**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG DIVISION, PRETORIA**

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

**27 March 2026** [redacted]

**Date** **K. La M Manamela**

**CASE NO: 172542/2025**

In the matter between:

| | |
|---|---|
| **BCB SOLUTIONS (PTY) LTD** | Applicant |
| and | |
| **SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LTD AND TWENTY-THREE OTHERS** | Respondents |

**CASE NO: 175029/2025**

In the matter between:

| | |
|---|---|
| **BOTLE BA AFRIKA ROADS (PTY) LTD** | First Applicant |
| **MAKALI PLANT & CONSTRUCTION (PTY) LTD** | Second Applicant |
| **RAZZMATAZZ CIVIL (PTY) LTD** | Third Applicant |
| **RAINBOW CIVILS CC** | Fourth Applicant |
| **MATCHABA DETOUE CONSTRUCTION (PTY) LTD** | Fifth Applicant |
| **QTC CIVILS (PTY) LTD** | Sixth Applicant |
| **DAMIAN'S CONTRACTORS CC** | Seventh Applicant |
| and | |
| **SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LTD AND TWENTY-THREE OTHERS** | Respondents |

**DATE OF JUDGMENT:** 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's secretary. The date of the judgment is deemed to be **27 March 2026**.

---

**JUDGMENT**

---

**Manamela, J**

***Introduction***

[1] This judgment concerns two separate applications to compel – brought in terms of Rule 30A[1] of the Uniform Rules of this Court. The one application is by BCB Solutions (Pty) Ltd ('BCB') under the case number: 172542/2025 ('the BCB Application'). The other is by Botle Ba Afrika Roads (Pty) Ltd ('Botle') and six other applicants under the case number: 175029/2025 ('the Botle Application'). Both applications are against South African National Roads Agency SOC Limited ('SANRAL'), as the first applicant, and a cohort of other twenty-three[2] respondents in each of these applications ('the non-SANRAL respondents').

[2] These interlocutory applications are aimed at compelling SANRAL to deliver documents constituting a complete record in the reviews brought by the applicants in terms of rule 53,[3] also of the Uniform Rules, in the BCB Application and the Botle Application (jointly, 'the applications').

---

1 Rule 30A(1) of the Uniform Rules provides, among others, that '[w]here a party fails to comply with these rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order … that such rule, notice, request, order or direction be complied with …'

2 It appears that the private company, Lenkosi Civils and Construction, may be joined as the twenty-fourth respondent.

3 Rule 53 of the Uniform Rules provides as follows in the material part: '(1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of the… board or officer performing ... administrative functions shall be by way of notice of motion directed and served by the party seeking to review such decision or proceedings on the … board or to the officer, as the case may be, and on all other parties affected — *(a)* calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected or set aside, and *(b)* calling upon the … chairperson or

[3] Part A of the applications was by way of an urgent interdict against the procurement process embarked upon by SANRAL. SANRAL had invited potential service providers to apply for inclusion on its panel under the 'Tender for Routine Road Maintenance Works across South Africa' ('the Tender'). The applicants in both applications represent the bidders dissatisfied with the process and outcome of the procurement process or the Tender. The non-SANRAL respondents are the successful bidders. The applicants sought – pending a review under Part B - an interdict against the constitution of a panel of service providers or utilisation of such panel under the Tender. But, ultimately, the matters were removed from the urgent roll, ostensibly, by agreement between the parties.

[4] Only Part B, being the actual reviews, now remains for adjudication by the Court in due course. Under Part B, the applicants seek the review and setting aside of various decisions and/or conduct of SANRAL in the Tender.

[5] In these interlocutory applications to compel SANRAL to furnish a record of the documents in the reviews, the applicants submit that their out-of-court efforts aimed at avoiding this part of the litigation were rebuffed by SANRAL. These, it is pointed out, were by way of requests, undertakings, Court directives, and rule 30A notices. Even these applications were additional attempts to implore SANRAL to furnish the review record, but in vain. SANRAL failed to furnish the complete record in both reviews. SANRAL did provide some documents, but the applicants consider the documents furnished – through electronic means, after it was served with these applications – to be manifestly incomplete and falling short of a rule 53 record.

