IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE DIVISION, KIMBERLEY

Case No: 2129/2020

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

THE POOLING AND SHARING JOINT VENTURE, A JOINT VENTUREESTABLISHED BETWEEN RICHTERSVELD MINING COMPANY (PTY) LTD AND ALEXKOR LIMITED Applicant/defendant

and

ALEXANDER BAY DIAMOND COMPANY (PTY) LTD (PREVIOUSLY KNOWN AS SCARLET SKY INVESTMENT 60 (PTY) LTD Respondent/plaintiff

Heard on: 14 /02/202

Delivered on: 23/05/2025

Summary: Pleadings. Application for amendment of pleadings in terms of Rule 28(4) of the Uniform Rules of Court on notice and without notice of motion supported by affidavit as contemplated in Rule 6. Application necessary where amendment is substantial. Would the defendant's plea, if amended, be excipiable.

ORDER

In the result the following order is made:

1. The applicant/defendant is granted leave to amend its pleadings within 14 days of this order.
2. Applicant/defendant is to pay the costs of the application as well as the costs of opposition.

JUDGMENT: APPLICATION FOR AMENDMENT OF PLEADINGS

MAMOSEBO ADJP

[1] The applicant (defendant) seeks leave to amend its pleadings in terms of Rule 28(4) of the Uniform Rules of Court. This application is opposed by the respondent (Plaintiff).

[2] The applicant is Pooling and Sharing Joint Venture, A Joint Venture established between Richtersveld Mining Company (Pty) Ltd and Alexkor Limited Transnet SOC Limited. The respondent/plaintiff is Alexander Bay Diamond Company (Proprietary) Limited (Previously known as Scarlet Sky Investments 60 (Proprietary) Limited). For convenience I will refer to the parties as plaintiff and defendant.

[3] The issues that stand for determination are: (i) whether, without a notice of motion supported by an affidavit, there is an application before court for adjudication and (ii) whether the defendant's proposed amendment if granted would result in a plea that is excipiable.

[4] At commencement of the hearing of this application, Mr Van Niekerk SC, for the plaintiff, raised a concern that pages 108 to 740 comprising about 632 pages, were irregularly inserted in the record without any explanatory affidavit and urged the court to ignore the said documents. Mr Mabunda, for the defendant, explained that the process of discovery has not been finalised and asked the Court to take judicial notice of the said documents. In all

fairness it would be sensible to only consider pages 1 to 108 of the papers for purposes of this application.

[5] On 14 March 2024 the defendant served the plaintiff with a notice of its intention to amend its plea in terms of Rule 28(1). The said notice sets out the proposed amendments. On 28 March 2024 plaintiff objected to the proposed amendment in terms of Rule 28(3). Rule 28(4) reads:

> 'If an objection which complies with subrule (3) is delivered within the period referred to in subrule (2), the party wishing to amend may, within 10 days, lodge an application for leave to amend.'

[6] It was contended on behalf of the plaintiff that no application for the amendment served before this court since it was not brought by way of notice of motion supported by an affidavit. The courts have already drawn this distinction when a party is launching a fresh application as contemplated in Rule 6 of the Uniform Rules of Court and when bringing an interlocutory application in the midst of pending litigation. In this court's unreported judgment *Cornelius Amos Peterson t/a Peterson Quantity Surveying and Project Management v Minister of Public Works*[1] the Full Court reasoned:

> 'The court a quo correctly dealt with the objection by the defendant that the plaintiff has failed to comply with Rule 6(11) of the Uniform Rules of Court in that the application was not filed by way of notice of motion procedure supported by an affidavit explaining the reasons for seeking this amendment. As clarified in *Yorkshire*[2] 'Notice' in this subrule does not mean notice of motion. These proceedings were already pending before court and the application for an amendment is incidental to such proceedings. Whereas the court a quo found that an affidavit by the plaintiff was necessary to explain the circumstances leading to the change in the identity of the defendant, I am of the view that this is not so serious as to non-suit the

[1] Per Mamosebo ADJP, Lever J and Nxumalo J, Case No 1423/2010 at para 15, delivered on 15 November 2024.
[2] Yorkshire Insurance Co Ltd v Reuben 1967 (2) SA 263 (E) at 265E - H

plaintiff in the amendment application since the Minister was already an active participant throughout the proceedings.'

