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17141/12-rm  
2012-04-28

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JUDGMENT

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IN THE HIGH COURT OF SOUTH AFRICA

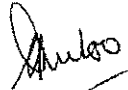
(NORTH GAUTENG HIGH COURT, PRETORIA)

**DELETE WHICHEVER IS NOT APPLICABLE**

(1) REPORTABLE YES/NO

(2) OF INTEREST TO OTHER JUDGES YES/NO

(3) REVISED

DATE 15/5/12 SIGNATURE 

CASE NUMBER: 17141/12

DATE: 2012-04-28

10 In the matter between:

15/5/12  
Gibco

OPPOSITION TO URBAN TOLLING ALLIANCE 1<sup>st</sup> Applicant

SOUTH AFRICAN VEHICLE RENTING AND LEASING ASSOCIATION 2<sup>ND</sup> Applicant

QUADPARA ASSOCIATION OF SOUTH AFRICA 3<sup>RD</sup> Applicant

SOUTH AFRICAN NATIONAL CONSUMER UNION 4<sup>TH</sup> Applicant

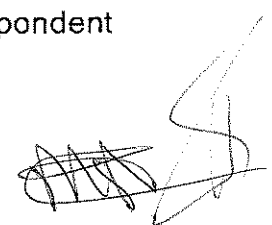
and

THE SOUTH AFRICAN NATIONAL ROADS AGENCY LTD 1<sup>ST</sup> Respondent

20 THE MINISTER, DEPARTMENT OF TRANSPORT REPUBLIC OF SOUTH AFRICA 2<sup>ND</sup> Respondent

THE MEC, DEPARTMENT OF ROADS AND TRANSPORT, GAUTENG 3<sup>RD</sup> Respondent

THE MINISTER, DEPARTMENT OF WATER AND ENVIRONMENTAL AFFAIRS 4<sup>TH</sup> Respondent



DIRECTOR-GENERAL, DEPARTMENT OF

WATER AND ENVIRONMENTAL AFFAIRS

5<sup>TH</sup> Respondent

NATIONAL CONSUMER COMMISSION

6<sup>TH</sup> Respondent

NATIONAL TREASURY

7<sup>TH</sup> Respondent

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J U D G M E N T

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PRINSLOO, J: The applicants applied before me on an urgent basis  
10 this week for interim interdictory relief aimed at restraining the first  
respondent from levying and collecting toll on certain sections of the  
Gauteng Freeways by making use of the electronic or "e-toll" method.

The interim interdict applied for is intended to restrain the first  
respondent from so levying and collecting toll, pending the outcome of a  
substantive review application to be heard in due course before a court  
of review. The interim relief is sought in terms of part A of the notice of  
motion and the substantive relief will be sought in due course in terms of  
prayers set out in part B of the notice of motion.

The urgent proceedings before me concerned only the interim  
20 interdictory relief sought in terms of part A. For illustrative purposes it is  
convenient to quote the wording of prayers 2 and 3 of part A of the  
notice of motion:

"2. That pending the final determination of the application for  
the relief sought in part B hereof, the first respondent be  
interdicted and restrained from levying and collecting toll on



the following roads:

- 2.1 national road N1 section 20 from Armadale to Midrand;
  - 2.2 national road N1 section 21 from Midrand to the Proefplaas Interchange;
  - 2.3 national road N3 section 12 from Old Barn Interchange to the Buccleuch Interchange;
  - 2.4 national road N4 section 1 from Koedoespoort to Hans Strijdom Drive;
  - 10 2.5 national road N12 section 18 from Diepkloof Interchange to Elands Interchange;
  - 2.6 national road N12 section 19 from Gillooly's Interchange to the Gauteng/Mpumalanga Provincial Border; and
  - 2.7 national road R21 (also known as the P157/1 and P157/2) sections 1 and 2 from Hans Strijdom Drive to Rietfontein Interchange N12, Province of Gauteng.
3. That pending the final resolution of the complaint filed by the fourth applicant with the 6<sup>th</sup> respondent in terms of section 71 of the Consumer Protection Act 68 of 2008 in respect of the first respondent's 'e-Toll Terms and Conditions' dated 28 February 2012, or the elapse of the time period referred to in section 114(1) of the Act, the first respondent be interdicted and restrained from levying and collecting toll on the roads referred to in paragraph 2.1 to
- 20

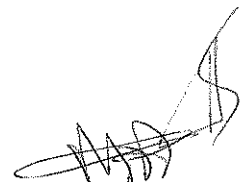


2.7 above on the terms and conditions set out in the first respondents 'e-Toll Terms and Conditions' "

The relief sought in prayer 3 was abandoned for purposes of this application.

In terms of part B of the notice of motion the court of review will in due course be moved to review and set aside the decision of the first respondent to declare the aforementioned sections of the freeways as continuous toll roads and also to review the establishment of electronic toll points on those aforementioned sections of the freeways. The court  
10 of review will also be moved to review and set aside the decisions of the second respondent ("The Transport Minister") to grant approval to the first respondent (The South African National Roads Agency Limited or "SANRAL") to make the aforesaid declarations in terms of the provisions of the South African National Roads Agency Limited and National Roads Act 7 of 1998 ("the Act:). There will also be applications before the review court in due course for decisions by the fourth and fifth respondents, (the Minister, Department of Water and Environmental Affairs and his or her Director General) to grant certain environmental authorisations required for the upgrading of certain interchanges and  
20 the like along the aforementioned sections of the freeways.

Before the review court the applicants will also apply for final interdictory relief restraining SANRAL from levying and collecting tolls specified in the aforesaid declarations. It is not necessary, for present purposes, to deal in greater particularity with the relief to be sought in due course before the court of review.



The 6<sup>th</sup> respondent before me is the National Consumer Commission which did not take part in the proceedings or oppose the application on a formal basis.

At the commencement of the proceedings the National Treasury applied to intervene as a 7<sup>th</sup> respondent in this urgent application. The application was duly granted. The 7<sup>th</sup> respondent ("The Treasury") actively took part in the hearing and opposed the application for interim interdictory relief.

Also during the course of the proceedings, the Road Freight  
10 Association and Afriforum made formal applications to be admitted as *amicus curiae* ("friends of the court"). They did so in terms of the provisions of uniform rule 16A on the basis that they had contributions to make in respect of constitutional arguments not raised by any of the other parties to the dispute. Their applications to be so permitted were opposed by some of the respondents. I will in due course briefly deal with the outcome of the two applications.

After the application which came before me was launched, no fewer than three notices were published in the *Government Gazette* in an attempt, so it was argued on behalf of the applicants, to create a  
20 legal infrastructure for the imposition of e-tolling on the Gauteng Freeway Improvement Project Network ("GFIP network") which is the relevant freeway network in respect of this application:

1. on 13 April 2012 a notice was published stipulating the tariffs to be paid ("the tariffs notice");
2. On 18 April 2012 a notice entitled "Conditions of Toll" was

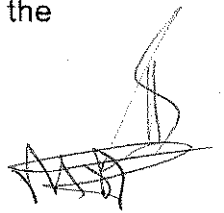


published ("the conditions notice"); and

3. on 18 April 2012 the Transport Minister published draft regulations to provide for exemptions from e-Tolling on the GFIP network ("the draft regulations")."

