



**IN THE COURT OF THE COMMISSIONER OF PATENTS FOR THE
REPUBLIC OF SOUTH AFRICA**

- (1) REPORTABLE: No
(2) OF INTEREST TO OTHERS JUDGES: No
(3) REVISED: No
(4) DATE: 12 February 2026

(5) SIGNATURE: _____

Case No/ Patent No: 2019/01833

Case No/Patent No: 2019/04718

In the matter between:

GEOBRUGG AG

Applicant

and

JOB SA ENGINEERING AND MANAGEMENT

(PTY) LTD

First Respondent

GEO EQUIP AFRICA (PTY) LTD

Second Respondent

THE REGISTRAR OF PATENTS

Third Respondent

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 12 February 2026.

JUDGMENT

COLLIS J

INTRODUCTION

1] This is an opposed application for condonation and an *ex post facto* extension of the three-month period for the publication of the advertisement of the acceptance of the full specifications of Patent Application Nos.: 2019/01833 and 2019/04718 in the Patent Journal.

2] As per the Notice of Motion, the relief sought was formulated as follows:

"1. Condonation hereby be and is granted for the late publication of the advertisements of the respective acceptances of the full specifications of the following patents in the Patent Journal:-

1.1 Patent Application No. 2019/01833 WIRE MESH AND METHOD FOR PRODUCING A COIL FOR A WIRE MESH ("the first patent"); and

1.2 Patent Application No. 2019/04718 WIRE MESH AND METHOD FOR PRODUCING A COIL FOR A WIRE MESH ("the second patent").

2. An extension of the respective three-month terms stipulated in section 61 of the Patents Act, 57 of 1978 ("the Act"), as read with Regulation 46 of the Patent Regulations, 1978, for the publication of those advertisements to a date immediately after the actual publication dates of their respective advertisements in the Patent Journal, namely:-

2.1 In the case of the first patent, an extension of the three-

month term to 30 January 2020; and

2.2 In the case of the second patent, an extension of the three-month term to 25 June 2020.

3. An order declaring that the granting and sealing of the first and second patents by the Third Respondent, respectively on 29 January 2020 and 24 June 2020, have not been invalidated by the late publication of their respective advertisements of the acceptance in the Patent Journal.

4. Costs of the application only in the event of it being opposed, including the cost of junior and senior counsel where so employed.

5. Further and/or alternative relief."

3] The First and Second Respondents (*the Respondents*) oppose the application whereas the Third Respondent has filed a Notice to Abide.

4] The basis for the opposition by the Respondents is firstly that the Applicant has approached the wrong forum for its relief and secondly that it has failed to join a party that has a direct and substantial interest

in the subject matter of this dispute and the outcome of this application.

5] The Respondents, although they oppose the application, have elected initially not to file an answering affidavit. Instead, it filed a Notice in terms of Rule 6(5)(d)(iii).¹ Its Answering Affidavit was subsequently filed on 6 February 2024.²

6] In respect of the notice so filed, the Applicant argues that the said notice is defective. It is contended that a party who intends to raise only a question of law in motion proceedings, may deliver a Rule 6(5)(d)(iii) notice of his intention to do so, but the notice must “set forth such question”.

7] The Respondents at the hearing informed the Court that it intends to argue a question of law. The Respondents’ Rule 6(5)(d)(iii) Notice however does not identify, as expressly required by the Rule, the question of law that the Respondents intend to argue.

8] The notice simply states that the Applicant “has failed to plead the necessary allegations which entitle it to the relief it seeks.”

¹ First and Second Respondents’ Rule 6 Notice, Caselines page no 013-1; Rule 6(5)(d)(iii) reads, “if he intends to raise any question of law only he shall deliver notice of his intention to do so, within the time stated in the preceding sub-paragraph, setting forth such question”.

² Caselines 012-117.

9] The statement so made, the Applicant argued, speaks to an alleged failure to plead facts thus drawing a conclusion; it does not postulate a question of law for argument in the application.³

10] On behalf of the Applicant it was further submitted that a Respondent cannot simply argue issues of law which have not clearly been raised and identified in either an opposing affidavit or in a Rule 6(5)(d)(iii) notice,⁴ for that would leave the Applicant in a position where it would have to attempt to guess what the Respondent intends to argue at the hearing.

11] In caselaw it has previously been held that Rule 6(5)(d)(iii) notice, is akin to an exception in an action proceeding,⁵ and the grounds upon which the exception is based, must be clearly stated.