See also *De Kock v Middelhoven* [3] and *Swartz v Van der Walt t/a Sentraten*[4].

I therefore find that no substantive application for leave to amend the pleadings was necessary. It follows that the plaintiff must fail on this score.

[7] The second aspect for consideration is the objection by the plaintiff that granting the defendant leave to amend its pleadings would still be open to exception on the grounds that it will not disclose a defence, alternatively, it will be vague and embarrassing.

[8] The genesis of this case stems from plaintiff's claim for damages consequent upon an alleged repudiation and termination of an agreement concluded on 06 October 2016 as well as plaintiff's equipment installed at the defendant's premises which is denied by the defendant.

[9] In the defendant's notice of intention to amend dated 09 April 2020, which runs from pages 46 to 73, its first special plea (paras 1 – 5) dealt with the non-compliance with Rule 41A of the Uniform Rules of Court in that the plaintiff had not filed a notice pertaining to referral of the dispute for mediation. The second special plea (paras 6 – 13) emphasised the dispute resolution procedure contemplated in Clause 29 of the agreement concluded by the parties and the fact that plaintiff has not followed this procedure before litigating. The procedure allowed for the dispute to be considered first by the Chief Executive Officers of the parties and should it remain unresolved, to be referred to an independent mediator. Paras 14 – 33 is the defendant's plea on the merits. Paras 34 to 40 deal with the defendant's counterclaim.

---

[3] 2018 (3) SA 180 (GP)
[4] 1998 (1) SA 53 (W)

[10] In its Notice of intention to amend the pleadings in terms of Rule 28(1) the defendant seeks the following relief: the deletion in entirety of paras 1 – 13, that is the first and second special pleas; paragraphs 14 to 33 of the plea on the merits (the plea in its entirety on the merits) as well as paras 34 to 40 of the counterclaim, (that is the deletion of the counterclaim in its entirety. The same must be replaced as follows:

‘First Special Plea: the contract is unlawful as it is prohibited by statute.

1. It is alleged at paragraph 6 of the amended Particulars of Claim (“the POC”) that on 06 October 2016, Alexander Bay Diamond Company (Pty) Ltd (“ABDC” or the “Plaintiff”) and Pooling and Sharing Joint Venture (the “PSJV” or the “Defendant”) concluded a written agreement to market, value, sell and beneficiate diamonds (the “agreement”). The agreement is annexed to the POC as Annexure “POC-1”).

2. It is further alleged at paragraph 8 of the POC that at the time of the conclusion of the Agreement, the Plaintiff was represented by Mr Daniel Nathan, alternatively an authorised representative of the Plaintiff and that the Defendant was represented by Mr Mervyn Carstens (“Mr Carstens).

3. It is common cause that the Agreement was concluded pursuant to a Request for Proposal issued by the Plaintiff on 04 March 2016 under tender reference number: R[...] 0[...] (the “Tender”) (also see the Agreement, clause 2.3).

4. A copy of the advertisement for the Tender is annexed hereto marked “DP-1” (the “Advertisement”) and stipulates that a Bidder for the Tender must meet inter alia the following minimum requirements:
   4.1 permits and licenses to conduct the business of trading in and/or processing of rough diamonds and/or polished diamonds; and
   4.2 premises, safe custody and secure viewing of the products.

5. Six (6) entities including the Plaintiff submitted bids for the Tender before the closing date.

6. The Plaintiff's bid (the "Bid") did not comply with the minimum requirements of the Tender in that the Plaintiff was not in possession of the necessary permits and/or licences to conduct the business of trading in and/or processing of rough diamonds and/or polished diamonds.

7. In its Bid, the Plaintiff submitted a Diamond Dealer's License (the "License") issued to an entity registered as Daniel Nathan Trading CC. A copy of the License is attached hereto marked "DP-2".

8. Moreover, in the Bid, the Plaintiff did not include the minimum requirement of having a premises authorised for the conduct of the business of trading in and/or processing of rough diamonds and/or polished diamonds.

9. Chapter 3 of the Diamonds Act 56 of 1986 (as amended) (the "Diamonds Act") prohibits any person, being in the possession of unpolished diamonds; the sale of unpolished diamonds; the purchase of unpolished diamonds; the dealing in unpolished diamonds; the processing of diamonds, unless he or she is a producer; a dealer; the holder of the relevant permit referred to in section 26 or is authorised thereto in writing by the South African Diamond and Precious Metals Regulator (the "Regulator").

