IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 2025/027504

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

23 January 2026 [redacted]
DATE

In the matter between:

HEAD OF DEPARTMENT OF THE GAUTENG DEPARTMENT OF ROADS AND TRANSPORT	First Applicant
MEMBER OF THE EXECUTIVE COUNCIL OF GAUTENG	Second Applicant

v

PUTCO (PTY) LTD	First Respondent
JR CHOEU EXPRESS CHLOORKOP CC	Second Respondent
TRUSTEES FOR THE TIME BEING OF THE IPELEGENG TRANSPORT TRUST	Third Respondent
GAUTENG COACHES (PTY) LTD	Fourth Respondent

NORTH WEST STAR SOC LTD	Fifth Respondent
TRUSTEES FOR THE TIME BEING OF THE ASIBEMUNYE TRANSPORT TRUST	Sixth Respondent
TRUSTEES FOR THE TIME BEING OF THE LEKOA TRANSPORT TRUST	Seventh Respondent
ATTERIDGEVILLE BUS SERVICES SOC LTD	Eighth Respondent
TSHWANE RAPID TRANSIT (PTY) LTD	Ninth Respondent
JOHANNESBURG METROPOLITAN BUS SERVICES SOC LTD	Tenth Respondent
MOOLLAS TRANSPORT SERVICES CC	Eleventh Respondent
AMOGELANG TRANSPORT SERVICES	Twelfth Respondent
ARBITRATION FOUNDATION OF SOUTH AFRICA	Thirteenth Respondent
LWANDILE SISILANA N.O.	Fourteenth Respondent
MEC FOR GAUTENG TREASURY & ECONOMIC DEVELOPMENT	Fifteenth Respondent

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email and by upload to CaseLines. The date and time for hand down is deemed to be 10h00 on 23 January 2026

JUDGMENT

<u>S VAN NIEUWENHUIZEN AJ</u>

[1] This matter came to me as a special opposed motion on 16 October 2025. The matter concerns a self-review application by the applicants in which they claim as Part A of their Notice of Motion the following relief:

"1. The ordinary forms and service provided for in the Uniform Rules of the High Court are dispensed with and Part A of this application is heard on an urgent basis in terms of the provisions of Uniform Rule 6(12) (a).

2. Pending the final determination of Part B of this application determination of any appeals):

2.1 The 1st to 12th respondents are interdicted and restrained to render the subsidised bus services in terms of the negotiated June 2023 contracts above the budget and subsidy amount/s allocated in terms of the Public Transport Operating Grant by the National Department of Transport ("PTOG");

2.2 The Department of Roads and Transport, Gauteng shall only be liable to pay the first to twelfth respondents subsidy payments arising from services rendered in terms of the negotiated June 2023 contracts from the subsidy amounts as per the PTOG allocation.

2.3 The dispute referred for arbitration by the 1st respondent before 13th and 14th respondents are stayed including any other disputes that may be referred by any of the respondents for dispute resolutions in terms of clause 41 of the negotiated 2023 contracts."

[2] The aforesaid relief is opposed by all the respondents except for the following: the tenth respondent filed a notice of intention to abide by the court's findings. The 7th and 9th respondents filed answering affidavits which were replied to by the applicants.

[3] The matter was referred for case management and as a consequence I was called upon to hear relief pursuant to two Rule 30A notices aimed at obtaining a full record of documents from the applicants for purposes of the self-review application.

[4] The applicants to the rule 30A applications refer to the applicants in the main matter collectively as the Department and I will follow the same nomenclature.

The Department's approach

[5] To understand the Department's dilemma fully, it is necessary to briefly set out its approach to the self-review application. The deponent to the founding affidavit does so on legal advice and in his capacity as Head of Department and consequently also wears the cap of "accounting officer" as defined in section 1 read with section 36 of the Public Finance Management Act 1 of 199 ("the PFMA"). He was only appointed to the post on 1 February 2023 and as of necessity cannot speak to events occurring prior to his appointment. For such historic events he relies on documents under his control.

[6] He states that:

"*I have in my possession, and under my control, the documents which are relevant for purposes of the adjudication of this application. I confirm that, prior to me signing this founding affidavit, I again acquainted myself fully and comprehensively with the contents of the aforementioned documents.*"

[7] Where he relies on information from other persons, he refers to their confirmatory affidavits and as for the rest he relies on legal advice.

[8] On the aforesaid basis he is of the view that the impugned decisions he refers to in Part "A" of the relief should be reviewed and be set aside. As already stated, this involves urgent and drastic relief to interfere with the so-called PTOG payments and a pending arbitration in this regard.

[9] In Part "B" of the relief the Department seeks to:

"*… review and set aside the Contracting Authority's ("CA") interchangeably referred to herein as the department's decisions to enter into 15 (fifteen) negotiated contracts in terms of section 41(1)(b) of the National Land Transport Act, 5 of 2009 ("NLTA") with the first to twelfth respondents ("the Respondents") on the basis that the contracts are unconstitutional, unlawful and invalid as they were concluded in contravention of the law and are irrational.*"

[10] Whichever way one views it the relief sought is far-reaching and drastic. As will become clear this is more so since the PTOG payments and ensuing contracts were not entered into willy nilly and on the face of it after thorough consultation and negotiation,

[11] The aforesaid was not preceded by a competitive bidding process but under authority of a deviation from normal procurement processes based on legal advice. This is of course no novelty, but what is allegedly problematic is that the negotiation process resulted in the budget availability for subsidies payable being materially insufficient to cover the agreed and contracted services.in contravention of section 38(2) of the PFMA. The seriousness hereof to all concerned cannot be overestimated.