This was last week, no more than three court days before this hearing started. Since none of these documents existed when the application was launched, the applicants could not have been expected to refer to them in their papers and applied to amend their notice of motion and to file a supplementary founding affidavit in which reference is made to  
10 these new notices. In the process of the amendment the applicants also introduced a further (independent) ground for interim relief, namely that e-Tolling cannot commence on 30 April 2012, because there is no legal infrastructure in place to exempt the operators of public transport from liability to pay tolls. I will revert to this topic hereunder.

At this point it is convenient to interpose by mentioning that in the end nineteen eminent counsel appeared before me, ten of whom are senior counsel. I am indebted to all of the for their well crafted, constructive and useful contributions. The hearing in the urgent court lasted for approximately three days and the record ran into some 2 500  
20 pages. Written heads of argument ran into a few hundred pages. The hearing ended two days ago, on Thursday afternoon. I am now forced to hand down this judgment under extremely urgent and pressing circumstances, over a long weekend, because the tolling of the roads forming the subject of the urgent application is scheduled to commence on Monday 30 April 2012, today being Saturday 28 April, and the



hearing before me commenced on Tuesday 24 April 2012.

At the commencement of the proceedings SANRAL, the Transport Minister and the Treasury contested the question of urgency, arguing that any urgency which may be present was created by the applicants themselves as the decision to toll the roads on the GFIP network was already published some years ago, in 2008, and it was not open to the applicants, under these circumstances, to launch this application on such an extremely urgent basis. It was argued that the applicants were guilty of abusing the rules of court so that the application fell to be  
10 struck from the roll.

I add that the fourth and fifth respondents (The Minister of the Department of Water and Environmental Affairs and his Director-General) did not actively take part in the proceedings before me and did not oppose the relief sought in part A of the notice of motion.

The applicants argued, broadly speaking, that they took part in the process which unfolded after the intention to toll these freeways was made public. They made representations and attended meetings. It is common cause that the Transport Minister on more than one occasion, four to be exact, suspended the whole tolling process, because of  
20 unprecedented public outcries leading to protests against the impending tolling of the freeways. The last such suspension came from the Minister as recently as January 2012.

I interpose to record that on Thursday afternoon, two days ago, there was an announcement of yet another, or fifth, postponement of the proposed tolling. This event, which took place on the day when the

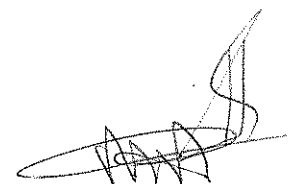


hearing was concluded, was not part of the issues ventilated before me and barring one later reference to this occurrence I say no more.

It was argued on behalf of the applicants that they only realised that the tolling would become a reality when the Minister of Finance announced in his budget speech on 22 February 2012 that the tolling would be activated on 30 April 2012. When that announcement was made the applicants acted with the necessary expediency to prepare this substantive and lengthy application, which they managed to launch on 23 March 2012. They gave the respondents more than a month's  
10 notice before the scheduled hearing on 24 April.

I have already expressed the view that sufficient notice was given under the circumstances. For the sake of brevity and given the somewhat unusual and pressing conditions under which I am handing down this judgment, I do not propose dwelling any further on the details of the arguments as to urgency or the lack thereof. I ruled that the application was urgent and that it had to be heard on that basis. I was also inspired by the fact that this dispute has enjoyed nationwide prominence and interest. I felt that it was important for some degree of clarity to be achieved.

20 I return to deal with the application by the applicants to amend the notice of motion and file a supplementary founding affidavit. As I have indicated the application was opposed on the basis that it was only served on the respondents on Saturday 21 April, leaving the latter with too little time to react thereto. It was argued that the amendment introduced additional grounds, thereby widening the scope of the





application and also involved complex legal and factual issues so that the granting of the amendment at this stage would lead to the prejudice of the respondents. After hearing argument I struck the application for amendment and to introduce a supplementary founding affidavit from the roll with costs.

The Road Freight Association, as I mentioned, had given notice of its intention to apply for leave to join the proceedings as *amicus curiae*. When the amendment was refused, the Road Freight Association withdrew its application because the contribution it intended to make as  
10 *amicus* had a direct bearing on the subject the applicants sought to introduce by way of the proposed amendments.

When Afriforum, represented by Ms Engelbrecht, nevertheless later proceeded with its application to be admitted as *amicus curiae*, the application was opposed on the basis that the toll tariffs, only published less than two weeks before this hearing, on 13 April 2012, which was to form the target of Afriforum's attack in support of this application, was not part of the evidence before me (with the proposed amendment having been refused) or part of the issues between the parties to the application.

20 According to authorities I was referred to, it is inappropriate for an *amicus* to introduce new contentions base on fresh evidence. In the result I refused Afriforum's application without granting an adverse cost order. I am indebted to both *amici* for their efforts to be of assistance.

I turn to a brief description of details of the various applicants. This, in my view, is important and relevant for purposes of considering

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the requirements which have to be established by the applicants in order to obtain interim relief.

The first applicant, the Opposition to Urban Tolling Alliance, is a voluntary association with perpetual succession authorised by its constitution to *inter alia* launch or oppose legal proceedings in its own name. The first applicant was established after the presentation of the budget speech in the National Assembly on 22 February 2012 which definitively signalled that the National Executive had resolved that the implementation of e-Tolling would proceed notwithstanding resistance  
10 from civil society and political opposition in the form of, for example, Cosatu.

The first applicant organisation came into existence on 12 March 2012. It supports the need for the upgrades and road additions that have been effected and have been planned in terms of the GFIP as well as all future urban and other route construction and improvements as and when the need arises.

The first applicant (to which I will also refer at times as "OUTA" which is the recognised abbreviation for the full name) opposes e-Tolling as a means to fund such construction and road improvements as well  
20 as, in this instance, the alleged unlawful manner in which SANRAL and the Transport Minister have sought to implement the proposed toll network. OUTA was established with the purpose of providing a platform for interested individuals, companies and organisations to meet and coordinate their efforts in opposing e-Tolling. It was also established for the purpose of acting in the public interest and in order

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to represent those members of society who are economically or socially disenfranchised and who were otherwise not able to oppose the tolling of Gauteng's freeways in their own name.

The organisations that are members of OUTA include:

1. The second applicant, The South African Vehicle Renting and Leasing Association or "SAVRALA", which represents its 22 member companies that conduct business in the vehicle rental and leasing industry and which collectively own 160 000 motor vehicles and manage a further 390 000 motor vehicles, 220 000 of which are on the road in Gauteng. These rental companies include well-known national and international concerns such as AVIS and Europe Car.
2. The South Africa Tourist Service Association ("SATSA") an organisation representing 740 companies operating in the inbound tourism industry.
3. The Retail Motor Industries of South Africa ("RMI"), representing 7 500 members in over 14 sectors in the retail motor and related industries, including service stations, franchise car dealers, panel beaters, spare outlets and tyre fitment centres, many of which will be impacted not only by the cost of paying toll, but also by the increased cost of motor parts and related products, 60% of which come from Gauteng. RMI is also concerned about the adverse effect on the employees of its members, numbering approximately 300 000 who will suffer increased cost of transport and food.
4. The Automobile Association of South Africa ("AA"), an

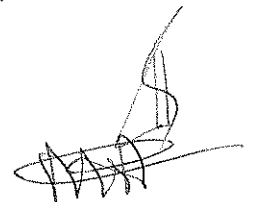
organisation conducting business on the roads of South Africa and in Gauteng with a membership of 2,5 million drivers nationally and 1,125 million drivers in Gauteng, has also formally associated itself with OUTA and supports the present application. The head of Public Affairs of the AA, Gary Ronald, informed the deponent to the founding affidavit that the level of opposition to the proposed tolling amongst the AA's members is overwhelming.