---

officer, as the case may be, to send, within 15 days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as the … chairperson or officer, as the case may be is by law required or desires to give or make, and to notify the applicant that such chairperson or officer, as the case may be has done so.'

[6] The applications are only opposed by SANRAL. No relief is sought directly against the non-SANRAL respondents, as they were merely cited due to whatever interest they may have in these applications. The applications came before me on 5 March 2026. They were assigned a date of hearing - as special motions - by the Office of the Acting Deputy Judge President. Mr K Hopkins SC, together with Ms C Louis, appeared for the applicants (in both applications), whilst Mr R Tshetlo appeared for SANRAL (also in both applications).

[7] By the time of the hearing of the applications it was almost common cause between the parties that SANRAL ought to furnish the documents. In fact, it had already furnished most of the documents and had undertaken to provide the rest within specified timeframes. SANRAL, had but conceded the merits of the applications in an affidavit filed rather belatedly the previous night. Therefore, the only remaining issue for determination by the Court is the issue of costs. I nevertheless reserved judgment in both matters after listening to oral submissions by counsel.

[8] As the issues in the two applications are similar and relate to the same decisions by or procurement processes of SANRAL, the applications were heard jointly. For these reasons, it follows that this single judgment is appropriate for both applications. But where necessary areas of divergence in the facts of the matters would be indicated.

***Brief background (to both applications)***

[9] Although liability as to costs is the only issue left for determination, I consider a brief background to both applications warranted for the disposal of this issue. The background will be constructed significantly from the common cause facts or I will indicate the contrary view or that a particular fact is in dispute.

[10] The BCB Application was launched on 23 September 2025 whilst the Botle Application was launched on 26 September 2025. The former was served on SANRAL on 25 September 2025 and the latter on 26 September 2025. The applications, in accordance with rule 53, called

upon SANRAL to dispatch the record in terms of rule 53(1)(b)[4]. In terms of this rule SANRAL was required to furnish a complete record of the impugned decisions and conduct (including its reasons for same) within 15 days from date of service of the applications. These periods were determined to have been until 16 and 18 October 2025, respectively.

[11] It is common cause that the prescribed periods for SANRAL to dispatch the record expired without SANRAL complying with the rule. SANRAL says that it instructed its attorneys of record on 29 September 2025 to commence with the retention of counsel and consultations, ostensibly for purposes of complying with rule 53 rather than for purposes of picking up the proverbial arms.

[12] On 8 October 2025, the parties decided to approach the office of the Acting Deputy Judge President ('ADJP'). On 27 October 2025, the legal representatives for the participating parties in both applications attended a case management meeting presided over by Potterill, J, as the then ADJP. SANRAL, at that meeting, gave an undertaking to extend the term of the existing panel of its service providers which were meant to be replaced by those in terms of the Tender (i.e. the non-SANRAL respondents) and not to implement the Tender. A timetable was agreed for the further activities in the reviews. One aspect of the agreement was that SANRAL would deliver the record by 30 November 2025, being within a month from the meeting. SANRAL's explanation for not achieving this agreed milestone includes that there were technical challenges experienced in availing the voluminous documentation in the Tender.[5]

[13] In December 2025, Potterill ADJP issued a directive to cause SANRAL to meet its obligations in order to avoid derailing the hearing of the reviews on the dates allocated in April 2026 to become impossible. But, again, SANRAL's default persisted.

---

4 *Ibid.*
5 Pars [28], [30]-[32].

[14] Faced with this situation, the applicants delivered notices in terms of rule 30A(1) in December 2025 informing SANRAL of their intention to launch these applications to compel.