[12] This follows from the following:

12.1 The matter involves fundamental principles of legality stemming from the Constitution and associated legislation;

12.2 The Department is enjoined by the Constitution and the rule of law to promote efficient economic effective use of resources and bears a high standard of accountability in this regard;

12.3 The Department must foster transparency and where it has taken decisions inconsistent with the Constitution and the law, it is obliged to approach the Court for self-review. In its own words it states that same is required to foster accountability and is in the interest of the public. From my perspective because this country has a Constitution every organ of state must abide by same and lip-service or reliance on legislative authorities' views are not always reflective of true governance under the rule of law;

12.4 The binding contracts if not reviewed and set aside will result in Gauteng Provincial Treasury having to fund a R7 billion budget shortfall from taxpayer money which is allegedly neither available nor affordable;

12.5 The Department attempted to regularise the bus contracts and adopt an open market approach to issue new contracts to the market and allow for market participation;

12.6 For this purpose, it published tender number DRT35/11/2019 on 15 October 2021, so that service providers could be obtained to provide subsidised bus services in terms of section 42 of the National Land Transport, Act 5 of 2009 ("the NLTA");

12.7 However, this process was interdicted by way of court process, which resulted in the Department being unable to conclude the tender process. I should add that this is only half the version put forward by the Department and that the final failure of this tender involved a withdrawal of support of the tender process by the National Government as well and that the 1st Respondent ("Putco") failed in a counter – application the detail of which is on the face of it irrelevant for present purposes;

12.8 The Department relied on s41(1)(b) of the NLTA after this tender process failed;

12.9 In the financial year 2020/21 four conditional grants were transferred to provinces and municipalities by the National Department of Transport, one of which is the PTOG (Public Transport Operations Grant);

12.10 The capital and running expenses incurred by the contracting parties are massive and the state's credibility in adhering to procurement contracts ostensibly legally entered, is at stake;

12.11 The whole issue of the PTOG payments has a long and contentious background;

12.12 In 2023 a "Grow Gauteng Gauteng Together" plan was apparently hatched by undisclosed persons;

12.13 This plan apparently reflects the government's national and provincial objectives of the bus transportation in the public transport industry and its impact on the Gauteng Provincial economy;

12.14 Historically, there have been 32 subsidised bus contracts operated by 13 bus operators, funded from the PTOG, under the Division of Revenue Act (DORA);

12.15 These contracts were operated in 3 Gauteng Metropolitans (City of Johannesburg, City of Tshwane, and City of Ekurhuleni) as well as at the Sedibeng District Municipality. Since inception the contracts were extended more than 76 times and were found to be irregular by the Auditor-General of South Africa ("the AGSA") as most, if not all subsidised bus contracts have been extended on a short-term basis since 2003;

12.16 In addition, the AGSA concluded that the contracts were irregular on the basis that he continuous extension of the bus contracts violated Supply Chain Management provisions as these extensions have exceeded the 15% threshold of the value of the original contracts. Apparently, findings, relating to non-compliance with section 41 and 42 of the NLTA were also made in as much as there was a failure to introduce new contracts to regulate bus related public transport operations;

12.17 An attempt to address the irregular nature of the aforesaid contractual arrangements (as well as the poor performance against the contracts) followed by negotiation with bus operators (guided by Section 41(1)(b) of the NLTA);

12.18 The need to have "sought the assistance" of the Gautrain Management Agency ("the GMA"). The Department signed a

Service Level Agreement with the GMA to negotiate the terms of the contracts. The relevant agreement is annex “FA16”;

12.19 The Preamble to this agreement reads *inter alia* as follows:

“*WHEREAS Section 11 of the National Land Transport Act (No 5 of 2009) ("NLTA") empowers the Province of Gauteng, acting through its Department of Roads and Transport, to continue performing the function of the contracting authority for certain subsided service contracts, Interim contracts, current tendered contracts and negotiated contracts affecting Gauteng and which were concluded prior to the date of commencement of the NLTA;*

AND WHEREAS the MEC has instructed the Department to, In terms of Section 41 of the NLTA, enter into negotiated contracts with operators providing subsidised bus services within and to Gauteng before 31 March 2023:

AND WHEREAS section 4(dA) of the GMA Act allows the GMA to “in consultation with the MEC, assist or act on behalf of any organ of state, when so requested, in realising its integrated public transport and rail related objectives and in protecting its interests and managing the assets, finance and financial securities of such organ of state";

AND WHEREAS the MEC has, In terms of section 4(dA) of the GMA Act, agreed that the GMA may assist the Department In the programme and project management of the entering into such negotiated contracts; ……”

12.20 Clause 1.31 specifically states that the Preamble forms part of the Agreement;

12.21 The Department expected the GMA to support the Department providing it with program management support, financial modelling, and commercial expertise in the negotiation of contracts and financial modelling. I accept implicitly at this stage of the proceedings that the GMA possessed the necessary skills to provide such services;

12.22 Given that the previous negotiated contracts were ending in June 2024 decisions were to be made as to whether contracts considered to be irregular by the AGSA are to be extended or what other steps could be taken to ensure an uninterrupted service. For these purposes legal opinion was sought and on the strength of same section 41(1)(b) of the NTLA was relied on together with the delegation to the GMA;

12.23 The GMA was required to negotiate with the bus operators to ensure that the negotiated terms of the contracts are lawful and would be covered by the available budget which was already known to the GMA; (the GMA's state of knowledge is clearly of some importance);

