



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/Not Reportable

Case no: 2026 - 186153

In the matter between:

**THE NORWEGIAN INVESTMENT FUND
FOR DEVELOPING COUNTRIES**

Applicant

and

**ONE THOUSAND AND ONE VOICES AFRICA I
(MAURITIUS) LIMITED**

First Respondent

MDI CONSULTANCY SERVICES AG

Second Respondent

**REDSUN DRIED FRUIT AND NUTS
(PROPRIETARY) LIMITED**

Third Respondent

JOHANNES JOUBERT SMIT

Fourth Respondent

Neutral citation: *The Norwegian Investment Fund For Developing Countries v One Thousand and One Voices Africa I (Mauritius) Limited and Others*
(2026 - 186153) 28 August 2026.

Coram: Mamosebo J.

Heard: 14 August 2026.

Delivered: 28 August 2026.

Summary: Urgent application – Interim interdictory relief – Application challenged on three grounds – (a) Jurisdiction, (b) Urgency, and (c) Availability of substantial redress in due course – Requirements for an interdict not met – Application dismissed.

ORDER

1. The forms, service and time periods provided for in the Uniform Rules of Court are dispensed with, and the applicant's non-compliance therewith is condoned, and the matter is heard as one of urgency in terms of Rule 6(12).
 2. The application is dismissed with costs, such costs to include those consequent upon the employment of two counsel on scale C as set out in Rule 67A read with Rule 69 of the Uniform Rules of Court.
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JUDGMENT

Mamosebo J

- [1] The Norwegian Investment Fund for Developing Countries ("the Fund") approached this Court on an urgent basis, seeking an interim interdict pending arbitration of the parties' dispute in respect of four ordinary shares in the third respondent, Redsun Dried Fruit and Nuts (Proprietary) Limited ("Redsun"). Essentially, the interdict sought would in effect (a) restrain the first respondent, One Thousand and One Voices Africa I (Mauritius) Limited ("1K1V"), from dealing with the four shares, and restrain Redsun from registering, recording or recognising a transfer of the shares in its securities register; and (b) restrain 1K1V from selling and alienating in any manner its four ordinary shares in Redsun to any person other than the Fund.

- [2] 1K1V opposed the application on three grounds: first, lack of jurisdiction; second, lack of urgency or that the alleged urgency was self-created; third, the availability of substantial redress for the Fund in the ordinary course. I consider the three grounds below.

Lack of jurisdiction

- [3] Ms Pillay SC, appearing for 1K1V, referred the Court to clause 29.2 of the Shareholders' Agreement (FA3) which stipulates:

'Each party hereby consents and submits to the non-exclusive jurisdiction of the South Gauteng High Court for the purposes of all or any legal proceedings arising from or concerning this Agreement.'

- [4] Counsel pointed out that these proceedings were brought before this Court despite the Fund's knowledge of the existence of clause 29.2, and under the circumstances where only Redsun has its place of business within the jurisdiction of this Court. In this regard, Ms Pillay submitted that 1K1V is Mauritius-incorporated; the second respondent, MDI Consultancy Services AG is Swiss-incorporated with its registered address in Switzerland; and the fourth respondent, Mr Johannes Joubert Smit resides in Somerset West, Western Cape Province. Mr Roux SC, for the Fund, submitted that this Court's jurisdiction is founded on s 21(2) of the Superior Courts Act¹ in that a Division which has jurisdiction over a cause also has jurisdiction over a person outside its area who is joined as a party to that cause. This reflects the common law principle of *causa continentia*, so argued Counsel.

- [5] Section 21 of the Superior Courts Act stipulates:

'Persons over whom and matters in relation to which Divisions have jurisdiction

- (1) A Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power –

¹ 10 of 2013.

(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

(2) A Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division. . . .’

[6] Mr Roux further relied on clause 29.3 of the Shareholders’ Agreement, which provides that any High Court with jurisdiction can be approached for relief on an urgent or interlocutory basis. Ms Pillay, relying on *Hamissie v Minister of Police and Another*,² argued that the causes of action against 1K1V and the causes of action against Redsun are both factually and legally distinct. Only once the Fund succeeds in obtaining an interdict can the relief against Redsun be reached. Therefore, Counsel argued, *causa continentia* cannot provide a basis for this Court to have jurisdiction.