12] Absent such express exposition, an applicant may be potentially prejudiced as it will be required to come to court and be ambushed on the point of law it must come and argue.

³ See, for example, the form of the Notice in *Motala and Another NNO v Moller and Others* 2014 (6) SA 223 (GJ) paragraph 7.

⁴ *Motala and Another NNO v Moller and Others* 2014 (6) SA 223 (GJ) paragraph 7; *Sandton Civic Precinct (Pty) Ltd v City of Jhb* 2009 (1) SA 317 (SCA) paragraph 6 note 2; *Manong & Assoc (Pty) Ltd v Dept of Roads & Transport*, EC (1) 2008 (6) SA 423 (EqC) at 426.

⁵ *Helen Suzman Foundation v President of the RSA* 2015 (2) SA 1 (CC) (2015 (1) BCLR 1, paragraph 127 note 105.

13] On behalf of the Respondents it was submitted that the question as to whether the Applicant has pleaded the necessary allegations entitling it to the relief sought is hardly a “question of law” for purposes of Rule 6(5)(d)(iii). But such a notice was prepared as a courtesy.⁶

14] In addition, it was contended that our law recognizes the right of a respondent, in spite of having filed an answering affidavit, to raise an objection in limine that the founding affidavit does not make out a prima facie case for the relief claimed and in this regard in support, the Respondents have placed reliance on the decision of Lacfin (Pty) Ltd v Johannes Nicholaas Le Roux and Four Others⁷ (“Lacfin”).⁸

15] The above principle was further endorsed in Bousaada (Pty) Limited and Another v FCB Africa (Pty) Limited and Another (16949/2021; 29891/2021) [2023] ZAGPJHC 695 (14 June 2023), at paragraph 95:

“[95]. The general rule is that an applicant has to make out his case in his founding affidavit. To determine whether an applicant has done so, the matter is considered on the basis of an exception, that is, the founding affidavit is taken on its own and

⁶ The notice appears at CaseLines, Item 13, p 013-1 – 013-3.

⁷ 2000 BIP 190 (O).

⁸ At 197H – 198D.

those allegations are presumed to be correct and the question is then whether those allegations are sufficient to warrant a finding in favour of the applicant.”

16] On this basis it was therefore argued that the Respondents, at all times were entitled to consider the facts tendered by the Applicant and make the statement that those facts are not sufficient to make out a case for the relief it seeks.

17] This Court is not persuaded that the Notice in terms of Rule 6(5)(d)(iii) is indeed defective. The notice clearly sets out that the founding papers fail to evince the necessary allegations for the relief which the Applicant seeks. Nothing more to my mind was required and the Applicant certainly was not caught by surprise by what was meant by the said notice when same was served on them.

18] In the present application the patents in question as per the Notice of Motions are: -

18.1 South Africa Patent No. 2019/01833 WIRE MESH AND METHOD FOR PRODUCING A COIL FOR A WIRE MESH (“the first patent”); and

18.2 South Africa Patent No. 2019/04718 WIRE MESH AND METHOD FOR PRODUCING A COIL FOR A WIRE MESH (“the second patent”).

(where reference is made generally to these patents herein below, we refer to them as “the patents”)

19] After the lodging of the applications for the registration of the patents, the Third Respondent, the Registrar of Patents (“*the Registrar*”) accepted the complete specifications of the patents and issued notices of that acceptance on 16 October 2019 (in respect of the first patent), and on 19 March 2020 (in respect of the second patent).

20] In terms of Section 42(3) of the Patents Act,⁹ once the Registrar gives notice of acceptance of a complete specification, an applicant for its registration (‘the Applicant herein’) must publish that acceptance in the South African Patents Journal within three months of that acceptance.¹⁰

21] Should an applicant fail to do so, the patent application lapses.

22] It is common cause that the Applicant failed to publish the acceptance timeously and has proceeded to launch these proceedings

⁹ Act 57 of 1978 (the “Patents Act”).

¹⁰ Regulation 46 of the Patent Regulations, 1978 (“the Patent Regulations”).

for the condonation of certain actions and the extension of certain time periods to revive the applications that have consequently lapsed.

GENERAL PROCEDURE IN RESPECT OF PUBLICATION

23] It will be apposite to first set out the general procedure in respect of publication. Regulation 46 imposes an obligation on an applicant for the registration of a patent to publish the advertisement of acceptance in the Patent Journal.