12.24 The negotiation team consisted of members from various sections headed by the GMA as per the SLA. The negotiations were predicated on legal advice which firmly recommended that section 41 of NLTA could be followed and that there were then, justifiable reasons for the Department to deviate from the normal procurement processes;

12.25 Subsequent to the negotiations of the contracts, it was noted that while section 41 of the NLTA authorises the Department to conclude the negotiated contracts, it was not consistent with the PFMA, Treasury Regulations and section 217 of the Constitution in so far as the procurement of services requirements relating to transparency, fairness, competitiveness and cost- effectiveness. To this end, the negotiation team having considered the legal advice obtained, resolved to prepare a request for a deviation from normal procurement processes;

12.26 This request for a deviation, in terms of National Treasury PFMA SCM Instruction Note 3 of 2021/2022 is attached to the founding affidavit as annex FA19. This 20-page document provides a valuable oversight explaining the history and predicament of the Department;

12.27 The Department was of the view that an appropriate case for deviation was made out but for the fact that:

> *"…. it was imperative that the negotiated contracts should be intra vires the deviation in all the material respect. Notably, clause 5.1 of the deviation memorandum dealing with costs implications, emphatically stated that the budget allocation including the escalations is subject to the amount that the National Department of Transport will make available to the department on an annual basis.*";

12.28 It is alleged that the negotiated contracts were negotiated inconsistent with clause 5.1 of the deviation memorandum in that the contracts exceeded the budget as allocated by the

National Department of Transport by creating a material shortfall of R7 billion over the seven-year period. The legal reasons herefore are at present irrelevant given that I am only concerned with the extent of documentation disclosed for the self-review application;

12.29 It is nevertheless clear that at the time the Department did not have the budget for the contract value it had agreed upon nor did the national government budget for same in advance. Based on a subsidy of 63% of the total cost the subsidised bus contracts for public transport operations required an average of R3,4 billion per annum and an approximate R29 billion over a seven-year period;

12.30 The explanations offered in paragraphs 63 and 64 of the founding affidavit are woefully inadequate as to how the service contracts came to be concluded (assuming the contents set above to be correct) and understandably leave the Rule 30A applicants in the air;

12.31 All the other explanations and serious allegations against Putco may well be relevant when the Department's application for relief is heard but same cannot be achieved until such time as the Department has placed all relevant documents before court. National Treasury as the source of the R22bn approximate budget might also have to be heard on the topic. I assume for the moment that its budget has a rational basis and any court hearing this matter might well be interested in the rationale for same;

12.32 Be that as it may I now turn to the applications in terms of Rule 30A to establish whether the information sought is required.

[13] Any application for self-review will require the Department to explain in full how it came to find itself in this position and its duty of disclosure to the court is of the highest possible nature so that court is ultimately placed in the best possible position to assess whether the application of self-review has merit or should be declined (or whether there is scope for just and equitable relief under the Constitution if required). That such disclosure and provision of reasons could never rest on the mere say so of the officials of the state organ alone is a matter of inevitability. The most detailed and scrupulous examination of this state organ's conduct will have to be conducted to establish if it is deserving of condonation of its alleged breach of the rule of law. It will of necessity require full disclosure by the Department and is agent, the GMA.

[14] I do not dwell on the various contracts awarded to the respondents. The need to disclose same is as obvious as is the need to explain how the award of the contracts came about. Fortunately, it is not my task to decide whether what appears to be a serious breach of the rule of law was indeed such. My task is to ensure that it places sufficient information before the court to enable the parties who seek relief in

terms of rule 30A can meaningfully engage with the Department and that the documentation disclosed traverses the relevant areas of enquiry encompassing a self-review application fully.

[15] Before I direct my attention to the specific complaints of the rule 30A applicants it is necessary to consider the background to the contracts and establish the level of disclosure required in matters such as these and thereafter to establish if the Department fell short of the legitimate requirements of disclosure necessary for a self-review or not in the context of the complaints raised by the rule 30A applicants.

The Rule 30A applications

[16] Prior to these applications being launched and on 5 March 2025 the Department lodged a "Rule 53 Record" of some 156 pages which seems to consist of the documents it thought it should provide for the self-review. Its use of rule 53 "seems" to be voluntary and given that a record of some nature would be required I see no difficulty with it adopting such methodology. The use of rule 53 although seemingly voluntary as will be touched upon is in my view rational and probably obligatory.

[17] The 4th respondent, Gauteng Coaches (Pty) Ltd ("Coaches") lodged its rule 30A notice on 7 March 2025 on the basis that the Department has failed to comply with rule 53 in that:

they have failed to lodge with the Registrar of the above Honourable Court, the full and complete record of the decisions which resulted in the impugned decisions referred to in paragraphs 2.1 and 2.2 of Part A of the Notice of Motion and paragraphs 1 and 2 of Part B of the Notice of Motion."