10. Section 28A of the Diamonds Act provides that no licensee may be assisted by a non-licensee during the viewing, purchasing, or selling of unpolished diamonds at any place where unpolished diamonds are offered for sale.

11. Furthermore, section 44 of the Diamonds Act provides that no person shall utilise any premises as a diamond trading house unless he or she holds a diamond trading house license and those premises are registered as a diamond trading house in terms of the Diamonds Act.

12. The Agreement enabling the Plaintiff to market, value, sell and beneficiate diamonds on behalf of the Defendant without the relevant permits and licenses is in contravention of the Diamonds Act and is therefore illegal, void *ab initio* and consequently unenforceable.

Wherefore the Defendant prays that the Plaintiff's claim be dismissed with costs.

Second Special Plea: The Contract is unlawful for Failure to Comply with State Procurement Legislation.

13. The award of the Tender to the Plaintiff was unlawful as the Plaintiff failed to meet the minimum requirements of the Tender as stipulated in the Advertisement and dealt with above.

14. Furthermore, the Advertisement stipulates that the 90:10 preference system would be applied to the Tender in terms of the Preferential Procurement Policy Framework Act 5 of 2000 (the "PPPFA").

15. The 90:10 preference system allows for a maximum of ten (10) points to be allocated for specific goals such as contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability provided that the lowest acceptable tender scores ninety (90) points for price.

16. In awarding the Tender to the Plaintiff, the Bid Evaluation Committee (the "BEC") did not conduct an evaluation in accordance with the 90:10 criteria, which conduct by the BEC was in contravention of the PPPFA and therefore unlawful.

17. The subsequent agreement was concluded in breach of the applicable procurement prescripts which are designed to ensure a transparent, cost-effective and competitive tendering process and is therefore unlawful and invalid.

18. As an organ of state, the Defendant is subject to the provisions of Section 217 of the Constitution of the Republic of South Africa, 1996 (the "Constitution") which requires that when an organ of state contracts for goods and services, it must do so in accordance with principles of fairness, equitability, transparency, competitiveness, and cost-effectiveness.

19. Section 217 of the Constitution is echoed in section 51(1)(a) of the Public Finance Management Act, 1998 (the "PFMA"), the PPPFA and implemented through the National Treasury Regulations which provide that contracts for goods and services for certain value thresholds have prescribed procedures including quotations or bidding procedures.

20. Failure by the BEC to implement the 90:10 preference system as provided for in the Advertisement is a violation of the Constitution and should not be sanctioned by the court.

21. Section 172 of the Constitution provides that when a court is deciding a constitutional matter within its power, a court must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency and make an order that is just and equitable.

22. The award of the Tender and the consequent Agreement must be declared invalid.

23. Insofar as a just and equitable remedy, the Plaintiff, that is complicit in impropriety and illegality should be precluded from profiting from such activities.

Wherefore the Defendant prays that the Plaintiff's claim be dismissed with costs.

Plea on the merits

Ad Paragraph 1

24. The contents of this paragraph are admitted.

Ad paragraph 2

25. The contents of this paragraph are admitted.

26. In amplification of such admission, it is further stated that the PSJV was established in terms of section 54(2) of the PFMA, whereby the accounting officer of Alexkor SOC Limited ("Alexkor") must in writing inform Treasury of Alexkor's role in the PSJV and submit such notice to the Minister for approval of the transaction, being participation of Alexkor in an arrangement similar to an unincorporated joint venture.

Ad paragraph 3

27. The contents of this paragraph are admitted.

Ad paragraph 4, 4.1 to 4.4

28. The contents of these paragraphs are admitted insofar as they correctly reflect the contents of the unanimous resolution.

29. In amplification of such admission, it is further stated that the appointment of independent contractors by the executive committee of the joint board is subject to section 217 of the Constitution and other relevant legislation which prescribe for a fair, equitable, transparent, competitive, and cost-effective procurement process.