24] Section 14 of the Act imposes an obligation on the Registrar to arrange for the periodic publication of a Journal "which shall contain ... details of the contents of all complete specifications accepted."

25] Patent Journals are published electronically, but only once per month, and on the last Wednesday of each month.¹¹

26] Advertisements of acceptance are submitted to the Registrar for publication in a specific Patent Journal. For it to be published in a specified Journal, the advertisement must be submitted for publication before the cut-off date for publication in that Journal.¹²

¹¹ Caselines page no 012-16, paragraphs 47, 48.

¹² Caselines page no 012-37, paragraph 111.2.

27] In practice, because the 3-month period commences with the running on the date of acceptance and notice of acceptance, notice of that acceptance to an applicant may be delayed, resulting in a situation in which an applicant is left with a very narrow window period to secure publication in a Patent Journal before the expiry of the 3-month period.

28] After the submission of an advertisement to the Registrar for publication in a specific Patent Journal, an applicant has no control over the actual publication of the advertisement and must simply accept that it will in fact be published in the Journal specified.¹³

29] If the advertisement is, for some or other reason, not published in the specified Journal, an applicant could well be left with no, or insufficient time to seek an extension of the 3-month period before its expiry.

30] Section 44(1) of the Act further directs that, "(a)s soon as practicable after the publication contemplated in section 42", the Registrar shall grant a patent in the form prescribed to the applicant, "and ... shall cause the patent to be sealed with the seal of the patent office."

¹³Caselines page no 012-37, paragraph 111.2.

31] In terms of this section, "such sealing shall be deemed to have been effected on the date of that publication." In other words, if a publication was, among others, in the judgement of the Registrar published within the 3-month period, the Registrar must grant and seal the patent.

ADVERTISEMENT OF ACCEPTANCE IN RESPECT OF THE TWO PATENTS IN QUESTION.

32] The facts surrounding the advertisement and the acceptance in respect of the two patents in question, are as set out in the founding affidavit and these facts as mentioned remain uncontested and uncontroverted as the Answering affidavit filed herein did not rebut any the facts surrounding the advertisement and acceptance.

33] In this regard it is the Applicants' case that, having regard to the circumstances surrounding the publication of the advertisements in respect of the patents, the Applicant and its patent attorneys of record did all that can reasonably be expected of them to ensure a timeous publication of the advertisements in the Patent Journal.

34] In respect of the first patent: -

34.1 The full specification in the application for the registration of the

first patent was accepted by the Registrar on 16 October 2019.¹⁴

34.2 The first notice that the Applicant (and any other such applicant) would have had of that acceptance, was upon receipt of the Registrar's Notice of acceptance. That notice was delivered to the Applicant's attorneys on 25 October 2019.¹⁵

34.3 The final day for the publication of the advertisement of acceptance was, therefore, 16 January 2020.

34.4 On 28 October 2019, the advertisement of its acceptance was electronically submitted to the Registrar for publication in the Patent Journal of 27 November 2019;¹⁶

34.5 The advertisement was published in the Patent Journal of 29 January 2020, therefore 13 days after the expiry of the 3-month period.¹⁷

34.6 However, in terms of Notice No. 1211 published in Government Gazette No. 42412 of 20 September 2019, the days from 24 December 2019 to 1 January 2020, were directed as *dies non* for the purposes of,

¹⁴ Caselines page no 012-21, paragraph 62.

¹⁵ Caselines page no 012-22, paragraph 63.

¹⁶ Caselines page no 012-22, paragraph 64.

¹⁷ Caselines page no 012-24, paragraph 71.

among others, the Act.

34.7 If these nine (9) *dies non* are excluded in the calculation of the 3-month period, the publication in essence was only 4 days late.

34.8 The reason for the failure by the Registrar to publish the advertisement in the Patent Journal of 27 November 2019 is unknown to the Applicant.¹⁸

34.9 The Registrar as mentioned has merely filed a Notice to Abide in these proceedings and as such has not furnished this Court with any explanation for his failure to publish the advertisement in the Patent Journal of 27 November 2019. The Registrar was also unable to ascertain and to furnish reasons for that failure.¹⁹

34.10 As regards the evidence in respect of the publication of the advertisement of the acceptance of the first patent, it is clear that no fault for the failure can be attributed to the Applicant;²⁰ this after the submission of the advertisement for publication in a stipulated Patent Journal to ensure timeous publication in order to avoid a lapsing of the application under section 42(3).