[18] This notice also stated that:

"*…….unless the First and Second Applicants remedy their aforesaid non-compliance with the Uniform Rules of Court, the Fourth Respondent intends, after the lapse of two (2) calendar days from the date of service of this Notice, to apply to the above Honourable Court for an order, among other things, (i) condonation for non-compliance with the time periods of rule 30A given the intended hearing date of the application, (ii) compelling the First and Second Respondents to comply with the provisions of Rule 53 of the Uniform Rules of Court and (iii) holding in abeyance any application for relief under Part A of the Notice of Motion until such time as the full and complete record of the impugned decisions has been delivered and the fourth respondent has been afforded an adequate opportunity to file its answering affidavit.*"

[19] Coaches followed same up with a conditional application to compel, fearing enrolment and seeking condonation to the extent its own rule 30A notice was out of time, and seeking the full record of impugned decisions which shall at least include the following:

"*3.1 The Intergovernmental Authorisation Agreements and other mandates obtained from the City of Tshwane, City of Johannesburg, City of Ekurhuleni, and the Sedibeng District Municipality.*

3.2. The minutes of the meeting held with the municipalities regarding the conclusion of the negotiated contracts.

3.3. The Gauteng Department of Roads and Transport responses to bus operators, 5 October 2022.

3.4. The Compliance Report submitted to the Head of Department.

3.5. The Negotiation Framework prepared by the Technical Team.

3.6. The inputs received from operators in response to the draft contract.

3.7. The opinion attached to the Deviation Memo, dated 30 June 2023.

3.8 All documents reflecting the Department's negotiations with individual operators.

3.9. The documents that record how the Department determined the rates and kilometres per negotiated contract and overall.

3.10. The documents that record the basis on which the Department issued Award Letters to the bus operators - containing the kilometres and rates per operator - before the Deviation Memo was approved and signed."

[20] Coaches was provided with:

"1. Award Letters;

2. Compliance Report;

3. Determination Rates;

4. Deviation Memo;

5 Framework;

6. IGAA:

7 Inputs from Operators;

8. Minutes of Meetings with Municipalities;

9 Response to the Bus Operators"

[21] Coaches during argument made it clear that they are only proceeding with the relief sought in paragraph 3.2, 3.6, 3.8, and 3.9.

[22] It is immediately clear that the Rule 53 record is inadequate in at least the respects listed in the previous paragraph.

[23] I have been provided with numerous decisions emphasizing the importance of a rule 53 record in the context of PAJA and self-reviews.

[24] Coaches argued that the rule 53 record should include every scrap of paper.[1]

[25] It submitted that the Department seeks what can only be described as

"*unusual interim relief. It asks the Court to interdict the bus operators from rendering services "above the budget and subsidy amount(s) allocated in terms of the [PTOG]". In effect, the Department wants it both ways: it seeks to preserve the operation of the negotiated contracts to avoid any disruption in bus services, while simultaneously seeking to amend them unilaterally by significantly reducing the remuneration payable, to align with its assessment of the applicable budget limits*"

[26] Another valid complaint is that:

"*It also seeks declaratory relief that its liability to pay under the contracts is limited to the subsidy amounts. This relief is inherently defective. The PTOG is a global amount, and the Department has not explained how*

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1 See Mamadi and another v Premier of Limpopo Province and others 2023 JDR 2828 (CC) paragraph 36.

this would be divided across twelve individual contracts, mainly since each contract contains different rates and route allocations. There may also be operational differences. More fundamentally, the Department seeks to compel operators to provide the same services, but at a lesser, unilaterally imposed rate. And, at these lesser undisclosed rates, a bus operator cannot assess whether it can still operate without making a loss.."

[27] Coaches also submits quite rightly in my view that:

"Even if the Department succeeds in establishing a case for interim relief, and even if the Honourable Court is prepared to overlook the material deficiencies in the formulation of the relief sought in the notice of motion, it would still be necessary to determine how the globular PTOG allocation should be divided among the fifteen contracts. That exercise cannot be done in the abstract. It would require a proper basis for understanding why certain routes were assigned higher rates than others, something that is only possible with access to the full record."

[28] It also adds that the interim relief for present purposes should be regarded as final relief. It is trite that relief in the format sought by the Department as interim relief is in its effect final.[2]

[29] It also emphasises that Mr Mdadane is the central party signing service contracts but demonstrates no rule 53 record which shed light on why the contracts were concluded on the terms that they were and importantly, very little that explains the Department's process prior to the conclusion of the contracts.

[30] Over and above the aforesaid critical information is missing. Gauteng Coaches, and the other operators, cannot be expected to respond to

2 Cf Radio Islam v Chairperson, Council of the Independent Broadcasting Authority, and Another1999 (3) SA 897 (W) at pp 910-912.

the Department's review grounds meaningfully, nor to engage with the question of just and equitable relief, in the absence of a complete record. This it argues is more serious given the Department's unexplained delay in launching the application: if it knew or ought to have known of the unlawfulness in June 2023, why did it wait more than a year and a half to take action? The submission was that the Court is now being asked to grant extraordinary relief without being told what went wrong, and, to the extent possible, is being denied crucial evidence that would allow a just and equitable remedy.

[31] It also alludes to a pattern of partial and half-hearted disclosure and the fact that Mr Mdadane nowhere clearly and unequivocally state states that all documents in his possession and under his control have been disclosed.

[32] There are clear and troubling gaps. The current record provides no explanation of the rationale for the impugned decisions, no internal assessments, no financial analysis, no determination of the rates offered, and no indication of how the Department concluded that the contracts fell within budget. Coaches submits that the absence of this material undermines both the fairness of the proceedings and the credibility of the Department's case. How a court has to adjudicate a self-review involving the service providers is beyond comprehension

[33] Letters written to the Department to resolve the problematic nature of the record also failed to assist.