Ad paragraph 5

30. The contents of this paragraph are admitted.

Ad paragraphs 6 to 8

31. The contents of these paragraphs are admitted.

32. It is, however, denied that the Agreement was lawful, valid and/or enforceable for the reasons stated above.

Ad paragraphs 9, 9,1 to 9.6

33. The contents of these paragraphs are admitted insofar as they correctly reflect the contents of the Agreement.

34. It is, however, denied that the Agreement was lawful, valid and/or enforceable for the reasons stated above.

Ad paragraph 10

35. The contents of this paragraph are denied and the Plaintiff is put to proof thereof.

Ad paragraph 11

36. The contents of this paragraph are admitted insofar as they correctly reflect the contents of clause 4.1.

37. For the reasons stated above, the Defendant pleads further that the Agreement was illegal and void ab initio.

Ad paragraph 12 to 15

38. The contents of these paragraphs are admitted insofar as they correctly reflect the contents of the documents and correspondence referred to therein.

39. For the reasons stated above, the Defendant further pleads that there can be no repudiation of an Agreement that is illegal and void ab initio.

40. In the alternative, the Defendant pleads that it is entitled to terminate the Agreement forthwith in terms of clause 19.2. The Plaintiff knowingly conducted the business of trading in and/or processing of rough

diamonds and/or polished diamonds without the relevant permits and/or licences to the prejudice of the Defendant and its reputation and in contravention of the Defendant's policies and procedures.

41. The remaining contents of these paragraphs are denied insofar as they are in conflict with what is stated herein.

Ad Paragraphs 16.1 to 16.3

42. It is admitted that the Defendant cancelled the Agreement.

43. The remaining contents of these paragraphs are denied insofar as they are in conflict with what is stated herein above.

Ad paragraphs 17 to 19

44. The contents of these paragraphs are denied.

45. The amounts claimed by the plaintiff (which are denied) are a result of an Agreement prohibited by statute. An illegal contract does not create obligations and consequently it cannot be enforced.

46. Alternatively, the Agreement is unlawful for failure to comply with section 217 of the Constitution and must be declared invalid in terms of s 172 of the Constitution. Insofar as the remedy, the Defendant pleads that parties who are complicit in impropriety and illegality should be precluded from profiting from such activities.

47. In the alternative, the Defendant pleads that no amounts are owing to the Plaintiff as no value was received as the Plaintiff was selling the Defendants rough diamonds at a price that is ostensibly lower than the market price.

48. Further, alternatively, the Defendant denies the quantum claimed and puts the Plaintiff to the proof thereof.

Ad paragraph 20 to 25

49. The contents of these paragraphs are denied.

50. Annexure “POC4” and “POC5” reflect that “the items” were purchased and installed at the behest of Daniel Nathan Trading (Pty) Ltd and not the Plaintiff. The Plaintiff’s ownership of “the items” is, therefore, denied.

51. In the alternative, section 23 of the Diamonds Act provides that the erection and operation of machinery designed or adopted for the polishing of diamonds is prohibited unless a person is a diamond beneficiator or researcher; an employee acting in the course of his or her employment with that diamond beneficiator or researcher; or is authorised thereto in writing by the Regulator.

52. For the reasons stated above, specifically section 23, the installation of “the items” by the Plaintiff (which is denied) is illegal and unenforceable.

Wherefore the Defendant prays for the Plaintiff’s claim to be dismissed with costs.

[11] In *Media24 (Pty) Ltd v Nhleko*[5]

‘In coming to its conclusion to refuse the application for amendment, the high court paid scant regard to the purpose of pleadings, which is to define the issues between the parties. Because the primary role of pleadings is to ensure that the real dispute between litigants is adjudicated upon, courts are loathe to deny parties the right to amend their pleadings, sometimes right up until judgment is granted. An exception is made when the amendment is mala fides or will result in an injustice which cannot be cured by a costs order. Thus, the power of a court to refuse amendments is confined to considerations of prejudice or injustice to the opponent.’

[5] 2023 JDR 1782 (SCA) para 16

[12] Mr Mabunda, on the one hand, argued that the proposed amendment introduces triable and sustainable defences while Mr Van Niekerk SC objected to the granting of the amendment sought claiming that it would render the pleadings excipiable.