5. OUTA also represents the interests of 94 businesses that have registered as supporters of OUTA, since the launch of its website approximately one month ago. The names of these businesses appear on the website.

6. OUTA further represents the 1831 individuals who have registered as supporters of OUTA since the launch of its website. Their names appear on the website. It is anticipated that after the launch of this application, the numbers aforementioned will increase dramatically.

I turn to a brief account of the personal circumstances of four individuals who are members of OUTA and will be prejudiced should the relief sought in the application not be granted, and on whose behalf OUTA is bringing this application. Their verifying affidavits form part of the record.

1. Hilda Maphoroma is a wife and mother of two children who is resident in Leondale Gardens and who works as a cashier at Norwood Spar. Her affidavit sets out how she and her husband, a policeman commuting from Leondale Gardens to his workplace,



have no option but to drive the toll routes to work. They illustrate how toll fees will swallow 9% of their combined income and drive their expenditure to R1 090,00 in excess of their combined income.

2. Denis Tabakin is a pensioner who is forced to continue working as a travelling salesman in order to support himself, his wife who has Alzheimers and their son. Tabakin's job for which he drives 400 to 500 kilometres per week compels him to make use *inter alia* of the proposed toll road network. He is already forced to live off  
10 saved capital in order to pay for his wife's care and medical expenses of approximately R18 000,00 per month. The extra R6 600,00 per annum that he will have to pay for toll fees will severely prejudice him and will erode his capital further.
3. Wayne Benjamin Osrin is a sole proprietor who runs a small plumbing business that uses two vans and a motor car. Like many in his industry, Osrin and his crew have to travel to diverse suburbs (listed in his affidavit) for work and in so doing often are required to make use of the proposed toll road network. Osrin explains the financial difficulty that he presently experiences (as  
20 do many plumbers, says Osrin) and how paying toll will negatively impact his business and make the retrenchment of one of his crew unavoidable.
4. Tsidi Leatse is a receptionist living in Boksburg who travels on the N3 and N12 freeways to her place of work in Illovo each day. Her salary, after tax, comes to R7 000,00 and her monthly expenses

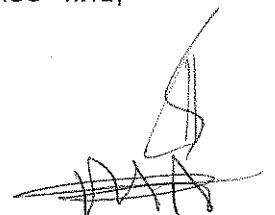


to R6 000,00. Accordingly, should she have to pay approximately R500,00 in toll fees every month (approximately 7% of her after tax income) she will have only R500,00 to save or use for unexpected expenses.

Inasmuch as the *locus standi* or legal standing of OUTA is disputed on the papers, although not in argument before me, I find that it does indeed have *locus standi, inter alia* in view of the provisions of section 38 of the Constitution of South Africa Act 108 of 1996 ("The Constitution"). I need not dwell any further on this subject.

10 As far as the second applicant, SAVRALA, is concerned, it has been mentioned that it is a voluntary association that represents 22 member companies which conduct business in the vehicle rental and leasing industries. The members of SAVRALA will suffer material financial and administrative prejudice on account of the implementation of open road tolling or e-Tolling, a system that attaches liability and directs enforcement against the owners of motor vehicles as opposed to the individual driving the motor vehicle on the toll road, if the driver or user who should be held liable in terms of the scheme does not pay the toll or cannot be traced. I will return to this topic later.

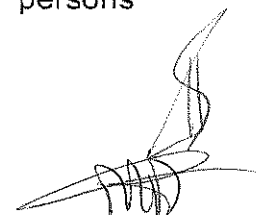
20 This means that individuals leasing vehicles from SAVRALA members will drive on the toll roads without SAVRALA or its members having any control on those movements, but the latter will be held liable for the toll fees. It will be costly and cumbersome and logistically challenging for these rental companies to introduce systems which may allow them to recover the toll fees from their clients. I also find,

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inasmuch as it may be necessary, that SAVRALA has the necessary *locus standi*.

The third applicant, Quadpara Association of South Africa ("QASA") is an organisation that protects and promotes the rights and interests of people with disabilities and people with mobility impairment. Details concerning QASA and its members are supplied by its CEO, Aristides Seirlis, whose confirmatory affidavit forms part of the record. QASA strives for the development and provision of projects, products and services, together with lobbying and advocacy, to assist and  
10 develop the capacity of quadruplegics and paraplegics to integrate and function within mainstream society. There are approximately 6 000 active members of QASA nationwide, 2 000 of whom are based in Gauteng. 78% of the members of QASA are black and less than 1% are gainfully employed. The sole source of income for 99% of QASA's members (and the same would apply to quadruplegics and paraplegics who are not members of QASA) is the disability pension of R1 200,00 per month provided by the state. The only viable mode of transport for QASA's members is private road transport. The vast majority of QASA's members do not own a car of their own and cannot afford to. They rely  
20 on friends, relatives and community members to transport them and typically will contribute to the cost of the transport provided by paying towards fuel costs. Public transport is of little or no use to QASA's members. According to Seirlis, who actively inspects public transport offerings in Gauteng on behalf of QASA members:

1. The Bus Rapid Transport System is not accessible for persons



with mobility impairment.

2. The Metro Rail Service is not accessible to QASA members, is unsafe and has no supplementary service assisting QASA's members to move from station to destination.
3. The Gautrain is far too expensive and its reach and/or routes are of no assistance to the vast majority of QASA' members.
4. Minibus taxis are not equipped to, and do not cater for persons with mobility impairment.

The members of QASA will be severely prejudiced by the tolling  
10 of the proposed toll road network in that they will have to pay for tolls out of the minimal amount they receive as a disability pension. Inasmuch as it may be necessary, I find that QASA also has the necessary *locus standi* on the strength of the provisions of section 38 of the Constitution.

The fourth applicant, the South African National Consumer Union ("SANCU") is an independent consumer organisation that protects and promotes the rights of millions of consumers in South Africa. SANCU has a statutory right of standing as an accredited consumer protection group in terms of section 78(1) of the Consumer Protection Act which  
20 permits it to:

"Commence or undertake any act to protect the interests of a consumer individually or to consumers collectively in any matter or before any forum contemplated in the Consumer Protection Act"

On SANRAL's own version there will be:

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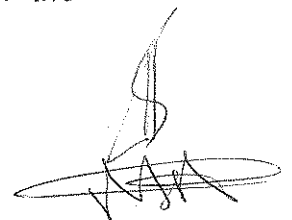


"Approximately one million vehicles who utilise the proposed toll road network each day."

Given very high levels of unemployment, recent hikes in fuel prices, and the general state of the economy it is in my view reasonable to accept, on the overwhelming probabilities, as I do, that there must be thousands, if not tens of thousands of motorists and businesses who have to make use of the GFIP freeways that find themselves in the same predicament as that experienced and illustrated by the four individuals, Maphoroma, Tabakin, Osrin and Leatse, as well as the disabled members of QASA and others. In my view the nationwide objections to, and protests against, the proposed tolling lend support to such a conclusion.