[34] The First, Third and Sixth respondents (for the sake of simplicity referred to as Putco collectively) lodged their rule 30A notice on 19 March 2025 on the basis that the department has failed to comply with rule 53 in similar terms to that of Coaches. Putco elaborated on the Department's failures by alleging that the following should have been included in the rule 53 record of decision although not necessarily limited to such documents:

"1. All letters, emails, and other written correspondence exchanged between the applicants and each of the respondents during the negotiation process, resulting in the conclusion of the Negotiated Contracts in June 2023, including:

1.1 all documents reflecting the Department's negotiations with individual operators;

1.2. the documents that record how the Department determined the rates and kilometres per negotiated contract and overall; and

1.3 the documents that record the basis on which the Department issued Award Letters to the bus operators - containing the kilometres and rates per operator - before the Deviation Memorandum, dated 30 June 2023, was approved and signed:"

[35] The Department responded as follows hereto:

"*1.1 The document requested in paragraph 1.1 constitutes an impermissible use of the provisions of Rule 53 in that the said document is not connected to nor was it a factor in the decision taken by the First Applicant to conclude negotiated contracts in excess of the available budget. Furthermore, the request is too broad and general, and the* *inclusion thereof in the Rule 53 record will unnecessarily burden this application.*

1.2 The documents relating to paragraphs 1.2 and 1.3 are contained in the supplementary Rule 53 record and the reply to Rule 35(12)."

[36] Since Putco no longer persists with the relief pertaining to "1.1" no further comment is required. It does persist with the relief in "1.2." The response to "1.2" is clearly inadequate. A proper response to a document required under Rule 53 should be properly referenced and not described in the way the Department did. **Putco** is enforcing the relief sought in terms of rule 30A and not under rule 35(12). The latter documents provided by and purporting to be the rule 53 record in relation to the impugned decisions and contracts forming the subject of the review application on 5 March 2025. These did not correspond to the relief sought in "1.2" which was only sought on 19 March 2025. The response to rule 35(12) also did not respond hereto given that what was sought under this rule were documents referred to in the Department's founding affidavit and not disclosed. [3]

[37] I refer to Putco's rule 30A notice insofar as it persisted with same in argument during the hearing of the matter.

[38] *"2. All letters, emails, and other written correspondence exchanged between the applicants and the Provincial Treasury relevant to the Negotiated Contracts concluded in June 2023 regarding:*

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3 See REPLY TO FIRST, THIRD AND SIXTH RESPONDENTS' NOTICE IN TERMS OF RULE 30A read with Heyns Founding Affidavit par 8.

2.1. the allocation and utilisation of the Public Transport Operations Grant (the PTOG) in the applicants' assessment of the supplementary budget available for subsidised public transport;

2.2. the amounts of the PTOG that were not used during each year and therefore refunded to the Provincial Treasury;

…………

3. All letters, emails, and other written correspondence, as well as agendas, minutes and other written records of meetings, in the applicants' possession regarding:

3.1. the allocation of the PTOG between all the respondents;

…………...

3.3. the budget available for subsidised public transport; and

3.4. the applicants' affordability assessment.

…………

7. The Department's response to annexure "FA22", in terms whereof the Auditor- General requested a response to the findings made against the Department in the Auditor-General's report for 2023/2024.

8. Assurances relating to the funding and available budget provided by the applicants and the Gauteng Management Agency to any of the respondents during the negotiation process.

……….

10. All discussions, decisions and resolutions taken by the applicants relating to the conclusion of the Negotiated Contracts in June 2023 and the negotiated rates and mileage".

[39] The relief sought in paragraph 2 read with 2.1 and 2.2 of the said notice can hardly be contentious. This is even more so given its view that the

PTOG is not the correct starting point.[4] Heyns, the deponent to Putco's affidavits, pointed out on behalf of Putco that the amount of the PTOG funding is only intended to supplement the amounts that the province pays to the bus operators. On its own, it is not sufficient to run an effective subsidised public bus service.

[40] It is for that reason that Putco initiated litigation in October 2024 and demonstrated that if the PTOG alone is paid it would result in irreparable harm to Putco, its employees and passengers. There is no point in rehashing the content of par 38 of Heyns affidavit here. The fact of the matter is that under the service contract more than the PTOG is payable (by implication the Department should also contribute to the subsidy) which it seems determined not to do. This point is further demonstrated by Putco in par 35-36.

[41] Paragraph 3 of the so-called van der Schyff -judgment makes it perfectly clear that the transport provided by Putco is subsidised by the Department. The PTOG is the portion subsidised by National government. The subsidised portion of bus fee from both National and Provincial sources permits lower bus fees for Putco's passengers. Once this is understood the relief sought in par 3 read with 3.1, 3.3 and 3.4 of the same notice follows logically.

[4] See par 37.

[42] The same logic dictates that the relief in par 7, 8 and 10 in the rule 30A notice should be granted. This encompasses documentation which must of necessity exist and casts light on the record of decision and will ensure what is termed equality of arms as between the Department and Putco. Should this documentation not be forthcoming the Department and GMA will be enabled to conceal its real role in the decision -making process.

[43] As matters stand it hides behind the GMA (its agent) and should account for its agent's and its own conduct in entering into the service contracts. Neither the Department nor GMA on its behalf could not have known the limitations to the PTOG with a concomitant duty to subsidise the contracts resting on the Department.

[44] In addition, nothing in the NLTA suggests that a province will not also be expected to subsidise a portion of subsidised service contracts. This notion is ultimately accepted by the Department as pointed out by Heyns on behalf of Putco.

[45] Putco's evidence clearly suggests that an affordability analysis underpinned the rates per kilometer, and the number of scheduled kilometers Putco was to operate, as well as what the Department could afford within its available budget.