[13] I agree with the approach by King AJ in *R M Van De Ghinste & Co (Pty) Ltd v Van De Ghinste*[6] where it is stated:

'What emerges clearly from these various decisions is that for a Court, faced with an objection to a proposed amendment to a pleading on the ground that the pleading as amended would be excipiable, to confine itself to an enquiry as to whether or not the question of excipiability is arguable - ie whether or not the pleading may be excipiable - is an expedient which will be resorted to only in exceptional circumstances and that ordinarily the Court will decide on the question and if the Court's decision is that the pleading as amended would be excipiable the Court will refuse the application for amendment.'

[14] The plaintiff's contention pertaining to the proposed first special plea are the following: first, that the defendant's reliance on a contravention, of the Diamond's Act, 56 of 1986, (the Diamonds Act) more specifically of s 20A, where it has opted to exclude a phrase in the section where the Diamond Export Exchange Centre (the DEEC) can be utilised by the plaintiff to sell unpolished diamonds; the plaintiff argued that s 20 is not directed at an entity that does not have a licence but precludes certain behaviour on the part of the licensee; the defendant made further reference to the plaintiff's production of a Diamond Dealer's Licence issued in favour of Daniel Nathan Trading CC. Plaintiff maintains that clause 20.3 of the agreement specifically refers to not being in possession of the required licence *"at the date of first tender"* and the defendant does not allege that that was the case. The plaintiff contends that it is inexplicable how the use of this licence would result in an agreement that is void *ab initio.* It was submitted on behalf of the plaintiff that should these amendments be permitted pertaining to the first special plea, it would be

[6] 1980 (1) SA 250 (C) at 258H – 259A

excipiable for failing to sustain a defence alternatively, for being vague and embarrassing.

[15] In as far as the second special plea is concerned, plaintiff challenges the stance by the defendant that prescripts governing an organ of state have not been complied with, maintaining that the defendant is cited as a Joint Venture and not as an organ of state subject to the Public Finance Management Act, 1999 and the Preferential Procurement Policy Framework. Plaintiff denies that the second special plea is not a defence open to the defendant. Plaintiff further denies that defendant has established the type of control as contemplated in *Mittalsteel South Africa Ltd (Formerly Iscor Ltd) v Hlatshwayo*[7] (the control test). Resultantly, plaintiff moves for the dismissal of the application for leave to amend with costs, including those of senior counsel.

[16] The defendant maintains that discovery has not been completed, and contends that there is admissible evidence, which, if placed before Court, will influence the Court's decision as enunciated by Plasket AJA, writing for the majority, in *Picbel Groep*[8] :

'…In *Dettmann v Goldfain and Another* [1975 (3) SA 385 (A) at 400A – B] this court stated that courts are, in some instances, reluctant to 'decide upon exception questions concerning the interpretation of a contract'. Those circumstances are, first, where the entire contract is not before the court; and secondly, where it appears from the contract or the pleadings that 'there may be admissible evidence which, if placed before the Court, could influence the Court's decision as to the meaning of the contract', provided that this possibility is 'something more than a notional or remote one'.'

[17] Notwithstanding that defendant does not deny the conclusion of the agreement between the parties, nevertheless its contention in support of the

[7] 2007 (1) SA 66 (SCA)
[8] Picbel Groep Voorsorgfonds (In Liquidation) v Somerville, and Related Matters 2013 (5) SA 496 (SCA) para 39

first special plea is that the award of the tender under tender number R[...] 0[...] and the conclusion of the contract were unlawful as there was a contravention of the Diamonds Act. Defendant contends further that the plaintiff was not even a holder of the Dealer's Licence and submitted a licence of a company, Daniel Nathan Trading CC, that was not even a party to the tender. It is inconceivable how using this company's licence at the DEEC would assist the plaintiff, so the argument went. In the proposal, plaintiff did not state that it will use the DEEC but relied on the trading house of Daniel Nathan Trading situated at a different address than the DEEC. The licences are also not transferrable.

[18] Regarding the attack by the plaintiff that the defendant is cited as a Joint Venture and not individually and therefore not an organ of state governed by the procurement legislation, the defendant's explanation is that the Joint Venture comprises Alexkor SOC Limited (Alexkor) and the Richtersveld Mining Company (Pty) Ltd (RMC). Alexkor is a public entity listed in Schedule 2 of the Public Finance Management Act, 1998 whereas RMC is a private entity with limited liability. Both make up the defendant established in terms of s 54(2) of the PFMA read with the Deed of Settlement, and the Unanimous Resolution of the Interim Joint Board. Of significance, and relying on *Mittalsteel,* is that Alexkor holds a 51% controlling interest in the defendant, it has contributed financially up to R200 million for the joint operations of the defendant, and the chairperson of the joint board is appointed by the Minister of Public Enterprises. The joint Board must therefore file quarterly reports in line with the PFMA.

