

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 087460/2023

(1)	REPORTABLE: NO/ YES
(2)	OF INTEREST TO OTHER JUDGES: NO/ YES
(3)	REVISED: NO /YES
 SIGNATURE	
10 OCTOBER 2025 DATE	

In the matter between:

LONEROCK SPARTAN GROUP JV

Applicant

and

**THE MINISTER OF THE NATIONAL DEPARTMENT
OF PUBLIC WORKS AND INFRASTRUCTURE**

First Respondent

ZIMBINI HILL NO

Second Respondent

LUFUNO NEVONDWE NO

Third Respondent

REHANA PARKER NO

Fourth Respondent

RAYMOND NKANDO NO

Fifth Respondent

KARABO SIYILA NO

Sixth Respondent

LERATO KUMALO NO

Seventh Respondent

NTHABISENG MKHWANAZI NO

Eighth Respondent

MPILO MBAMBISA NO

Ninth Respondent

KRISHEN SUKDEV NO

Tenth Respondent

***Delivered:** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 10 OCTOBER 2025.*

JUDGMENT

MAKHOBHA, J

- [1] The Applicant in this matter is Lonerock Construction (Pty) Ltd. The First Respondent is the National Department of Public Works and Infrastructure. The Second to Tenth Respondents are erstwhile members of board of trustees of the independent development trust (herein referred to as "IDT").
- [2] This is an application for payment of monies allegedly due to the Applicant under the construction contract between the parties, which the first Respondent refused to pay.
- [3] The Applicant seeks the following relief:
- 3.1. Payment in the amount of R2 799 728.32 (excluding VAT), being the sum total of:
- (a) R2 268 357.87 (excluding VAT) for the time-related preliminaries and generals (P&G's) for 103 days, being the number of days from the date of suspension to the upliftment of the suspension of works; and

- (b) R531 370.45 (excluding VAT), which are proven costs for the standing time for 51 days.

3.2. Costs of the application

- [4] The First Respondent (herein referred to as the "Department") seeks an order declaring Lonerock, the Applicant (herein referred to as "Lonerock") liable to pay to the Department an amount of R6 441 500.00 in respect of penalties for failure to complete the works, which covers the period from 03 February 2023 until 30 November 202....
- [5] The Applicants contended that, the Department has no legal standing to oppose this application, as that right singularly befalls the IDT (Independent Development Trust). The IDT has not filed any affidavit in support of the Department.
- [6] It is contended further by the Applicant, that the Department does not alleged, nor claims, that it is entitled to "step in the shoes" of the IDT as the designated "implementing agent", or that it terminated the IDT's mandate to act as "implementing agent", and that it now acts in such capacity.
- [7] The Department raised the non-compliance with Proceedings Against Certain Organ of State Act 40 of 2002.
- [8] The Department raised the point in limine through a supplementary affidavit that was filed and served on the Applicant. Counsel for the Applicant did not deal with this issue in his heads of argument.
- [9] It is not in dispute that the Applicant has failed to serve a notice in terms of Section 3 of the Institution of Legal Proceedings Against Certain Organs of the State Act 40 of 2002.
- [10] In my view IDT was indeed acting on behalf of the Department and it was the implementing agent. The Department was in terms of the offer of appointment identified as the employer.
- [11] I therefore find that the Applicant did not prove that it delivered the Section 3 notice. Section 3 of Act 40 of 2002 makes it a prerequisite to commencing legal proceedings with a notice. Failure to comply must, of necessity, preclude a Plaintiff from enforcing its claim.
- [12] The application by the Applicant is dismissed with costs.

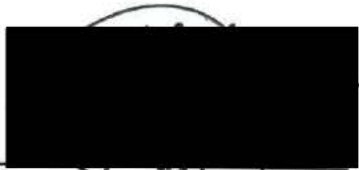
[13] On the counter claim, it is my view that the First Respondent is not entitled to claim against the Applicant because it has no contractual basis for any penalty claim. Further the Department has conceded that the Applicant is entitled to an extension of time.

[14] I make the following order:

14.1. The Applicant's claim is dismissed with costs for failure to comply with Section 2(a) of the Institution of Legal Proceedings Against Certain Organs of State Act 40 of 2002

14.2. The ruling of Endecon Ubuntu (Pty) Ltd Engineering on contractor's claim for the extension of time and cost taken on 23 April 2023 is declared irregular, unlawful and invalid, and is set aside.

14.3. The First Respondent's counter claim is dismissed with costs.



D. MAKHOBA J
JUDGE OF THE HIGH COURT
PRETORIA

Date of Hearing: 25 August 2025

Judgment delivered: 10 October 2025

Appearances

For Applicant: Adv C. Acker

For Respondent: Adv Gift Mashaba SC