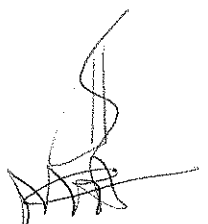
I turn to making a few remarks about this proposed urban toll road network, the first of its kind in South Africa, which forms the subject of this case. I do so by briefly summarising submissions on the subject, in the founding affidavit, which I do not consider to be seriously or convincingly controverted in the opposing papers.

Presently existing toll roads in south Africa are essentially examples of "rural" or "long haul" tolling where motorists are stopped at the toll plazas to pay their dues. The proposed GFIP network that is the subject matter before us and that has been the subject of major public controversy in South Africa since February 2011, is entirely different. It is different firstly, so the applicants allege, because the proposed toll road network is an urban toll road scheme. The sections of road that have been earmarked for tolling, constitute the main arteries for the

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movement of motor vehicles in and around the two major cities of South Africa that constitute the economic and administrative heartland of the country.

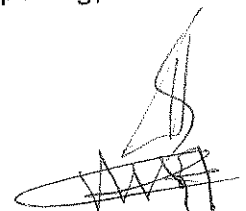
It is different, secondly, so it is argued, because of the massive numbers of citizens who make use of the proposed toll roads. It is argued that the proposed toll roads are used every day by hundreds of thousands of commuters, urban residents and employees of businesses that drive north-south between Johannesburg and Pretoria and in all directions in and around both cities, and their adjoining municipal areas  
10 and from both centres to and from the country's major international airport (O. R. Tambo) situated on the outskirts of Johannesburg. The proposed toll road network, that is the subject matter of this application, is different, thirdly, so it is contended, because of the extent to which the road users referred to above are captive to the use of the network. Just as well known as the fact that the proposed toll roads are massively populated on a daily basis, is the fact, so it is contended by the applicants, that they are so populated precisely because there are no viable alternative metropolitan or secondary roads available for the use of urban commuters. This is because the metropolitan and secondary  
20 roads referred to in the founding affidavit, which include amongst others the R55, the R515, the M1 or M2 and the Old Johannesburg Road, R101, are themselves heavily congested on account of the use of such roads by persons residing or working locally as well as spill over from those road users that try to avoid the congestion of the major arterial network.



Even more captive to the proposed toll road network, are the long haul road users, many of whom are members of the Road Freight Association, who travel through the two metropolitan centres. The long haul road user travelling from the south of Johannesburg to the north of Pretoria, for all practical purposes, has no option but to use the main arteries forming part of the proposed toll road network. In reality, so the applicants contend, and I am in agreement with that submission, ordinary as well as long haul road users have little or no choice but to make use of the proposed toll roads.

10 In the case of ordinary private road users, the extent to which they are captive to the proposed toll road network is exacerbated by the acknowledged inadequacy of the public transport system in Johannesburg and Pretoria as well as between the two centres. Although efforts have been made recently, so the applicants concede, by *inter alia* local and provincial government to improve public transport infrastructure, and effect modal upgrades of buses mini-buses and railway options, public transport remains hopelessly inadequate as a viable alternative option to a very high proportion of residential and business road users within Gauteng.

20 I now turn to the trite and well known requirements which the applicants have to establish in order to obtain the interim interdictory relief sought before me. Where this judgment is being handed down under extremely urgent circumstances over a weekend, it is not practicable or appropriate to travel into too much detail. Where I fail to fully deal with comprehensive and in many instances compelling,

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arguments presented to me by eminent counsel over many hours, I do so not out of disrespect, but because of, what I hope to be obvious, time and logistical constraints.

I mention the requirements. First there must be a *prima facie* right on the part of the applicant to the relief sought. The degree of proof required to establish this right is less exacting than in the case of a final interdict. It is usually recognised that the applicant must prove a right which, though *prima facie* established, is open to some doubt.

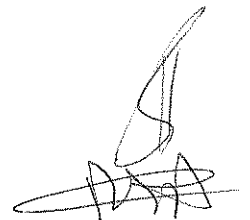
Second, there must be a well grounded apprehension of irreparable harm if the interim relief is not granted.

Third, the balance of convenience must favour the granting of interim relief. The prejudice to be suffered by the applicants, if the relief is not granted, is to be weighed against the prejudice to be suffered by the respondents, if the relief is granted. The stronger the applicants' *prima facie* right, the less the need to rely on prejudice to themselves and the converse is also true.

Fourth, there must be no other ordinary remedy that is available to give adequate redress to the applicant.

I turn briefly to the question whether the applicants have established a *prima facie* right. It is useful to make a few general remarks about this requirement. It has been held that a reasonable prospect of success in the main action or application is a useful indicator, when considering applications for interim interdicts. This is, in my view, not the only consideration.

In the proceedings before me, eminent counsel on both sides

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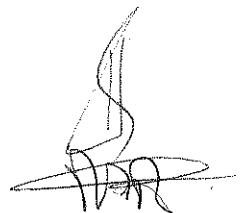
presented well researched and impressive arguments on the relevant strengths and weaknesses of the case of the applicants in the main action, or in this case, the main application.

I have carefully considered these arguments. At this preliminary stage, involving interim relief, the court does not prejudge the matter, but should generally refrain from discussing too many details or making a finding on the issues. The court of first instance hearing the application for interim relief has no right to fetter the discretion of the trial court, or in this case the review court hearing the main application.

10 See for example *Stewart v Schwab and Others* 1956 (4) SA 791 (T) at 794 F to G and the discussion in *Interdicts and Related Orders* by *Johan Meyer*, first edition 1993.

In part B the applicants, as I have mentioned, seek orders reviewing and setting aside the decisions of SANRAL to declare the GFIP network as a toll road. These decisions were made in terms of section 27(1)(a)(i) of The Act. As I have already alluded to they also seek orders reviewing and setting aside decisions taken by the Transport Minister in terms of section 27(1)(a) read with section 27(4) of the Act to grant approval to SANRAL to make the aforesaid  
20 declarations.

Finally, they seek orders reviewing and setting aside the decisions of the fourth and fifth respondents to grant certain environmental authorisations relevant to the construction process in terms of section 25 of the National Environmental Management Act number 107 of 1998 ("NEMA"). The applicants argued that they have

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established a *prima facie* right to have these decisions reviewed. They rely on the review grounds codified in section 6 of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). They contend that the decisions under attack lacked rationality and they rely on a number of the selected review grounds listed in section 6 of PAJA. For reasons already mentioned, I will not travel into the details.

The review grounds are briefly the following:

1. The decisions were unreasonable because collection costs are disproportionate. The applicants demonstrated, through figures and calculations, details of which I cannot dwell on under the present circumstances, that over a 20 year period the public would be required to pay not less than R21,3 billion for the operation of the open road tolling system. Since the total capital cost of phase 1 of the GFIP was R20,5 billion this means that road users will be required to pay more for the collection of e-Tolls than for the upgrading of the roads.

SANRAL stated that the figures set out in the founding affidavit in regard to this subject was correct:

"Based on a public non-compliance in excess of 60%."