¹⁸ Caselines page no 012-23, paragraph 70.

¹⁹ Caselines page no 012-23, paragraph 67.

²⁰ Caselines page no 012-24, paragraph 71.

35] The Applicant therefore submitted that it had no further control over the actual publication date itself and that the sole cause for the failure to advertise timeously must therefore lie with the Registrar.

35] In respect of the second patent: -

35.1 The full specification in the application for the registration of the second patent was accepted on 19 March 2020.²¹

35.2 The Registrar however only delivered the notice of acceptance of the full specification to the Applicant's attorneys on 5 June 2020.²²

35.3 The final day for the publication of the advertisement of acceptance was, therefore, 19 June 2020.

35.4 As a result of the Patent Journal being published only once in a month, this on the last Wednesday of each month, it was impossible at any date after receipt of the notice to secure publication in a Patent Journal before 19 June 2020.²³

²¹ Caselines page no 012-25, paragraph 78.

²² Caselines page no 012-25, paragraph 79.

²³ Caselines page no 012-25, paragraph 82.

35.5 Nevertheless, on 8 June 2020, the Applicant's attorneys electronically submitted the advertisement of its acceptance to the Registrar for publication in the Patent Journal.²⁴

35.6 The advertisement was, in the event, published in the Patent Journal of 24 June 2020, five (5) days after the expiry of the 3-month period.²⁵

35.7 However, in terms of a notice by the Companies and Intellectual Property Commission ("the CIPC"), the period from 27 March 2020 to 16 April 2020, was, due to the national COVID-19 lockdown regulations, ruled as *dies non*.²⁶

35.8 The reason for the failure by the Registrar to deliver the notice of acceptance to the Applicant promptly after that acceptance is not known to the Applicant. However, it appears certain that the failure was in all likelihood occasioned by the COVID-19 pandemic and the extraordinary disruptions brought about by the lock-down regulations.²⁷

35.9 If the 21 COVID-19 *dies non* are to be excluded in the calculation of the 3-month period, the publication was in fact not late.

²⁴ Caselines page no 012-26, paragraph 87.

²⁵ Caselines page no 012-27, paragraph 91.

²⁶ Caselines page no 012-25, paragraphs 81, 83.

²⁷ Caselines page no 012-25, paragraph 81.

35.10 On behalf of the Applicant it was therefore submitted that the extreme and extraordinary circumstances brought about by the COVID-19 pandemic would undeniably add a certain complication to an argument that section 42(3) was intended to be absolute and peremptory.

THE STATUTORY PROVISIONS RELEVANT TO THE APPLICATION

36] Section 42(3) of the Act and Regulation 46, and the ostensibly peremptory directive “shall” in those provisions, are relevant in this application. Section 42 of the Act provides as follows: -

“(1) When a complete specification has been accepted, the registrar shall give written notice of that fact to the applicant.

(2) ...

(3) Unless the acceptance is so published in the journal within the prescribed period or within such further period as the registrar may, on application to him and on good cause shown and on payment of the prescribed fee, allow, the application shall lapse.”

37] Regulation 46, which should be read with section 42 of the Act, provides as follows: -

“When notice of acceptance of an application has been given by the registrar, the applicant shall advertise the acceptance in the journal within three months of such acceptance or within such further time as the registrar may allow on request on form P 4.”

38] Various other sections of the Act, the Regulations, the Patent Cooperation Treaty (“the PCT”) and the PCT Regulations²⁸ also incorporate the ostensibly peremptory directive “shall.”

39] These sections all provide for the extension of time periods and condonation for non-compliance. Accordingly, these various sections also furnish the context in which section 42(3) of the Act and Regulation

²⁸ See, for example, sections 9(a), 10(2), 30(1) and (2), 30(3A)(4), 31(5), 32(1) to (4), 40, 43E(2), 43F(3)(c), 44(1), 48(4) 73(1), 89 of the Act and the concomitant Regulations, including Regulation 99; PCT Articles 47 and 48; and PCT Rules 82bis and 82quater; Ironically, even if the rather long-winded rambling of the PCT and the PCT Rules, which are in consequence not always easy to grasp, do have what can be termed peremptory directives, section 43F(3)(c) of the Act cannot be ignored. The section states that “section 16(2) shall apply in relation to time limits specified in terms of the Patent Cooperation Treaty, the regulations made thereunder and the administrative instructions issued under those regulations unless otherwise provided therein”. Accordingly, even if the PCT directives were peremptory and even if non-compliance did result in a lapsing of an application or a patent, then those provisions would be neutralised by section our Patents Act.