[7] Leach JA in *Foize Africa (Pty) Ltd v Foize Beheer BV and Others*³ (“*Foize Africa*”) reaffirmed the principle that the parties cannot by contract oust the High Court of jurisdiction conferred to it by statute or common law. The Court has a discretion as to whether to enforce the forum-selection clause, having considered all the facts and circumstances of a particular case.

[8] It is necessary to distinguish between the existence of jurisdiction and the exercise thereof. A contractual forum-selection clause does not, without more, deprive a High Court of jurisdiction otherwise conferred by statute. It remains open to a court with jurisdiction to determine whether, in exercising its discretion and having regard to the parties’ Agreement, it should entertain the matter. The

² (740/22) [2026] ZANWHC 113 (14 April 2026).

³ 2013 (3) SA 91 (SCA) paras 20-22.

enquiry is therefore not confined to whether this Court has jurisdiction, but is also about whether sufficient grounds have been established for departing from the forum selected by the parties.

- [9] The parties have consented to the jurisdiction of the South Gauteng High Court. The Fund has not advanced any compelling reasons why this Court should not give effect to the parties' freely negotiated forum selection. Nor has the Fund demonstrated that the enforcement of the forum-selection clause would be unreasonable, oppressive, contrary to public policy, or productive of substantial injustice.⁴ In commercial matters, considerations of certainty and predictability ordinarily favour the enforcement of freely negotiated forum-selection clauses.
- [10] Section 21 of the Superior Courts Act, in my view, does not override a contractual forum-selection clause but merely identifies when a Division has jurisdiction. Likewise, clause 29.3 of the Shareholders' Agreement cannot be construed as conferring jurisdiction upon a court that otherwise lacks it. Properly interpreted, the clause preserves the parties' entitlement to seek urgent or interlocutory relief in a court otherwise possessing competent jurisdiction, but does not create jurisdiction where none exists.
- [11] It may well be that this Court would ordinarily have jurisdiction in so far as the relief sought against Redsun is concerned. However, I am not persuaded in respect of the interconnectedness of the causes of action for the principle of *causa continentia* to apply. In other words, I am not convinced that this Court can be said to have jurisdiction "over a part of a cause" wherein it has not been established that the relief sought against Redsun is not merely consequential/accessory to the relief sought against 1K1V.⁵ Even the deponent to the founding affidavit, Mr Johan Andries Ismael Kemp, said the following at paragraph 10: 'the applicant seeks limited accessory relief against the third respondent, and as such, no costs are sought against the third respondent unless the third respondent elects to oppose this application.' Importantly, the

⁴ See generally *Beadica 231 CC and Others v Trustees, Oregon Trust and Others* 2020 (5) SA 247 (CC); 2020 (9) BCLR 1098 (CC) para 102.

⁵ See generally *Permanent Secretary, Department of Welfare, Eastern Cape, and Another v Ngxuzza and Others* 2001 (4) SA 1184 (SCA) at 1201.

parties, in this instance, have included the forum-selection clause in the Shareholders' Agreement to serve a legitimate commercial purpose. The Fund has not made a strong case that it should not be bound by the Agreement and that this Court should exercise its discretion to the Fund's favour.

- [12] It is also desirable, as affirmed in *Foize Africa*⁶, to avoid a multiplicity of actions in different courts with the associated potential of conflicting decisions. It follows, therefore, that in the light of the facts argued before me as well as the surrounding factors pertaining to jurisdiction, I am not satisfied that the Fund has made a case for *causa continentia* to apply. Accordingly, 1K1V's opposition ground based on lack of jurisdiction stands to be upheld. Even if I am wrong in my conclusion regarding jurisdiction, the application falls to be dismissed for the additional reasons discussed below relating to urgency and the substantive requirements for interim interdictory relief.

Urgency

- [13] As alluded to above, the Fund seeks interim interdictory relief pending the final determination of the dispute declared by the Fund on 20 July 2026 in accordance with clause 23 of the Shareholders' Agreement concluded on or about 11 April 2022 ("ROFO Dispute"), including any arbitration arising from that dispute. To ground the urgency relied upon, the Fund contended that:

- (a) if 1K1V were to transfer the four ordinary shares to Mr Smit, the transferee, before the ROFO Dispute has been resolved, the transferee will not be a party to the agreement and will not be bound by the arbitral process;
- (b) an award in the Fund's favour will not without more procure registration of the shares in the Fund's name;

⁶ *Supra* fn 3 para 28.