[15] A further directive was issued on 11 December 2025 by Davis J requiring compliance by SANRAL by no later than 15 December 2025. In an effort to comply SANRAL, on 15 December 2025, delivered documents which it considered to constitute the record in both reviews. But the documents furnished on that date are considered by the applicants to have been 'disorganised, incomplete, partially inaccessible, and materially deficient'. The applicants, also, say that a significant number of these documents was missing and portions of some of them were redacted without an explanation. There is no need for the redaction of any part of the documents as no confidential price information is included in the bid documents, alternatively SANRAL ought to have proposed an appropriate confidentiality regime or redaction protocol, it is argued on behalf of the applicants. SANRAL insists that the documents delivered on that date constituted the review record, directed for delivery by Davis J.

[16] Still on the documents provided to the applicants by SANRAL in December 2025, the applicants say that they informed SANRAL of the identified deficiencies in mid-January 2026. They, further, say that they provided SANRAL an opportunity to remedy the situation by 19 January 2026, but to no avail. In the absence of delivery of the record or an explanation by way of affidavit by SANRAL, the Botle Application ensued on 4 February 2026 and the BCB Application on 12 February 2026.

[17] The efforts to avoid derailment of the hearing of the reviews continued, despite the launch of these interlocutory applications. On 12 February 2026, a case management meeting presided over by Davis ADJP took place. This was to revise the timetable (towards the hearing of the reviews, previously agreed) on the basis of subsequent developments. SANRAL told this

meeting that it would deliver its answering affidavit in these applications to compel by 23 February 2026.

[18] On 23 February 2026, SANRAL delivered (or tendered access to documents via shared electronic folder) further documents it considered to constitute the record or to add to what had already been provided in order to complete the record. This was obviously contrary to SANRAL's own undertaking to deliver an answering affidavit, given at the February 2026 case management meeting before Davis ADJP. The applicants still considered the record to be materially incomplete. SANRAL was alerted again and given until 27 February 2026 to address the deficiencies or deliver an affidavit explaining the material filed towards constitution of the record and the whereabouts of what is still outstanding. The applicants had identified the latter material under annexure A to their respective notices of motion and, thus, waived their rights to other documents which may exist in relation to the Tender.

[19] SANRAL did not file an explanatory or answering affidavit on whether the delivered documents should be considered the complete record or indicate which documents are in existence and those which are not. It was only in the evening of 4 March 2026 that SANRAL delivered a document labelled 'explanatory affidavit'. This was on the eve of the hearing of both applications, on 5 March 2026.

***The essence of the BCB Application and the Botle Application***

[20] In the reviews, the applicants complain that they have been unfairly disqualified in the Tender and about the award of the Tender to the non-SANRAL respondents. The consider the process in the Tender and the ultimate award decisions unfair and in breach of the material statutory and other legal instruments. The reviews, as indicated above, are for the impugned decisions and conduct of SANRAL to be reviewed and set aside.

[21] These applications to compel are on the ground that SANRAL is non-compliant regarding the delivery of the record for the review. The applicants seek that SANRAL be compelled to deliver the rule 53 record and for leave to seek the striking of SANRAL's opposition to the reviews, in the event of non-compliance with the order compelling delivery of the record.

[22] The applicants' case in both applications are that SANRAL's conduct throughout these proceedings has been marked by delay and persistent non-compliance towards the dispatch of the record within the period prescribed by rule 53. The non-compliance persisted, despite judicial case management meetings; judicial directives, and a flurry of correspondences between the legal representatives for the parties. SANRAL could have furnished the record and explained under oath why the documents already delivered constitutes the full record of the impugned decisions and conduct subject to the reviews. The non-compliant conduct endured even after the applicants have invoked rule 30A. The applicants identified the specific documents that were required for the reviews in an annexure to the notices of motion of their respective applications. When this did not deter SANRAL the applicants followed up by preparing to move these applications seeking formal judicial intervention.