- 20 This qualification does not appear to be borne out by the details contained in the record. SANRAL has refused to disclose, despite a clear invitation in the founding affidavit for it to do so, the true cost of collecting e-Tolls or the contract concluded with ETC Joint Venture that would reflect the true cost of collecting e-Tolls.

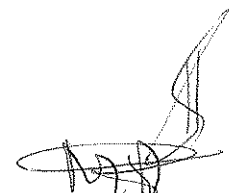
Since the true facts lie exclusively within SANRAL's knowledge an adverse inference against the latter may, in my view, be justified in this respect, for present purposes. This crucial fact about collection costs exceeding upgrade costs was not appreciated by the Transport Minister, so the applicants argue, when he gave approval to SANRAL to declare the toll roads.

Reverting to the previous subject, I record that it was further submitted on behalf of the applicants that a public non compliance rate of 60% would in any event not be unduly high.

10 Liability to pay the e-toll attaches to the "user or driver" of the vehicle at the moment when an e-transaction occurs, but SANRAL has no means of identifying the "user or driver" who declines to pay the e-Toll voluntarily.

The Minister still continues to deny the correctness of the very figures that SANRAL has admitted to be correct. The applicants argue that this state of affairs vitiates the Transport Minister's decision to give approval for the declaration of the toll roads and SANRAL's decision to issue the declarations. This argument is based on the review ground to be found in section 6(2)(h) of  
20 PAJA, namely that the exercise of the power in terms of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function.

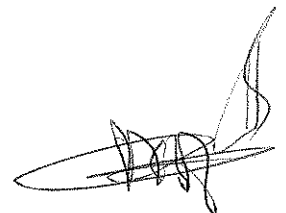
The applicants contend that one of the factors that will necessarily be relevant to a decision to collect revenue from a



particular source involves the costs in collecting that revenue. It is common cause that the functions performed by the Minister and SANRAL resorts under "administrative action" as defined in PAJA and that the Minister and SANRAL perform the functions as "organs of state" as defined in the constitution.

2. A second review ground advanced by the applicants also resorts under section 6(2)(h) of PAJA, *supra*, on the basis that enforcement of the tolling system would be virtually impossible. In their answering affidavit, the Transport Minister and his MEC (the third respondent) did not deal with this allegation at all. On the available figures and projections, given the anticipated non-compliance percentages, and numbers of road users, there will, within seven days of the implementation of e-Tolling, be approximately 70 000 non-compliant defaulters from whom toll collection will have to be made each day. On SANRAL's own version it will be required to serve 70 000 summonses per day or a total of approximately 2,1 million summonses per month and institute proceedings against the same number of persons using whatever procedures are available in terms of the Criminal Procedure Act and the rules of the Magistrate's Court.

It is submitted by the applicants that this operation and challenge will be impossible, practically, to execute. The calculation is made on a relatively modest non-compliance percentage. The higher the percentage of non-compliance, the more overwhelming the challenge becomes. There are other issues flowing from this





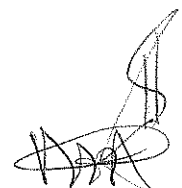
review ground which I do not consider it practicable to deal with under these pressing circumstances.

3. Another review ground advanced is that SANRAL failed to give proper notice as required by section 27(4)(a) of the Act. For example the published notice of SANRAL's intention to declare the GFIP network as toll roads, did not indicate that the toll roads would operate on the basis of open road tolling and furnished no indication whatsoever of the likely amounts of the tolls.

10 All this is common cause. Section 4(1) of PAJA imposes an obligation to allow public participation in the case of administrative action which "materially and adversely affects the rights of the public". This requirement was not met, so the applicants argued.

4. A fourth ground of review is that the Minister was misled regarding the existence of adequate public transport alternatives. The GFIP interim social impact report pointed out that "it is important that the toll option is only considered as part of an integrated transport plan and in the event of there being viable alternatives". The same report stated that "existing public  
20 transport alternatives are currently not viable and would have to undergo considerable expansion."

However, SANRAL's letter to the Minister seeking approval for the declaration of the toll roads made no mention of this critical consideration. It was strongly argued on behalf of the respondents that at the relevant stage when the decision under attack was taken, the



report, warning about the absence of viable alternatives, was not yet available.

For present purposes I am of the view that this argument was adequately addressed on behalf of the applicants in reply before me. As pointed out, it is not required or indeed permitted at this stage to express a firm view on the merits of any of the review grounds. *Prima facie* establishment of reasonable prospects of success on any one ground, together with other relevant considerations, peculiar to this particular case, will suffice for the applicants.

10 After careful consideration of the arguments, counter-arguments and submissions in reply, I have come to the conclusion that the applicants have managed to cross this hurdle. Against this background, I am persuaded that the applicants have managed to establish "a *prima facie* right, although open to some doubt" to have the decision reviewed and set aside as formulated in prayers 1 and 2 of part B of the notice of motion. Prayer 3 of part B, as I have said, concerns an application to review and set aside decisions by the fourth and/or the fifth respondents to grant certain environmental authorisations in terms of section 24 of NEMA.

20 The challenges by the applicants regarding the merits of these decisions do not appear to be controverted on the papers. The respondents rely rather on a technical argument relating to the failure by the applicants, as required by section 7 of PAJA, to first exhaust their internal remedies. In my view these arguments have also been sufficiently addressed on behalf of the applicants, in order to pass the

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test applicable at this interim stage of the proceedings.

I am therefore satisfied that a proper case in the form of a *prima facie* right has also been established to have the decisions in this regard reviewed and set aside. In the result I am of the view that the applicants managed to establish the *prima facie* right required for the interim relief prayed for.

I turn to the second requirement namely that of a well grounded apprehension of irreparable harm if interim relief is not granted. I have referred to affidavits from aggrieved commuters who will be called upon  
10 to pay excessive toll monies which they cannot afford. On a general reading of the papers, the weight of the evidence suggests that there are no adequate alternative routes available to most of these commuters to be affected by the e-Tolling system in Gauteng, neither can they exercise an option to make use of safe and adequate public transport. In my view the irreparable harm they will suffer on an ongoing basis, is self evident. There is also the ongoing financial drain that will be placed on SAVRALA, details of which I have referred to and the ongoing financial hardships that will be visited upon the members of the Quadpara Association of South Africa. The same applies to the  
20 thousands of members of the South African National Consumer Union. Counter arguments offered to the effect that the perceived harm is not "irreparable", because toll paid unnecessarily, if it turns out that the final review application is successful, can be refunded to millions of aggrieved motorists, appear to me to be not persuasive enough to justify a finding at this stage that the applicants have failed to pass the



required test. In my view a proper case has been made out to establish this requirement for interim relief.

I turn to the third requirement, a need to establish that the balance of convenience favours the granting of interim relief. I have briefly referred to this requirement earlier. On behalf of the respondents it was argued with considerable force that these losses which SANRAL stand to suffer may lead to default on its part to meet its commitments towards the contractors. I am alive to the fact that SANRAL may well suffer considerable financial losses through the inability to levy toll monies during the period pending the outcome of the proceedings before the court of review. This could result in the business rating of SANRAL being downgraded and also impact on its ability to execute other necessary projects. The Government, which guaranteed compliance on behalf of SANRAL, may then be called upon, as a result of an acceleration clause in the contract, to pay the full debt of some R20 billion at once with possible negative effects permeating through the economy. These are serious considerations which I duly reflected on. I also paid proper regard to counter arguments offered on the subject by the applicants.