- (c) the Fund will be compelled to litigate against the third party and possibly other affected parties to vindicate its asserted rights to the First Offer Shares;
- (d) the Fund will incur additional delay and costs in attempting to reverse a completed transaction; and
- (e) the practical efficacy of the agreed arbitration will be materially diminished.

[14] The Fund, invoking the principle in *Nelson Mandela Metropolitan Municipality and Others v Greyvenouw CC and Others*,⁷ also contended that, because it first attempted to explore a commercial solution by involving a potential joint sale of the respective shareholdings, it cannot be faulted for the delay in bringing the urgent application because the process would have avoided this application. According to the Fund, the delay is only of 4 days. The Fund denies that the urgency is self-created.

[15] 1K1V countered the aforementioned submission on urgency, on three grounds. First, that the Fund did not rise up to the test as elucidated in *Luna Meubel*⁸ to justify the extent to which timelines have been abridged in bringing the application; second, that the alleged urgency is self-created; and third, that the Fund can obtain substantial redress in the ordinary course.

[16] Rule 6(12) of the Uniform Rules of Court requires the applicant to set out explicitly the circumstances rendering the matter urgent and the reasons why it cannot obtain substantial redress at a hearing in due course.⁹ The enquiry into urgency is not limited to whether an applicant ultimately faces prejudice. The applicant must also explain, with particularity, why the matter could not have proceeded in accordance with the ordinary Rules and why the degree of

⁷ 2004 (2) SA 81 (SE).

⁸ *Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers)* 1977 (4) SA 135 (W) at 137F.

⁹ *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011); 2011 JDR 1832 (GSJ) paras 6 and 7.

procedural deviation adopted was justified. The greater the departure from the ordinary processes of the Court, the more compelling the explanation required.

- [17] 1K1V contended that the Fund failed to act with expedition, effectively letting a period of eight weeks to lapse despite being aware eight weeks prior that 1K1V had taken a stance on the Fund's conditional acceptance of the four ordinary shares (ROFO shares). There was also no explanation for the severely truncated timelines within which 1K1V was to file a notice to oppose the application, or for the filing of its answering affidavit, so argued 1K1V.
- [18] Insofar as the Fund's contention of first exploring a commercial solution is concerned, 1K1V not only argued that the facts in *Nelson Mandela Metropolitan* are distinguishable, but also maintained that the Fund was engaged in a different process concerning its potential exit as a shareholder which had nothing to do with the ROFO shares. The Fund knew from 9 June 2026 when 1K1V informed it that it was not willing to accept the Fund's conditional acceptance of the four ordinary shares. The Fund nevertheless held back until 31 July 2026 thus launching this application about eight weeks later.
- [19] Even accepting in the Fund's favour that commercial discussions were pursued in good faith and in an attempt to avoid litigation, the papers do not satisfactorily explain why the application thereafter proceeded on the highly truncated timetable ultimately adopted. The fact that parties engage in settlement discussions does not, without more, relieve an applicant of the obligation to approach the Court with due expedition once the imminence of litigation becomes reasonably foreseeable.

The requirements for an interim interdict

- [20] The requirements for an interim interdict are trite, namely (a) a clear right or a *prima facie* right, though open to some doubt; (b) an injury actually committed or reasonably apprehended; (c) the balance of convenience must favour the applicant; and (d) the absence of similar protection by any other ordinary

remedy.¹⁰ These requisites must be met for an applicant to succeed in obtaining interim interdictory relief.

Prima facie right

[21] The Fund averred that it has established a *prima facie* right, even if open to some doubt, arising from its unconditional acceptance of the ROFO shares. It relies on its response marked “FA7” dated and signed on 29 May 2026 that its acceptance was unconditional, establishing, as it is, a *prima facie* right. It is necessary to quote FA7 in full:

‘RE: REDSUN DRIED FRUIT AND NUTS PROPRIETARY LIMITED – RIGHT OF FIRST OFFER NOTICE DATED 30 APRIL 2026

1. We refer to our letter dated 15 May 2026 (Information Request) in which Norfund requested certain documents and information to enable it to properly assess the right of first offer notice dated 30 April 2026 issued by 1K1V (ROFO Notice).
2. Capitalised terms used in this letter but not defined herein bear the meaning given to them in the ROFO Notice.
3. We acknowledge receipt of the email response to our Information Request dated 25 May 2026. Norfund records that this response is wholly inadequate to enable Norfund to make a properly informed assessment of the ROFO Notice, including the valuation methodology underpinning the First Offered Purchase Price. Norfund notes, in particular, that certain of the information requested in the Information Request would, in the ordinary course, have been made available to the third party purchaser to enable it to formulate a bona fide offer for the First Offered Shares at the First Offered Purchase Price. 1K1V’s failure to furnish Norfund with equivalent information is noted and Norfund reserves all of its rights in this regard.
4. In light of the inadequacy of the information provided, Norfund is unable to confirm its agreement with the valuation methodology underlying the First Offered Purchase Price. Norfund’s acceptance of the First Offer (as set out below) shall not be construed as an endorsement of, or agreement with, such evaluation

¹⁰ *Setlogelo v Setlogelo* 1914 AD 221 at 227.

methodology. Notwithstanding the foregoing, the ROFO acceptance period expires today, 29 May 2026.

5. Norfund hereby accepts the First Offer as contained in the ROFO Notice to acquire the First Offered Shares (being a total of 4 ordinary par value shares in the Company) for the First Offered Price (being an aggregate amount of ZAR 8 786 127).
6. As requested in terms of paragraph 5.1 of the ROFO Notice, Norfund's countersigned ROFO Notice is attached hereto. Norfund confirms that it has accepted the First Offer in respect of all (and not only part) of the First Offered Shares and that its acceptance is unconditional.
7. As you are aware, in terms of clause 12 of the Shareholders Agreement, in connection with Norfund's investment in the Company, 1K1V and MDI undertook to provide Norfund with a USD IRR of a minimum of 8% on its investment in the Company. Norfund records that the First Offered Purchase Price shall be included in Norfund's investment in the Company for purposes of calculating its USD IRR return on investment upon the occurrence of an IRR Trigger Event (as defined in clause 12.2 of the Shareholders Agreement). For the avoidance of doubt, the acquisition by Norfund of the First Offered Shares does not constitute, and shall not be deemed to give rise to, an IRR Trigger Event.
8. Norfund is ready to consummate the acquisition of the First Offer Shares within the 20-business day period contained in clause 13.6 of the Shareholders Agreement.
9. Nothing in this letter, including Norfund's acceptance of the First Offer, shall constitute a waiver of any of Norfund's rights under the Shareholders Agreement, at law or otherwise, including (without limitation) any rights Norfund may have arising from 1K1V's failure to adequately respond to the Information Request or any non-compliance by 1K1V with the provisions of the Shareholders Agreement in connection with the ROFO Notice. All such rights are expressly reserved. (Emphasis added.)

[22] Mr Roux referred the Court to 001-97 (FA4) in the papers where the following appears to bolster the Fund's contention of a *prima facie* right: 'By countersigning and returning a signed copy of this letter to 1K1V and the

Company, you hereby accept the First Offer on the terms and conditions set out in this letter and agree that this letter shall constitute the agreement reached between 1K1V and yourself on this matter'. At 001-98 (FA5) paragraph 5, the Fund also wrote: 'To enable Norfund to fully and properly assess the ROFO Notice on an informed basis, please provide the following documents and information: . . .' The request was denied by email on 25 May 2026 (FA6).

- [23] It is not necessary at this stage finally to determine the proper interpretation of the Shareholders' Agreement or the legal effect of the Fund's correspondence. Those issues may ultimately fall for determination in arbitration proceedings. The present enquiry is narrower, namely whether the Fund has demonstrated a *prima facie* right, though open to some doubt, sufficient to warrant interim protection.
- [24] Clause 13.5 of the Agreement states that acceptance of the first offer may not be subject to any conditions. Contract law requires acceptance to be clear, unequivocal, and unambiguous.¹¹ In paragraph 9 of the purported acceptance letter, the Fund expressly reserves its rights to later contest aspects of the terms of the transaction and alleges non-compliance with the Shareholders' Agreement. In paragraph 4, the Fund expressly records its disagreement with the valuation methodology and reserves its rights in that regard. Paragraph 7 introduces additional statements regarding the treatment of the acquisition for purposes of calculating the Fund's IRR.
- [25] At the very least, the contents of paragraphs 3, 4, 7 and 9 of the letter create substantial uncertainty as to whether the acceptance relied upon by the Fund was clear, unequivocal and entirely unqualified as contemplated by clause 13.5. An objective reading of the correspondence reveals an acceptance accompanied by reservations relating to valuation methodology, future rights and the treatment of the acquisition for IRR purposes.