[46] As stated, the Department claimed that no rule 53 record is required in a self-review application, notwithstanding the fact that it correctly

accepted and undertook to provide a rule 53 record not only for part B but also part A of the relief it seeks.[5]

[47] The Department also seems not to differentiate between relevance under rule 35(12) as opposed to rule 53. Putco quite correctly relies on the fact that relevance is assessed in relation to the decisions sought to be reviewed and is not limited to the case pleaded in the founding affidavit.

[48] The correspondence referred to in par 42 and further of Putco's affidavit also demonstrates the dire need for the rule 53 record to be amplified by the documents requested in Putco's rule 30A notice.

[49] The Department also raised the novel complaint that the record is becoming too voluminous and burdening the court record. Heyns deals with these notions effectively in par 50.1 and 50.2 of his affidavit. A less meritorious defence is hardly imaginable once the relevance of a rule 53 record is borne in mind and adhered to, not to mention the need to assist the Court as to how the failure in the rule of law came about in the utmost transparent way.

[50] It is important to note that the Department's original rule 53 record comprised less than 300 pages. Since the Rule 30A applications were

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5 See par 30, its sub numbers and par 31.; In any event the content of par 27 and 28 of Putco's affidavit demonstrates why a different approach by the Department would be wrong.

launched various other documents were made available. This demonstrates that the rule 30A notices were necessary. After complaints by the applicants and other parties a further 6000 pages were made available. This reflects poorly on the Department. After the applicants' delivery of their rule 30A notice a further 186 pages became available. It also demonstrates the need for a suitable costs order.

[51] Putco persists in an assertion that the documents were supplied haphazardly despite the Department's denials..

[52] Putco also raises in its replying affidavit the case management meeting with the DJP and the Department's failures to adhere strictly to the prescribed timelines. Its answering affidavit was filed late (although preceded by an unsigned version which was one day late). In addition, various unsigned documents were uploaded on 2 July 2025 on Caselines described as "Additional Documents" An updated Index was only served on 2 July 2025. The documents disclosed under rule 35(12) and rule 35(3) were at the date of filing of Putco's replying affidavit still not properly paginated despite undertakings to the contrary provided at the case management meeting.

[53] Putco contends prejudice in that all the aforesaid would have been done before at the time of filing of the Department's answering affidavit and the timeframe for the filing of Putco's replying affidavit was calculated on this basis. The documents provided electronically as a series of electronic folders were organised in a confusing manner and

had under various folders a series of nested folders. I do not intend to list all the complaints. It is nevertheless clear that the Department did not comply with the case management

[54] Putco could not discern whether any of its requests were complied with or not. It also submitted that the Department has not established a proper factual dispute. I agree with this statement. Putco also denies the claim that the documents it sought were provided as stated by the Department.

The need for the Rule 30A Notices and the Application pursuant to the Case Management Meeting with the DJP

[55] The applications to compel were obviously necessary. The original application for self-review hardly disclosed any information regarding the decision-making process. Even after wading through the initial attempt to comply with rule 53 (300 pages allegedly provided out of cordiality under the rule rather that recognition of its onerous duties to the courts, parties to subsided bus service or duty of accountability under the rule of law as encapsulated in the Constitution) one is hardly the wiser. This the Department claimed was all the relevant contemporaneous documents in respect of the conclusion of 15 different contracts with 12 different bus operators, including internal memoranda, opinions, emails, correspondence, and minutes of meetings. The suggestion that the aforesaid was a full disclosure of the documents forming the record of decision is an obvious improbability.

[56] The department's obvious failure to comprehend the above obligations must have led it to the conclusion that the job is done. It overlooks the Constitutional Court's approach that the Rule 53 record is an invaluable tool in the performance of the review-court's function, because it sheds light on what happened and serves to give the lie to unfounded ex post facto justification of the decision under review in giving support to the decision- maker's stance.[6]

[57] The Department's position is even worse given that 18 months after the contracts were concluded (i.e. when the Department first attempted to bring its review application in December 2024), the Department apparently sought to deny that it conducted an extensive affordability process, motivated Provincial Treasury to fund the June 2023 contracts, or made various assurances to the operators regarding the Department's ability to pay. in accordance. with the terms of the June 2023 contracts.

[58] In addition, the Department has been providing unconvincing and changing reasons for its refusal to provide the documentation. For reasons best known to itself it is of the view that rule 53 does not apply to self-review applications. This is so nonsensical that it requires no debate. Another reason was that the documentation sought is not relevant. I only need to point out that despite the alleged irrelevancy,

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6 See Turnbull-Jackson v Hibiscus Court Municipality and Others 2014 (6) SA 592 (CC) para 37.

the last tranche of documents another 186 documents came to light albeit by imperfect and inappropriate means.

[59] The final straw is the assertion that the burden of production would be too onerous for the Department. Th0e latter excuse should in my view never be tolerated under our Constitution. No amount of paper (whether electronically or otherwise provided) is ever too much to be processed by a hard-working lawyer in a system governed by the rule of law as it stands under our Constitution. From my humble perspective it is a red flag showing up the existence of either an incompetent bureaucracy or the certain sign of a lazy lawyer.

[60] The aforesaid excuses were never relied upon in the Department's answering affidavit. On the contrary, the defences raised in the answering affidavit suggest that the documents sought are already provided or simply do not exist. Putco has dropped large components of its Rule 30A notice precisely because the documents became available after the notice were filed.