[23] What the applications seek to achieve, it is submitted, is to secure compliance with SANRAL's obligations pivoting the review process. SANRAL's conduct with regard to its failure to furnish the record is considered by the applicants as plainly dishonest, secretive and clandestine and, thus, unbefitting of an organ of state. SANRAL is not permitted to withhold documents, it is further argued, as it has constitutional obligations to promote transparency and accountability. Section 217(1) of the Constitution of the Republic of South Africa, 1996 ('the

Constitution'), it is submitted, enjoins SANRAL to conduct its procurement in an open, transparent and accountable manner.[6]

[24] On the other hand, SANRAL is required by section 165(4) of the Constitution – again, as an organ of state – to assist the courts to administer justice.[7] This is achievable in the current applications by SANRAL, providing the Court with information reasonably required to allow the Court to make a just and fair decision.[8] The corollary is the protection of the independence, impartiality, dignity, accessibility and effectiveness of the Court and its processes.[9]

[25] Rule 53 is a direct peremptory obligation imposed on a decision-maker to provide information regarding its conduct or decisions through the dispatch of the full record within the prescribed period. Such decision-maker may not engage in selective or partial disclosure of the material documents constituting the record. These applications confirm SANRAL's failure to fully discharge these obligations. I hasten to express my association with this submission. The effect of SANRAL's conduct in this regard, whether intended or not, is to deprive the Court or the judge seized with reviews (still to be heard) of access to the full record, something that is inimical to proper discharge of the review function. Also, the applicants, as parties calling for a review, are equally deprived of a meaningful exercise of their constitutional right to a fair hearing.[10]

---

6 Section 217(1) of the Constitution provides: '[w]hen an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective'.

7 Section 165(4) of the Constitution provides that: '[o]rgans of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.'

8 *S v Mamabolo* (CCT 44/00) 2001 (3) SA 409 (CC) (11 April 2001) [17]-[18], [38].

9 *Ibid.*

10 *Democratic Alliance v Acting National Director of Public Prosecutions* 2012 (3) SA 486 (SCA) [37]; *Turnbull-Jackson v Hibiscus Court Municipality* 2014 (6) SA 592 (CC) [37]; *Lawyers for Human Rights v Rules Board for Courts of Law and another* [2012] 3 All SA 153 (GNP) [53].

[26] However, as stated above, SANRAL capitulated on the eve of the hearing of these applications and provided most of the documents and undertook to do so with regard to the remaining. The outstanding issue is the determination of the appropriate scale for costs to be awarded by the Court. This is competent and balanced when SANRAL's side of the story is considered in its full extent. I do so next.

***SANRAL's explanation***

[27] SANRAL, as already mentioned, delivered what is labelled an explanatory affidavit, the evening before the hearing. This was no doubt extremely late.

[28] The affidavit included a request for condonation premised on the assertion that the delay in its delivery was not due to wilful non-compliance or disrespect for the Court or the applicants, but some specified factors. These factors largely had to do with technical challenges in availing the material documents. The challenges are said to have plagued the movement of documents from SANRAL to its attorneys and, in turn, from SANRAL's attorneys to their counterpart, for the applicants. It was stated that the interests of justice called for the condonation sought to be granted. The applicants did not oppose the admittance of SANRAL's affidavit, although as with the Court, they lamented the timing of its delivery. The nature of its contents, as would become clear below, may have contributed to the applicants' attitude in this instance.

[29] The deponent to SANRAL's explanatory affidavit is Mr Kabelo Sekete. Mr Sekete is the general manager in SANRAL's Category Department said to be responsible for the execution of projects within SANRAL. He reports to the chief procurement officer of SANRAL. In his role he works with the Bids Committees. It may be opportune to point out that these committees are bodies entrusted with the relevant responsibilities in ensuring 'fair,

equitable, transparent, competitive and cost-effective' procurement by SANRAL.[11] It is said that at the time of the Tender these bodies misunderstood the SANRAL procurement policy and did not keep full minutes of their meetings reflecting deliberations which took place before voting on resolutions, including to appoint or disqualify a particular bidder in the tender. They only recorded the bare resolutions taken. One can only hope – which hope I still arrived at grudgingly – that this type of incidents were few and isolated. For they do not augur well for an organ of state, that SANRAL is, entrusted with billions of rands in taxpayers' money and the responsibility of building our national roads and highways.