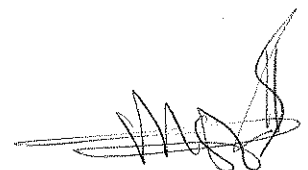
20 There is also a question whether the R20 billion debt may not be reduced considerably if the full amount is paid up front. I also cannot ignore the fact that SANRAL and the Transport Minister have in the past seen fit to postpone the implementation of the scheme on no less than four occasions (and two days ago, as I have mentioned, for a fifth time), despite the projections *supra* of the calamities which may result from



such a delay.

On the other hand tens of thousands of motorists, businesses and ordinary men and women, including family members of these affected motorists and business people, will suffer ongoing financial hardship if the interim relief is not granted. Ongoing and widespread protest actions against, and objections to, the proposed tolling underscore the exceptionally high levels of concern and resistance on the part of thousands of aggrieved motorists and business people. By the very nature of this extraordinary case it is difficult, if not impossible, to gauge  
10 in real terms the prejudice to be suffered by these aggrieved road users and business people; but what is plain is that it will be very substantial indeed. Given the vast numbers of motorists and business people involved, I am, after due reflection, of the view that on the probabilities the applicants have shown that the balance of convenience favours them.

I turn to the requirement that the applicants have to prove that they have no alternative remedy. In my view this is self evident. Interim relief is generally granted to preserve the status quo pending the outcome of the main action or application. When giving judgment  
20 earlier in the week on the question of urgency, I pointed out that there is ample authority for the proposition that an applicant for review at a stage when the impugned process (in this case the tolling) is already well underway, could be confronted with a decision not to reverse the process for practical and logistical reasons, even if the legal challenge turns out to be sound.



For the above reasons I have come to the conclusion that the applicants have made out a proper case for the interim interdictory relief so that an appropriate order has to be made. Quite apart from any other consideration I have a sense that this exceptional case, with its particular characteristics, and the public interest that it has evoked, should be afforded the attention and consideration of a court of final instance.

I make a brief observation with regard to the costs of this application. There is compelling authority for the proposition that there  
10 are sound reasons for not awarding the costs relating to an interim interdict to a successful applicant in the absence of exceptional circumstances. If such an applicant turns out to be unsuccessful in the action or application for final relief, the cost order in respect of the application for interim relief may, in retrospect, turn out to have been unjust.

In the circumstances I intend ordering that the costs of these proceedings are to be reserved for decision during the part B proceedings. I make the following order, which is also contained in a draft order marked XYZ, which draft order is made an order of court at  
20 the same time.

1. The first respondent is hereby interdicted and restrained from levying and collecting toll on the following roads, pending the final determination of the application for the relief sought in part B of the notice of motion dated 23 March 2012:

1.1 National road N1, section 20 from Armadale to Midrand;



- 1.2 National road N1, section 21 from Midrand to the Proefplaas Interchange;
  - 1.3 National road N3, section 12 from Old Barn Interchange to the Buccleuch Interchange;
  - 1.4 National road N4, section 1 from Koedoespoort to Hans Strijdom Drive;
  - 1.5 National road N12, section 18 from Diepkloof Interchange to Elands Interchange;
  - 1.6 National road N12, section 19 from Gillooly's Interchange to the Gauteng Mpumalanga provincial border; and
  - 1.7 National road R21 (also known as the P157/1 and P157/2) sections 1 and 2 from Hans Strijdom Drive to Rietfontein Interchange (N12) Province of Gauteng.
2. The interdict in paragraph 1 above is to operate with immediate effect.
  3. The costs of the application for the relief sought in part A are reserved for determination at the application for the relief sought in part B.

I hand down the draft order XYZ.



"7A2"



# Hurter Spies INC

prokureurs • attorneys

Hurter Spies Incorporated  
 Reg. no. 2008/009761/21  
 Attorneys/Notaries/Conveyancers

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 SolidarityPark  
 C/oDF Maian Drive and Eendracht Street  
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 e-mail : [admin@hurterspies.co.za](mailto:admin@hurterspies.co.za)  
 Internet : [www.hurterspies.co.za](http://www.hurterspies.co.za)

Our ref. W D Spies/W716

Your ref: Mr. Nazir Alli

2012-05-15

The Chief Executive Officer: SANRAL

48 Tambotie Avenue, Val de Grace, Pretoria, 0184

By fax: (012) 844 8200

Dear Sir

**RE: IMPLEMENTATION OF TOLL SYSTEM ON GAUTENG HIGHWAY**

We act for Afriforum.

We have previously, on behalf of our client, expressed concern at the level of the rates proposed to be implemented when e-tolling commences on the Gauteng Freeway Improvement Project. We also proposed consultation on the proposed level of tolls to be exacted prior to adopting any rates.


On 13 April 2012, the Director-General: Transport published the rates then proposed to be payable upon commencement of the e-tolling system. The rate publication caused alarm and, as you are aware, our client sought to intervene in proceedings aimed at preventing the commencement of tolling on 30 April 2012, based on an analysis of that notice.

In the event, Afriforum was not granted permission to intervene. The main application for urgent interim relief was, however, successful and e-tolling has not commenced.

It is our client's view that, if e-tolling is to commence, it cannot be on the basis of the so-called 'Tariff Notice' of 13 April 2012. Its view, in summary, is that:

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Directors: WD Spies B Com LLB MBA (UP); MW Viljoen LLB (UFS)  
 Associate: J Kruger LLB (NWU) Post Graduate Diploma (Business Management)(UCT)  
 Consultant: JJ Hurter Dip Proc (UP)





1. The classification in the Tariff Notice depends on the presence or absence of registration for an e-tag and/or the period within which payment of toll fees is made by the owner of a vehicle operated on the GFIP. This constitutes a classification not contemplated in section 27(3)(b)(iv) of the South African National Road Agency Limited and National Roads Act no 7 of 1998 ('the SANRAL Act'), and therefore the tariffs as published are based on a classification that is not authorised.
2. Indeed, it is noted that the classification, such as it is, is not concerned with 'users' of the GFIP, but rather with ownership of vehicles operated on it. In that sense, it also fails to comply with the provisions of the SANRAL Act.
3. The toll tariffs as published, affect members of the community at large, but, in addition, they are calculated to cause particular prejudice to individuals who do not have an e-tag fitted to their vehicles and/or who elect not to make payment of toll fees through the operation of an e-tolling account as a registered user and/or who fail to make payment of tolling fees within seven days of use of the toll roads in question. Afriforum contends that where the rights of the public are materially and adversely affected, as is the case in the present instance, special procedures had to have been followed. Section 4(1) of Promotion of Administrative Justice Act ('PAJA') instructs administrators to decide whether to hold a public inquiry, to follow a notice and comment procedure, to do both of these things, to follow a 'fair but different' procedure in terms of other legislation, or to follow 'another appropriate procedure' which gives effect to section 3. Section 4 finds application when administrative action has a general impact with a significant public effect, as is the case in the present instance. Although the SANRAL Act may contemplate only notice of toll tariffs within 14 days of such tariffs coming into effect, fairness nevertheless dictates that a more comprehensive process, involving public comment on the specific rates contemplated, ought to have been adopted.
4. A comparison of the tariffs initially proposed to be levied in accordance with a 4 February 2011 notice, and the Tariff Notice suggests that the tariffs now proposed have been determined on an irrational and arbitrary basis.