46 must be construed.

40] Section 16(1) of the Act deals with the discretionary powers granted to the Registrar and the Commissioner and provides that, "whenever by this Act any time is specified within which any act or thing is to be done, the registrar ... may, save where it is otherwise expressly provided, extend the time either before or after its expiry."

41] From the above it is apparent that the Registrar is expressly granted the power in section 16(2) to extend any time period stipulated for any act except where a provision in the Act expressly states that the period may not be extended.

42] On behalf of the Applicant it was submitted that section 42(3) does not expressly prohibit an ex post facto extension of the period. The section counsel had argued although silent about an ex post facto extension of the period section 16(2) already states that such an extension may be granted before or after the expiry of any stipulated time period.

43] Therefore, counsel had argued because section 42(3) does not expressly prohibit such an ex post facto extension, such an extension is by necessary implication expressly permitted.

44] An express prohibition on an ex post facto extension would have to be read into section 42(3), and simultaneously it would be necessary to ignore the blanket empowerment of section 16(2) to grant such an extension - a proposition that flies in the face of the trite principle of interpretation that effect must be given to every word or phrase in a statute.

DEFENCES

45] On behalf of the Respondents the following arguments were advanced in relation to Section 16 of the Patents Act:

45.1 Firstly, there are no general discretionary powers that inure/(take effect or benefit) to both the Commissioner and Registrar. Rather, the Patents Act confers specific discretionary powers upon either the Registrar or the Commissioner; and

45.2 Secondly, the discretionary power that relates to the extension of time periods is no different. It vests in the Registrar or the Commissioner "as the case may be" – i.e. whomever the Patents Act vests that specific power to, in those specific circumstances.

46] For the above reasons counsel for the Respondents had argued that

application for the extension of the time period ought to have been made to either the Registrar or Commissioner as the case may be, and that the Applicant cannot ask this Court to extend such time period before it has approached the Registrar.

47] Before this Court, it is common cause that the Applicant has not applied for condonation to the Registrar or the Commissioner for the extension of the three-month period and in its Founding Affidavit it has been unable to explain with conviction why an application has not been made to the Registrar.

48] As set out above, section 42(3) of the Act, read together with the general empowerment granted under section 16(2) of the Act, and with Regulation 46, expressly empowers the REGISTRAR, on application, on good cause shown and on the payment of the PRESCRIBED FEE, to extend the three-month period, before or after its expiry.

49] The Applicant however, instead of applying to the Registrar for the extension of the time period elected to merely cite the Registrar in the present proceedings and proceeded to serve the application on the Registrar who in turn elected to file a Notice to Abide.

50] Mere service on the Registrar of an application to Court for

condonation is not sufficient as it does not comply with what is envisaged in Section 42(3), Section 16(2) and Regulation 46.

51] The provisions set out above are peremptory and should have been complied with.

52] Absent an application which was first directed to the Registrar for consideration, the present application is entirely premature before this Court.

53] The second defense raised by the Respondents in their belatedly filed Answering Affidavit, relates to the material non-joinder of Lichenry Construction (Pty) Ltd ("Lichenry").

54] In the said Answering Affidavit it is alleged that on 8 March 2022, the Applicant instituted separate actions for infringements of the relevant patents against the Respondents before court.

55] On 18 October 2022, the Applicant thereafter instituted separate actions for infringements against another entity namely Lichenry Construction (Pty) Ltd also for alleged infringement of the relevant patents.

56] All the nine cases currently before Court are defended and in their respective pleas filed all of the defendants have raised as defense that the patents are invalid and unenforceable because of non-compliance with Section 42 and Regulation 46 of the Act.

57] It is in response to the pleas so filed, that the Applicant has elected to launch the present proceedings and this the Applicant has conceded as much in the founding affidavit.²⁹

58] It however elected only to cite the Respondents in the present proceedings and not Lichenry, this notwithstanding that the Applicant was acutely aware of the identity of the non-joined party and that Lichenry has a direct and substantial interest in the proceedings.