¹¹ *Boerne v Harris* 1949 (1) SA 793 (A) at 808-9.

- [26] Whether these reservations ultimately amount to conditions is a matter that may require determination in arbitration. However, they materially weaken the Fund's contention that an immediately enforceable contractual entitlement has been established. Viewed objectively, and without finally deciding the issue, the Fund's purported acceptance does not plainly accord with the requirements contemplated by clause 13.5 of the Shareholders' Agreement. In the circumstances, it does not follow that the Fund has established a *prima facie* right, even if open to some doubt.

Reasonable apprehension of harm

- [27] According to the Fund, 1K1V asserts that it will transfer the First Offer shares under clause 13.7 of the Agreement. In this regard, the Fund's contention is that its apprehension of harm stems not only from 1K1V's refusal to preserve the shares but also from 1K1V's failure to disclose when the transfer will occur. Once the shares are placed in the hands of a person who is not a party to the Shareholders' Agreement and thus not bound by the arbitral proceedings, it would be difficult to reverse that transaction without experiencing delays and incurring costs.
- [28] 1K1V maintains that the Fund still bears the *onus* to demonstrate that it has a well-grounded apprehension that it will suffer irreparable harm should the interim relief it seeks not be granted. 1K1V argued that the harm pleaded by the Fund is that the ROFO shares will pass to a person who is not a party to the arbitral process, thereby undermining the efficacy of the agreed process and compelling the Fund to litigate against the third party to vindicate its asserted rights to the First Offer shares. It was submitted that nothing stops the Fund from continuing with the arbitration process and in the likelihood that the award is in its favour, 1K1V has 237 ordinary shares in Redsun from which the four ordinary shares can be transferred. 1K1V maintains that the Fund has not alleged irreparable harm under the circumstances.

- [29] The Constitutional Court in *Tshwane City v Afriforum and Another*¹² ("*Tshwane City*") insightfully remarked:

'Within the context of a restraining order, harm connotes a common-sensical, discernible or intelligible disadvantage or peril that is capable of legal protection. It is the tangible or intangible effect of deprivation or adverse action taken against someone. And that disadvantage is capable of being objectively and universally appreciated as a loss worthy of some legal protection, however much others might doubt its existence, relevance or significance. Ordinarily the harm sought to be prevented through interim relief must be connected to the grounds in the main application.'

- [30] The difficulty with the Fund's case is that the harm alleged is predicated largely upon anticipated procedural inconvenience, additional litigation, delay and costs. While these considerations are not irrelevant, they do not, on the papers before me, establish that any subsequent arbitral award or other competent relief would be rendered ineffective. The Fund has not shown that the consequences of a transfer would be incapable of reversal or incapable of being addressed through appropriate legal remedies.

The Constitutional Court further pronounced¹³:

'Irreparable [harm] implies that the effects or consequences cannot be reversed or undone. Irreparable therefore highlights the irreversibility or permanency of the injury or harm. That would mean that a favourable outcome by the court reviewing allegedly objectionable conduct cannot be an order that would effectively undo the harm that would ensue should the interim order not be granted.'

I am not persuaded that the Fund has made out a case of irreversible harm. It is clear that the harm, should it be found to exist at the arbitration proceedings, can still be undone. It follows that the Fund has not established a well-grounded apprehension of harm and also fails in this score.

Balance of convenience

¹² 2016 (6) SA 279 (CC) para 56.

¹³ *Ibid* para 59.

[31] This Court must weigh the prejudice the Fund would suffer if the shares are transferred before the arbitration proceedings, against the prejudice to 1K1V if the shares are preserved pending arbitration. The Fund contended repeatedly that the shares will pass to a non-party, that the efficacy of the arbitration will be impaired, and litigation will be unavoidable. The Fund relies on the following to bolster its argument that the balance of convenience favours it: the prejudice that will be suffered by 1K1V is relatively limited because the interim relief neither declares the Fund as owner nor orders immediate transfer; the duration of the restraint lasts only until the arbitral award which will determine the ROFO dispute; the order will lapse should the Fund fail to refer the dispute to arbitration after the expiry of the 21-day period; should the Fund succeed it will pay the First Offer price specified by 1K1V; and should the Fund not succeed in the arbitration, however, the restraint will lapse and 1K1V may exercise its rights as stipulated in the Shareholders' Agreement.