In addition, our client is concerned about reports that suggest an improper tender process that has culminated in excessive expenditure on e-tolling infrastructure and high toll tariffs brought about by operating costs.

In light of the foregoing, we seek your confirmation that the Tariff Notice of 13 April 2012 will be withdrawn and that any recommendation in respect of tolling tariffs be preceded by a process of public participation in the manner contemplated in PAJA.

Should such confirmation not be received by 25 May 2012, Afriforum will initiate litigation aimed at challenging the validity of the contents of the Tariff Notice.

We look forward to hearing from you.



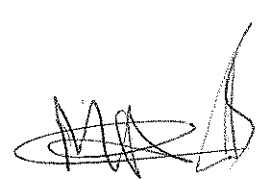
Yours sincerely

**HURTER SPIES INC**

Per: W D Spies

cc. The Minister of Transport: Min S'bu Ndebele  
Private Bag X193, PRETORIA, 0001  
Fax: (011) 328 3194

cc. The MEC for Road and Transport: Gauteng  
Private Bag X83, Marshalltown, 2107  
Johannesburg CBD  
Fax: (+ 27 11) 355 7305

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"7A3"

OUR REFERENCE : Mr. J. Classen/HMK.1/0001  
YOUR REFERENCE : Mr. N. Kirby/HM/SOUTH3114.74  
DATE : 8 May 2012

Werksmans  
SANDTON

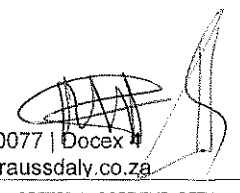
Dear Sir

**re : HMKL 3 INVESTMENTS (PTY) LIMITED / THE SOUTH AFRICAN NATIONAL  
ROADS AGENCY LIMITED & OTHERS, NORTH GAUTENG HIGH COURT,  
PRETORIA : CASE NUMBER - 67270/2010**

1. We have been instructed by our clients, HMKL3 Investments (Pty) Ltd to bring an application to join the matter recently decided before the Gauteng North High Court by Judge Prinsloo (hereinafter referred to as the "OUTA" matter) with our application for review and we will shortly serve an application for joinder on your offices.
2. Please indicate whether your client will oppose such application.

Yours faithfully

**JACQUES CLASSEN**



PRETORIA Centaur House, 38 Ingersol Street, Lynnwood Glen, Pretoria | P O Box 1266, Menlyn Central 0077 | Docex  
Lynnwood Ridge | Tel: +27 (012) 348 1683 / 087 351 8282 Fax: +27 (0) 86 734 7493 | Email: jclassen@straussdaly.co.za  
DURBAN PIETERMARITZBURG RICHARDS BAY EMPANGENI JOHANNESBURG BLOEMFONTEIN CAPE TOWN CLAREMONT BELVILLE STELLENBOSCH PRETORIA PORT ELIZABETH

Neil Kirby

---

**From:** Jacques Classen [jclassen@straussdaly.co.za]  
**Sent:** Tuesday, May 15, 2012 2:18 PM  
**To:** Neil Kirby  
**Subject:** HMKL 3 INVESTMENTS (PTY) LIMITED / MINISTER OF TRANSPORT / SANRAL : YOUR MATTER - OUTA / THE MINISTER OF TRANSPORT / SANRAL

**Attachments:** WERKSMANS 8-5-12.docx

*Jacques Andre Classen*

Director | BLC & LLB



Cell 082 851 1816 | Tel +27 (0) 12 348 1683 | Fax +27 (0) 86 588 4052

Centaur House, 38 Ingersol Street, Lynnwood Glen, Pretoria

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■ DURBAN ■ PIETERMARITZBURG ■ RICHARDS BAY ■ JOHANNESBURG ■ PRETORIA ■ BLOEMFONTEIN ■  
■ CAPE TOWN ■ NEWLANDS ■ BELLVILLE ■ STELLENBOSCH ■ PORT ELIZABETH

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5/18/2012

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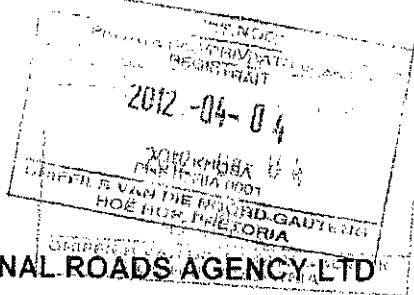
IN THE NORTH GAUTENG HIGH COURT, PRETORIA  
(REPUBLIC OF SOUTH AFRICA)

Case No: 17141/12

In the matter between:

- OPPOSITION TO URBAN TOLLING ALLIANCE First Applicant
- SOUTH AFRICAN VEHICLE RENTING AND LEASING ASSOCIATION Second Applicant
- QUADPARA ASSOCIATION OF SOUTH AFRICA Third Applicant
- SOUTH AFRICAN NATIONAL CONSUMER UNION Fourth Applicant

and



- THE SOUTH AFRICAN NATIONAL ROADS AGENCY LTD First Respondent
- THE MINISTER, DEPARTMENT OF TRANSPORT Second Respondent
- THE MEC, DEPARTMENT OF ROADS AND TRANSPORT, GAUTENG Third Respondent
- THE MINISTER, DEPARTMENT OF WATER AND ENVIRONMENTAL AFFAIRS Fourth Respondent
- THE DIRECTOR-GENERAL, DEPARTMENT OF WATER AND ENVIRONMENTAL AFFAIRS Fifth Respondent
- NATIONAL CONSUMER COMMISSION Sixth Respondent

NOTICE IN TERMS OF RULE 16A

KINDLY TAKE NOTICE THAT the Applicants in the above application are raising a constitutional issue.

1. The application is brought in two parts. In Part A of the application the Applicants seek interim interdictory relief preventing the tolling of various sections of the Gauteng Freeways and in Part B of the application, the Applicants seek the reviewing and setting aside of

1.1. the declaration of various sections of the Gauteng Freeways as toll roads and approvals by the Minister of Transport related thereto;

1.2. environmental authorisations obtained by the South African National Roads Agency Limited ("SANRAL") in order to proceed with the upgrading of the same sections of the Gauteng Freeways.

2. The application will deal with:

2.1. the duties imposed by section 33 of the Constitution on an organ of state in matters that materially and adversely affect the rights of the public;

2.2. the interpretation and application of the Promotion of the Administrative Justice Act 3 of 2000, ("PAJA"), which gives effect to section 33 of the Constitution;

2.3. the interpretation of section 27 of the South African National Roads Agency Limited and National Roads Act 7 of 1998 read with sections 3 and 4 of PAJA;

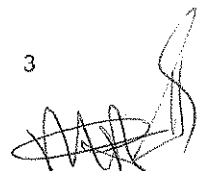
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- 2.4. the extent to which the conduct of SANRAL and/or the Minister of Transport complied with section 27 of the SANRAL Act read with sections 3 and 4 of PAJA and section 33 of the Constitution;
- 2.5. the validity of environmental authorisations obtained in terms of section 24 of the National Environmental Management Act 107 of 1998 ("NEMA") which gives effect to the environmental right contained in section 24 of the Constitution; and
- 2.6. the interpretation of NEMA and the regulations applicable to the granting of environmental authorisations in light of PAJA and section 33 of the Constitution.