59] It is trite that the test for joinder, as a matter of necessity, is whether a party has a direct and substantial interest which may be affected prejudicially by the judgment of the Court in the proceedings concerned.³⁰

60] Our Constitutional Court in *Lebea v Menye and Another*³¹ has

²⁹ Caselines para 19 012-122.

³⁰ *Judicial Service Commission and Another v Cape Bar Council and Another* (818/2011) [2012] ZASCA 115; 2012 (11) BCLR 1239 (SCA); 2013 (1) SA 170 (SCA); [2013] 1 All SA 40 (SCA) (14 September 2012) at par 12.

³¹ (CCT 182/20) [2022] ZACC 40; 2023 (3) BCLR 257 (CC) (29 November 2022).

interpreted the phrase “direct and substantial interest” as one which is:³²

“a direct and substantial interest in the order that a court is asked to make in a matter. It is not enough if a person has an interest in a finding or in certain reasons for an order. The interest must be in the order or the outcome of the litigation.”

61] A legal interest must be put forward – the mere possibility of that interest being sufficient.³³

62] In *South African Riding for the Disabled Association v Regional Land Claims Commissioner and Others*³⁴ (“SA Riding”) the Constitutional Court held that a legal interest is one in the subject matter of the litigation which could be prejudicially affected by the judgment of the Court.³⁵

³² Lebea at par 30.

³³ See the decision of the Full Bench in *Hlophe v Freedom Under Law In re: Freedom Under Law v Hlophe; Moseneke and Others v Hlophe In re: Hlophe v Judicial Services Commission and Others* (2021/43482) [2021] ZAGPJHC 743; [2022] 1 All SA 721 (GJ); 2022 (2) SA 523 (GJ) (29 November 2021) at par 35.

³⁴ *South African Riding for the Disabled Association v Regional Land Claims Commissioner and Others* (CCT172/16) [2017] ZACC 4; 2017 (8) BCLR 1053 (CC); 2017 (5) SA 1 (CC) (23 February 2017) at par 9;

³⁵ *South African Riding for the Disabled Association v Regional Land Claims Commissioner and Others* (CCT172/16) [2017] ZACC 4; 2017 (8) BCLR 1053 (CC); 2017 (5) SA 1 (CC) (23 February 2017) at par 9; *Johannesburg Society of Advocates and Another v Seth Azwihangwisi Nthai and Others* (879/2020 and 880/2019) [2020] ZASCA 171 (15 December 2020) at par 31 (“SA Riding”).

63] Furthermore, in *Transvaal Agricultural Union v Minister of Agriculture and Land Affairs and Others*³⁶ the Supreme Court of Appeal held that the first test in determining whether a third party had a direct and substantial interest in the outcome of litigation is to consider whether the third party would have locus standi to claim relief concerning the same subject matter.³⁷

64] This is precisely what has occurred in these proceedings. There is no conceivable basis as to why Lichenry should not be joined when it has raised the exact ground of invalidity, in respect of the exact patents, as the First and Second Respondents.

65] The Applicant has not advanced a single explanation as to why Lichenry was not joined to these proceedings. The Applicant was clearly aware of Lichenry, given that the Applicant has sued it and Lichenry has pleaded the invalidity of the relevant patents. Why it chose to not join Lichenry this Court finds difficult to comprehend.

66] Lichenry's direct and substantial interest is the same as that of the First and Second Respondent. Each of these parties has been sued on the strength of the relevant patents and have been accused of infringing

³⁶ (091/2003) [2005] ZASCA 12; 2005 (4) SA 212 (SCA) (23 March 2005).

³⁷ At par 66.

them.

67] Each defendant has raised the exact same grounds of invalidity of those patents as part of their defense in the infringement actions. The effect of this litigation, if successful, will also negate Lichenry's plea of invalidity.

68] This Court therefore concludes that Lichenry has a direct and substantial interest in the order and outcome of this litigation and for that reason, it ought to be joined in these proceedings.

69] Consequently, the point in limine is to be upheld. However, due to the finding made above regarding this application being premature, this matter cannot be postponed for purposes of joinder.

ORDER

70] In the result the following order is made:

70.1 The point of non-joinder raised by the Respondents in relation to Lichenry Construction (Pty) Ltd, is upheld.

70.2 The application is dismissed with costs, such costs to include

those costs consequent upon the employ of two counsel, one being senior counsel, on Scale C.



C COLLIS

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

APPEARANCES

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Instructing Attorney: DR. Gerntholtz Inc.

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