[61] The complaints of operators and other parties to the review revealed a further 6 600 pages (to be found in Caselines section 9 and 11) and as referred to, even there after another 186 pages in **Additional Records** were made available. The bulk of the latter were only provided with the departments answering affidavit filed on 2 July 2025. The aforesaid does not strike me as being transparent and frank from the outset nor the behaviour a state organ should display when it seeks self-review,

having breached the rule of law on its own admission and it seems to be self-evident that one of such breaches was its own failure to assume the duty to budget for a short-fall in the PTOG and shouldering its own burden.

[62] The applicants and the Gauteng Province (“the Province”) are not able to provide public-transport services themselves. The June 2023 contracts (which the applicants are trying to set aside) are, therefore, the manner in which the applicants and the Province discharge their constitutional and statutory obligations (including under the NLTA to the public. These obligations appear to be substantial.

[63] I only refer to the assertions made by Putco and Asibemunye as examples. Putco allegedly transports 130000 passengers per day and Asibemunye 800 passengers per day. These passengers include commuters travelling to and from work, as well as students and learners who are reliant on this mode of subsidised public transport. The transport provided in terms of the June 2023 contracts enables members of the public to exercise various other constitutional and statutory rights (including the right to education, to employment, their rights to freedom of movement and association, as well as autonomy – which the courts have held is a component of the right to dignity.

[64] To this end, the transport provided by the operators is subsidised by the applicant pursuant to the June 2023 contracts. As a result of the

subsidy from the applicants, the operators' passengers pay a reduced fare for their transport.

[65] These services are provided primarily to people living in low- income areas in Gauteng (and Mpumalanga) and have apparently been reliant hereon for decades.

[66] Of even more importance is the fact that the applicants and the Province are not able to provide public-transport services themselves. The June 2023 contracts are, therefore, the manner in which the applicants and the Province discharge their constitutional and statutory obligations (including under the National Land Transport Act 5 of 2009) to the public.

[67] Prior to the conclusion of the June 2023 contracts, the Department expressly confirmed with Putco that the rates per kilometre and the number of scheduled kilometres Putco was to operate, had been calculated in accordance with 'an affordability analysis" as well as what the applicants could afford within -its available budget. From July 2023 until June 2024, the applicants duly paid the operators the amounts due under the June 2023 contracts.

[68] Thereafter the applicants attempted impermissibly to reduce the amount of the monthly subsidy paid to the operators under the June 2023 contracts - on multiple occasions and different bases - unilaterally and without following the applicable provisions in the contracts.

The right to a complete record

[69] The decision in *Helen Suzman Foundation v Judicial Service Commission* [7] is in this respect most profound:

"*What forms part of the rule 53 record? The current position in our law is that — with the exception of privileged information — **the record contains all information relevant to the impugned decision or proceedings.** [16] **Information is relevant if it throws light on the decision-making process and the factors that were likely at play in the mind of the decision-maker.** [17] Zeffertt & Paizes make a comment on the exclusion of evidence on the grounds of privilege. That comment must surely be of relevance even to the exclusion of privileged information from a rule 53 record. After all, the content of a rule 53 record is but evidentiary in nature. The authors say that in the case of privileged information, the exclusion is based on the recognition that the general policy that justice is best served when all relevant evidence is ventilated may, in some cases, be outweighed by a particular policy that requires the suppression of that evidence.* [18] *The fact that documents contain information of a confidential nature 'does not per se in our law confer on them any privilege against disclosure'.* [19]"

(my emphasis)

[70] The observations in paragraph 18 should also be borne in mind:

"[18] Specifically, coming to a decision-maker's deliberations, historically they have not formed part of the rule 53 record. This was based on this dictum in Johannesburg City Council:

*'The words record of proceedings cannot be otherwise construed, in my view, than as a loose description of the documents, evidence, arguments and other information before the tribunal relating to the matter under review, at the time of the making of the decision in question. It may be a formal record and dossier of what has happened before the tribunal, but it may also be a disjointed indication of the material that was at the tribunal's disposal. **In the latter case it would, I venture to think, include every scrap of paper throwing light,***

7 See 2018 (4) SA 1 (CC)

> ***however indirectly, on what the proceedings were, both procedurally and evidentially****. A record of proceedings is analogous to the record of proceedings in a court of law which quite clearly does not include a record of the deliberations subsequent to the receiving of the evidence and preceding the announcement of the court's decision. Thus the deliberations of the Executive Committee are as little part of the record of proceedings as the private deliberations of the jury or of the Court in a case before it. It does, however, include all the documents before the Executive Committee as well as all documents which are by reference incorporated in the file before it.'* ”
>
> (my emphasis)

Coaches and Putco's in my view rightly contend that the record plays a crucial role in judicial review proceedings, providing key insights into the decision-making process and ensuring fairness between the parties. Courts rely on the record to assess the lawfulness and rationality of decisions; without it, applicants are at a significant disadvantage. The record sheds light on the reasoning behind decisions, refuting after-the-fact justifications and allowing both the applicant and the court to scrutinise the exercise of public power thoroughly.

[71] In my view, despite the Department's protestations, it has not provided a record which reveals how it (this includes its agent the GMA) came to the impugned decisions or how it thought same to be rational and after all the delays it somehow acquired the right to renege on the service contracts. There is no transparency on the rates and schedule agreed with the operators or how it could have awarded same on an affordable basis The ultimate shortfall raises more questions and only raises

suspicions including a notion that the Department assumed that it had no duty to subsidise from its own budget (to top up the PTOG).