[32] 1K1V contended that the Fund seeks to constrain how 1K1V deals with its shares for an indefinite period. To dispel the assertion by the Fund that the balance of convenience is in its favour, 1K1V invoked *Tshwane City*¹⁴ where the Constitutional Court described balance of convenience in this fashion:

'... This requirement recognises that in an application for a temporary restraining order there will invariably be at least two competing interests. And those interests are inextricably linked to the harm a respondent is likely to suffer in the event of the order being granted and the harm likely to be suffered by an applicant if the relief sought is not granted.'

Having considered the submissions concerning prejudice on either side, should the relief be granted or not be granted? I am not satisfied that the balance of convenience favours granting the Fund the interim relief sought. The Fund has not persuasively demonstrated the prejudice that it is likely to suffer.

[33] Furthermore, the strength of an applicant's asserted right remains an important consideration when assessing the balance of convenience. Where the

¹⁴ *Ibid* para 62.

existence of the *prima facie* right relied upon is itself open to substantial doubt, the prejudice said to be suffered by an applicant must carry correspondingly less weight in the balancing exercise.

Alternative remedies

[34] The Fund argued that although the parties have contractually agreed to arbitration as the agreed remedy, arbitration does not restrain a transfer pending the arbitral award, hence clause 23.4 of the Shareholders' Agreement permitting urgent relief. Whether the Fund will pursue a damages action, an application to reverse the transaction, or an attempt to obtain substitute shares; all of these will require additional proceedings, which the Fund is trying to prevent. For the aforementioned reasons, the Fund contended that there is no adequate alternative remedy. To counter the Fund's submission, 1K1V is adamant that the Fund's available alternative remedy to enforce its rights according to the Shareholders' Agreement is arbitration. Should the arbitrator find that the sale of shares was unlawful, there are a host of other remedies available to the Fund, so argued 1K1V.

[35] A party must show that no alternative remedy exists and that the court should grant the relief sought. The existence of an alternative remedy does not require that such remedy be identical to the relief sought in these proceedings. The question is whether the available remedy affords substantial redress. The Fund correctly points out that arbitration does not by itself preserve the *status quo* pending determination of the dispute. However, the Fund has not demonstrated on the papers that the arbitral process, together with any consequential remedies that may flow from a favourable award, would be ineffective or incapable of affording it meaningful relief/substantial redress. The availability of arbitration and other remedies that may offer substantial redress following a favourable award therefore weighs against the granting of interim interdictory relief in the circumstances of this matter.

[36] There was a notice filed by 1K1V in terms of Rule 6(5)(e) of the Uniform Rules of Court in which Mr Trent Jordan Hudson was seeking this Court's indulgence

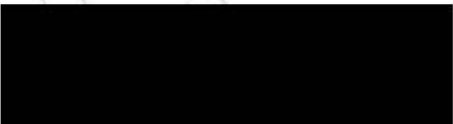
to file an additional affidavit to clear up the averments made by the deponent of the replying affidavit. The parties did not entertain this application during their oral submissions; therefore, nothing turns on it.

[37] It bears emphasis that the Court has not determined finally the parties' contractual rights arising from the Shareholders' Agreement or the disputed ROFO process. Those issues remain capable of determination in the agreed arbitral forum. The findings contained in this judgment are confined to the requirements for urgent interim relief and should not be understood as finally disposing of the substantive dispute between the parties.

[38] I am now left with the question of costs. The generally trite principle is that costs follow the result, and I have no reason to deviate therefrom. The parties submitted that the matter was complex and justified the employment of senior and junior counsel. I agree.

[39] As a result, the following order is made:

1. The forms, service and time periods provided for in the Uniform Rules of Court are dispensed with, and the applicant's non-compliance therewith is condoned, and the matter is heard as one of urgency in terms of Rule 6(12).
2. The application is dismissed with costs, such costs to include those consequent upon the employment of two counsel on scale C as set out in Rule 67A read with Rule 69 of the Uniform Rules of Court.



MC MAMOSEBO
JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Applicant:

Instructed by:

Adv. B Roux SC with Adv. R Pottas

Baker McKenzie Inc

c/o Van de Wall Inc

For the 1st Respondent:

Instructed by:

Adv. K Pillay SC with Adv. S Ebrahim

Webber Wentzel Attorneys

c/o Elliott Maris Attorneys