[30] SANRAL says it has endeavoured to collate and provide all documents in its possession of relevance to the Tender or procurement process and decisions subject to the review. It says that its efforts were hampered by the large scale or volume of documents involved in the Tender. The process to avail the documents was cumbersome. The tally of bids evaluated in the Tender is 401. SANRAL, further, explains that - through its attorneys – it retained a third-party printing company to convert the electronic folders into hard copies to obviate the technical challenges in furnishing the documents electronically. But, the challenges persisted and production of some of the documents took time and was at a great cost.

[31] SANRAL says that – it had in fact already - on 15 December 2025, delivered 1 581 documents to the applicants. In its view this was the complete record for the review. It dismisses the criticism by the applicants that the documents were furnished in a 'haphazard and disorganised manner'. The documents were accompanied by an index comprising 115 pages of itself. The index, according to SANRAL, was a helpful tool which could have been used by the applicants and their agents to navigate the large number of documents provided. In the

11 Section 217(1) of the Constitution, quoted in footnote 6 above.

index the documents were appropriately itemised, dated and described, SANRAL asserts. Also, a secure share link was provided to access the documents.

[32] Although SANRAL has, as far back as 18 December 2025, confirmed to its attorneys that all documents have been provided, following internal interactions within SANRAL and, externally, with its attorneys, further documents (to form part of the record) were uploaded by SANRAL on a share folder on 19 February 2026.

[33] All these, it is essentially contented, led to SANRAL not complying with the undertakings given or the timeframes imposed at case management meetings in these applications. Overall, SANRAL denies that it engaged in deliberate prejudicial efforts against the applicants or efforts geared towards the non-disclosure of the review record.

***Documents which were still an issue at the hearing***

[34] As already stated above, by the end of the hearing the parties agreed as to the documents which have already being furnished and those still to be furnished to constitute the record of the reviews. This included the mode of dispatch of the outstanding documents.

[35] Although the applications will be formally granted, I deem it unnecessary to burden this judgment further by reflecting a list of the particular documents which were still to be provided. This is also due to the fact that even with the documents SANRAL claimed to have provided before the hearing the applicants were still to acknowledge that this was in fact the case. Therefore, a proper order would be to grant the relief sought in its entirety, with costs. I turn to the latter issue.

***Conclusion and costs***

[36] It is an indubitable fact that SANRAL was late in the discharge of its obligations under rule 53 to furnish the record in the reviews. It is equally beyond doubt that SANRAL’s non-

compliance went beyond the time it was afforded to do so by the rule and the additional time provided by the judicial directives. Its adversaries only opted to formally compel the delivery of the record in terms of these applications over three months after the expiry of the period normally allowed for this chore.[12] There was equally an interlude of more than a month between the date of delivery of the notice under rule 30A and the launch of the applications.[13] All these do not suggest that the applicants rushed to bring these applications. Their other efforts had failed and, as the applicants aptly describe the situation, the applications had become a necessity.

[37] SANRAL admits the delay in availing the record. It gave reasons for the delay, some of which are captured above, in the so-called 'explanatory affidavit'.[14] But it gave its adversaries no option by its enduring muted silence, than to launch these applications. A prudent and reasonable litigant would have timeously explained - under oath - what documents were available to dispatch as the record and those incapable of dispatch, due to either their being non-existent or no longer in its possession. Such explanation would, naturally, involve the nature and extent of the material documents and, thus, a litigant would not be out of place to further explain within the same affidavit that the volume of documents involved is considered unprecedented and thus posing problems in the timeous delivery of the record. What SANRAL chose to do, possibly under its attorneys' watch or their acquiescence, was to ignore the applicants' pleas and this Court's directives for it to comply with the rule.