[72] The fact that no transparency, accountability, or any ultimate basis for just and equitable relief cab be found in the existing record demonstrates the woeful state of the Department's rule 53 record. The aforesaid failures may well result in an infringement of Coaches and Putco's rights under section 34 of the Constitution to have the matter adjudicated fairly.

[73] Coaches' heads of argument makes the point that in circumstances as prevail in this matter a court may even view a self-review with some scepticism and as a mechanism motivated by commercial considerations to escape contractual obligations it no longer wishes to honour rather than same being driven by genuine public interest concerns.[8]

[74] The aforesaid is even more so where unreasonable delay is at stake. In this matter the record is unhelpful with regard to the delays.[9]

Condonation

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[8] Cf Altech Radio Holdings (Pty) Ltd and Others v Tshwane City 2021 **(**3**)** SA 25 **(**SCA**)** pp 69 -71

[9] Cf Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd 2019 (4) SA 331 (CC) (2019 (6)

[75] To the extent that any processes in this matter was filed out of time in breach of any rule of court or in conflict with any Case Management directive issued I believe it appropriate to condone the late filing thereof. In doing so I bear in mind the requirements laid down in *Grootboom v National Prosecuting Authority and Another*.[10]

[76] Finally, the overall conduct of the Department in presenting the record in a haphazard, piecemeal and tardy fashion deserves censure. I also take into account the fact that it made use of electronic links in placeholders. Although I have been making use of advanced computing systems since the late 1980's and at times the use of such links could be useful I am of the view that the use of links to a database on such extensive basis is unhelpful and unnecessary where a consolidated paginated and indexed record of decision is required. I also take into account that the applicants themselves were directed during case management to provide a paginated and indexed record of such documents including the rule 35(12) documents furnished and failed to do so. The costs order below reflects my disapproval of the Departments conduct as a state organ which should conduct itself beyond reproach.

Relief

[77] Hence, I grant the following order:

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10 See par 50.

“1 To the extent that any processes in this matter were filed out of time or in breach of any rule of court or in conflict with any Case Management directive issued same is condoned;

2 The applicants are directed to lodge with the Registrar of the above Honourable Court, the full and complete record of the decisions which resulted in the impugned decisions referred to in paragraphs 2.1 and 2.2 of Part A of the Notice of Motion and paragraphs 1 and 2 of Part B of the Notice of Motion.

3. The aforesaid is to include all the documents referred to in:

3.1 Paragraphs 3.2, 3.6, 3.8, and 3.9.of the Rule 30A notice filed by the 4th respondent.on 7 March 2025.

3.2 Paragraphs 1.2, 2, 2.1, 2.2, 3, 3.1, 3.3, 3.4, 7, 8 and 10 of the Rule 30A notice filed by the First, Third and Sixth Respondents on 19 March 2025

4. All documents provided thus far as part of the rule 53 record coupled with the documents referred to in paragraphs 3.1 and 3.2 above should be bundled together as the rile 53 record, paginated and indexed (where possible in a chronological fashion) with a clear indication whether it was sourced from the records of the applicants or the GMA as its agent.

5. The applicants are to pay the costs of the 1st, 3rd, 4th, and 6th respondents on an attorney and own client scale, such costs to include the use of 2 counsel by the parties including the use of senior counsel, where applicable, by such party."

[redacted]

S VAN NIEUWENHUIZEN AJ
ACTING JUDGE OF THE HIGH COURT

Date delivered: 23 January 2026

Representation for Applicants (in main review)

Counsel:	Adv Moses Mphaga S.C. Tshwane Society of Advocates Mobile: 082 054 5967/ 083 511 5020 (PA) Email: mphaga@counseltsa.co.za mphaga@gmail.com beaudine@counseltsa.co.za (PA)
with	Adv Yanela S. Ntloko Group One Advocates Mobile:082 044 8108 Email: ntloko@counsel.co.za ntlokoys@gmail.com
with	Adv Boyisile Yawa Circle Chambers Mobile: 082 576 5487 Email: boyisileyawa@lawcircle.co.za

Instructed by: State Attorney, Pretoria
M Mtheto
012 309 1646/ 079 100 9469
MMtheto@justice.gov.za

Representation for 1st,3rd and 6th Respondent (in main review)

Counsel: Adv A Franklin S.C.
Advocates Group 621
Mobile: 079 886 9520
Email: aefranklin@group621.co.za

with Adv S Scott
Advocates Group 621
Mobile: 083 784 9678
Email: scott@group621.co.za

Instructed by: Bowman Gilfillan
11 Alice Lane
Sandton
Johannesburg
Ref:624 8134
Tel: 011 669 9541/9612
Email:
samanthamason@bowmanslaw.com
robin.carr@bowmanslaw.com
cassidy.wood@bowmanslaw.com
bongumusa.sibiya@bowmanslaw.com

c/o Bowman Gilfillan Inc,
1st Floor, Unit 1001A
Podium at Menlyn
43 Ingersol Road,
Lynnwood Glen,
Pretoria.

Representation for 4th Respondent (in main review)

Counsel:	Adv A Govender S.C. Group One Advocates Mobile:072 647 5920 Email:anbang@law.co.za
With	Michael Dafel Group One Advocates Mobile:072 657 2229 Email: dafel@counsel.co.za
Instructed by:	Cuzen Randeree Dyasi Cotswold Building, First Floor, Greenacres Office Park Cnr Barry Hetzog and Victory Road, Randburg Ref:G35 Tel: 011 442 3242 Email: zain@crdinco.co.za suhail@crdinco.co.za