[19] The plaintiff seems to challenge the defendant's reliance on its assertion that it is an organ of state and must comply with the procurement legislation claiming that the control test does not apply. But the SCA in *Mittalsteel*[9] remarked:

[9] Ibid para 19 and 22

Minister of Education, Western Cape, and Others v Governing Body, Mikro Primary School, and Another gave this Court the opportunity of pointing out that 'any institution exercising a public power or performing a public function in terms of any legislation is an organ of State'. That is, with respect, correct and was as far as it was necessary for the Court to go. The control test was not needed. The school governing body was obviously performing a public function and thus was an organ of State. The control test is useful in a situation when it is necessary to determine whether functions, which by their nature might as well be private functions, are performed under the control of the State and are thereby turned into public functions instead. This converts a body like a trading entity, normally a private body, into a public body for the time and to the extent that it carries out public function

I mention these approaches not because the control test is inappropriate in the present case but to emphasise that the test may, under given circumstances, not be the most suitable one. In an era in which privatisation of public services and utilities has become commonplace, bodies may perform what is traditionally a government function without being subject to control by any of the spheres of government and may therefore, despite their independence from control, properly be classified as public bodies.'

[20] It is prudent to bear in mind that exceptions are not to be dealt with in an over-technical manner. See *Telematrix (Pty) Ltd t/a Matrix Vehicle Tracking v Advertising Standards Authority SA*[10], and as such, a court looks benevolently instead of over-critically at a pleading. See also *First National Bank of Southern Africa Ltd v Perry N.O.*[11]

I am therefore unable to agree with the submission that the pleading will be excipiable.

[21] Regard being had to the contentions and submissions by counsel on either side, and mindful of the purpose of the pleadings, which is to define the issues

[10] 2006 (1) SA 461 (SCA) at 465 H
[11] 2001 (3) SA 960 (SCA) at 972 I

between the parties, I have no reason to deny the defendant the right to amend its pleadings at this stage. The Court has the power to grant the amendment provided no prejudice would be occasioned thereby. One of the cornerstones of justice is the determination to arrive at the truth. The amendment must be allowed.

[22] There remains the question of costs. It is trite that a party seeking an indulgence should pay the costs of the application, such costs to include the costs of opposition where it was reasonable and not vexatious or frivolous. The applicant argued that the opposition by the plaintiff for the amendment was unmeritorious and vexatious if regard is had to the unlawfulness of the tender award to the plaintiff. It is for this reason that the plaintiff must be ordered to pay the costs of opposition. The plaintiff urged the court to dismiss the application for leave to amend with costs, including those of senior counsel.

[23] Van Winsen AJ in *Myers v Abramson*[12] remarked as follows:

‘It does not appeal to me as being fair and reasonable that the opponent to applicant for an indulgence should be put in a position that he opposes the granting of the indulgence at his peril in the sense that if the amendment is granted he cannot recover his costs of opposition or may even have to pay such costs as are occasioned by his opposition. It seems to me that the applicant for the indulgence should pay all such costs as can reasonably be said to be wasted because of the application, these costs to include the costs of such opposition as is in the circumstances reasonable, and not vexatious or frivolous.’

I am therefore not persuaded that the opposition was unreasonable, frivolous or vexatious to attract a cost order against the plaintiff.

[24] In the result the following order is made:

[12] 1951 (3) SA 438 (C) at 455

1. The applicant/defendant is granted leave to amend its pleadings within 14 days of this order.
2. Applicant/defendant is to pay the costs of the application as well as the costs of opposition.

MC MAMOSEBO

ACTING DEPUTY JUDGE PRESIDENT

NORTHERN CAPE DIVISION

For applicant/ defendant	Adv. TV Mabuda
Instructed by:	Messina Incorporated
	c/o Engelsman Magabane Inc
For respondent/plaintiff:	Adv. JG Van Niekerk SC
Instructed by:	Hector North Inc
	c/o Van De Wall Inc