evidence that will be arranged. The reason for not directing a hearing of oral evidence at this stage is because there is scarcity of information on the implementation of phase 3 and that will elongate the hearing at a huge cost to the parties.

[143] There are various factors that would influence the decision on the implementation of phase 3 and how it should be implemented. I deal with them below. The respondents in their plan will have to address, *inter alia*, the following factors, in no particular order:

[144] **Factors to be addressed in the implementation plan:**

- (a) A list of deceased learners and deregistered contractors;
- (b) The effect of the CIDB Grading on phase 3;
- (c) The number of the remaining learners (persons) from the original 51 learners; taking into account those that are deceased and deregistered;

³⁴ Black Sash Trust v Minister of Social Development [2017] ZACC 8; 2017 (3) SA 335 (CC).

(d) The number of remaining learner contractors (entities) attached to each of the remaining learners;

(e) A list of learners that were disqualified from the program and the reasons therefor, together with a list of those learners who abandoned the program, if any;

(f) To identify those learners who are no longer 'learners' as envisaged in the program;

(g) To identify learners who have received projects that exceed the threshold values for phase 3. (Such information to specify dates, nature of the projects, amounts paid to the learner, identity of the training provider, CIBD grades and any other relevant information in this regard;

(h) The nature of further practical training experience required by any of the learners, if so, which learners (to be identified) and the type of practical training.

(i) Identify learners for certification and approximate time for the award of such certification;

(j) To identify projects for phase 3 and the duration thereof.

(k) To determine and source budget allocation for phase 3.

(l) To indicate whether there were assessment reports of the learners by the training providers? All those to be summarized to indicate the type of training, project allocated, performance of the learner and any areas where further practical training is required by any of the learners.

(m) to identify learners to be assessed by an accredited training provider to determine their competence to be awarded a competency certificate to

stipulate that they have met the requirements to be awarded the NQF Level 2 qualification.

(n) time frames for the implementation of the third phase, and any other factors that are relevant to phase 3.

ORDER

[145] In the circumstances I make the following Order:

1. The First, Second and Third respondents are directed to take the necessary step to implement Phase 3 of the Eastern Cape School Building Expanded Public Works Programme, which is the final phase of the programme, which will enable the Construction Sector Education and Training Authority (CETA) to award the NQF Level 2 to the applicants.
2. The First, Second and Third respondents are directed to file reports, within **(30) THIRTY** days hereof, on affidavit, setting out how they plan to implement phase 3, taking into account relevant factors, amongst others, listed in paragraph 144 above.
3. The Order in **paragraph 1** is suspended for a period of **(60) Sixty days** pending the filing of the reports mentioned in paragraph 2 of this Order.
4. Any other matters not dealt with herein in relation to the application are reserved pending compliance with this supervisory order.
5. All issues of costs are reserved until conclusion of these proceedings.

T.V NORMAN
JUDGE OF THE HIGH COURT

APPEARANCES:

For the APPLICANTS : Adv Ntsepe
Instructed by : TYOPO ATTORNEYS
c/o : BACELA BUKULA ATTORNEYS
115 CAMBRIDGE STREET
KING WILLIAMS TOWN
TEL: 083 285 6761
EMAIL: tyopomxilisi@gmail.com

For the 1st Respondent : STATE ATTORNEY, GQEBERHA
29 Western Avenue
GQEBERHA
TEL: 041 585 7921
EMAIL: MiSwart@justice.gov.za
c/o : SQUIRES SMITH & LAURIE INC.
44 TAYLOR STREET
KING WILLIAMS TOWN
TEL: 043 642 3430
FAX: 043 643 3956
EMAIL: kuls@squires.co.za
REF: MRS. AL FRIEDRICHS/ka/MAT111346

For the 2nd & 3rd Respondents: Adv Rocke SC together with Ms Appels
Instructed by : STATE ATTORNEY, EAST LONDON
OLD SPOORNET BUILDING
17 FLEET STREET
EAST LONDON
REF: 161/22-P13 (MRS TYANI)
c/o : SHARED LEGAL SERVICES
32 ALEXANDRA ROAD
KING WILLIAMS TOWN

For the 4th Respondent : Mr Macozoma
Instructed by : BATE CHUBB & DICKSON INC.
Suite 3, Norvia House
EAST LONDON
TEL: 043 701 4500
EMAIL: lindeka@batechubb.co.za
c/o : GORDON McCUNE ATTORNEYS
36 TAYLOR STREET
KING WILLIAMS TOWN
REF: MACOZOMA/lg/C4/MATT4416

Matter heard on : 20 June 2024
Judgment delivered on : 15 October 2024