[38] By this conduct SANRAL, effectively, failed to meet the overarching Constitutional requirement for organs of state to do their earnest when contracting for goods or services to ensure that this is done 'in accordance with a system which is fair, equitable, transparent,

---

12 Pars [10] and [16] above.
13 Pars [16] and [16] above.
14 Pars [18], [27]-[33] above.

competitive and cost-effective'.[15] The substance of section 217(1) of the Constitution is not only limited to the actual procurement processes, but includes any challenge to such procurement.

[39] When an organ of state, such SANRAL, is challenged with regard to its procurement of services or goods, it cannot resort to tactical measures and propensities to avoid compliance in a manner which is unfair, inequitable, non-transparent, uncompetitive and cost-ineffective. This is not a system envisaged by the provisions of section 217. But yet, SANRAL did exactly that in these applications. It doesn't really matter whether SANRAL did not mean to prejudice its opponents or disrespect them and the Court. The effect of SANRAL's conduct is towards those ends. This type of conduct cannot and will not be countenanced. SANRAL is liable for costs of these applications.

[40] The applicants urged the Court to mark its disapproval of the conduct of SANRAL by directing that it pays the applicants' costs at a punitive scale, including the costs of two counsel. It is submitted that SANRAL unfairly led the applicants to incur legal costs when this could have been totally avoided and, thus, there is no valid reason why the applicants should be out of pocket. I agree. SANRAL will be ordered to pay costs of these applications on attorney and client scale, including costs of two counsel where applicable.

***Order***

[41] In the premises,

[41.1] in the matter between ***BCB Solutions (Pty) Ltd v South African National Roads Agency SOC Limited and Twenty-Three Others*** under Case Number: **172542/2025**, I make the order, that:

---

15 Footnote 6 above for a reading of the material part of s 217(1) of the Constitution.

a) the application is granted, subject to b) hereof;

b) in the event that the first respondent has not yet fully complied with the relief sought in the notice of motion to this application and in the absence of an agreement between the parties in this regard, the first respondent is directed to fully comply by furnishing the record by no later than 1 April 2026, and

c) the first respondent is liable to pay the applicant's costs of the application at the scale of attorney and client, including the costs of two counsel where employed.

[41.2] in the matter between ***Botle Ba Afrika Roads (Pty) Ltd v South African National Roads Agency SOC Limited and Twenty-Three Others*** under Case Number: **175029/2025**, I make the order, that:

a) the application is granted, subject to b) hereof;

b) in the event that the first respondent has not yet fully complied with the relief sought in the notice of motion to this application and in the absence of an agreement between the parties in this regard, the first respondent is directed to fully comply by furnishing the record by no later than 1 April 2026, and

c) the first respondent is liable to pay the applicants' costs of the application at the scale of attorney and client, including the costs of two counsel where employed.

[redacted]

**Khashane La M. Manamela**
**Judge of the High Court**

| | | |
|---|---|---|
| **Date of Hearing** | **:** | **05 March 2026** |
| **Date of Judgment** | **:** | **27 March 2026** |

**Appearances**:

| | | |
|---|---|---|
| For the Applicants (both cases) | : | Mr K Hopkins SC (with Ms C Louis) |
| Instructed (in the BCB Application) by | : | Serote Attorneys, Silver Lakes, Pretoria |
| Instructed (in Botle Application)) by | : | Fairbridges Wertheim Becker Attorneys, Sandton, Johannesburg<br>c/o Serote Attorneys, Silver Lakes, Pretoria |
| For the First Respondent (both cases) | : | Mr R Tshetlo |
| Instructed by | : | Edward Nathan Sonnenbergs Inc, Sandton, Johannesburg |
| Second to Twenty-Three Respondents | : | No appearance |