**TAKE NOTICE FURTHER THAT** any party having an interest in the above constitutional issues may, with the written consent of all the parties to the proceedings, given not later than 20 days after filing of this notice and supplementary affidavit, be admitted therein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

**TAKE NOTICE FURTHER THAT** the written consent referred to, shall within five days of its having been obtained, be lodged with the registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

**TAKE NOTICE FURTHER THAT** the terms and conditions referred to above may be amended by the court.



**TAKE NOTICE FURTHER THAT** if the *amicus curiae* is unable to obtain the written consent as contemplated above, he or she may, within 5 days of the expiry of the 20 day period, apply to the court to be admitted as an *amicus curiae*.

**TAKE NOTICE FURTHER THAT** an application as contemplated above shall:

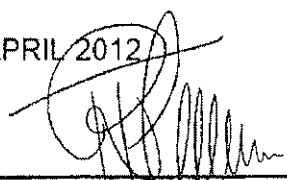
- (a) briefly describe the interest of the *amicus curiae* in the proceedings;
- (b) clearly and succinctly set out the submissions which will be advanced by the *amicus curiae*, the relevance thereof to the proceedings and his or her reasons for believing that the submissions will assist the court and are different from those of the other parties; and
- (c) be served upon all parties to the proceedings.

**TAKE NOTICE FURTHER THAT** any party to the proceedings who wishes to oppose an application to be admitted as *amicus curiae*, shall file an answering affidavit within 5 days of the service of such application upon such party.

**TAKE NOTICE FURTHER THAT** the answering affidavit shall clearly and succinctly set out the grounds of such opposition.

**AND TAKE NOTICE FURTHER THAT** the court may dispense with any of the requirements of this rule if it is in the interests of justice to do so.

SIGNED at JOHANNESBURG on this the 2<sup>nd</sup> day of APRIL 2012

  
\_\_\_\_\_  
**CLIFFE DEKKER HOFMEYR INC**  
Attorneys for the Applicants  
1 Protea Place, Sandown  
Sandton 2196  
Docex 154 Randburg



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Arcadia 0083  
PRETORIA  
PO Box 781  
Pretoria, 0001  
Tel: (012) 342-4890  
Fax: (012) 342-4896  
Ref: Y Coetzee

TO:  
The Registrar of the above Honourable  
Court, **PRETORIA**

AND TO:  
**WERKSMANS ATTORNEYS**  
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\_\_\_\_\_  
For: First Respondent's Attorneys

AND TO:  
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W. S. E.  
For: Second, Third, Fourth &  
Fifth Respondents' Attorneys

W. S. E.

"FAS"

**Johannesburg**

Kenneth Morare  
Analyst  
Sub Sovereign Group  
Moody's Investors Service South Africa  
(Pty) Ltd.

JOURNALISTS: 44 20 7772 5456

SUBSCRIBERS: 44 20 7772 5454

**London**

David Rubinoff  
MD - Sub-Sovereigns  
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**Moody's downgrades South African National Roads Agency to Baa2/A2.za;  
negative outlook**

Johannesburg, <Rating Date Pending> -- Moody's Investors Service has today  
downgraded the following ratings of the South African National Roads Agency Limited  
(SANRAL):

-Global scale, local and foreign currency issuer ratings downgraded to Baa2/P-3 from  
Baa1/P-2;

-South African national scale issuer ratings downgraded to A2.za/P-2.za from Aa3.za/P-  
1.za.

The outlook on the ratings remains negative.

**RATINGS RATIONALE**

The rating action follows the North Gauteng High Court's decision on 28 April 2012 to block the implementation of e-tolling on the country's largest toll road, the Gauteng Freeway Improvement Project (GFIP), pending a final court resolution on the matter. This interdict supersedes the South African government's decision to postpone e-toll collections by one month on 26 April 2012 and adds uncertainty on the future of this controversial toll road project. "The delay in GFIP e-toll collection adds pressure on SANRAL's finances and raises concerns over its medium-term financial sustainability," says Kenneth Morare, Moody's lead analyst for SANRAL.

Moody's notes that public opposition led the national government to postpone the implementation of e-toll collections to 30 April 2012 from June 2011, and agree on a significant reduction in e-tolls. Thus far, the delayed implementation of e-tolls has resulted in revenue losses of approximately ZAR2.7 billion for SANRAL, which is a sizable 40% of its estimated 2012 annual budget. These losses will grow by an estimated ZAR270 million per month as a result of the recent court decision and will erode the extraordinary budget allocation of ZAR5.8 billion provided to SANRAL from the government to compensate for its decision to lower toll tariffs in February 2012.

Moody's further notes that SANRAL incurred ZAR20 billion in debt (of which approximately 50% is guaranteed by the South African government) to finance the GFIP project and that the e-toll revenues are essential to it servicing this debt and absorbing the concomitant operating costs. The GFIP is responsible for most of the rapid increase in SANRAL's debt stock to its current level of ZAR39.7 billion, or a high

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6x its 2012 estimated annual revenue. “We believe that SANRAL’s high gearing and uncertainties over e-tolling issues could make it difficult for the company to debt-finance the operating deficits resulting from its loss of e-toll revenue” adds Mr. Morare.

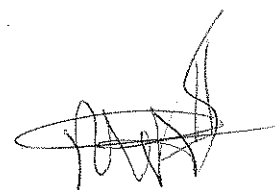
The negative outlook reflects (i) SANRAL’s weakening financial conditions over the medium term and the inherent operational risks associated with the e-tolling system and (ii) concerns over South Africa’s deteriorating operating environment, as reflected by the negative outlook on South Africa’s A3 government bond ratings.

#### WHAT COULD CHANGE THE RATING UP/DOWN

Stabilization of SANRAL’s ratings will require stabilization of South Africa’s government bond ratings, as well as a positive resolution of the GFIP issue leading to a stabilisation of SANRAL’s financial position and prospects.

Conversely, SANRAL’s ratings could come under pressure in the event of (i) an unfavorable resolution of the GFIP toll issue, resulting in a further material deterioration of the company’s financial metrics and cash flows, and/or a downgrade of South Africa’s government bond rating.

SANRAL is wholly owned by the Republic of South Africa, with the Ministry of Transport representing the government as the sole shareholder. The company is

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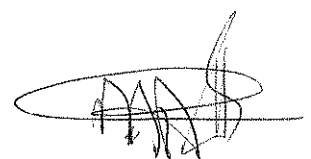
accountable to the central government, which established SANRAL's mandate to develop, finance and maintain the national road infrastructure in South Africa.

Moody's National Scale Ratings (NSRs) are intended as relative measures of creditworthiness among debt issues and issuers within a country, enabling market participants to better differentiate relative risks. NSRs differ from Moody's global scale ratings in that they are not globally comparable with the full universe of Moody's rated entities, but only with NSRs for other rated debt issues and issuers within the same country. NSRs are designated by a ".nn" country modifier signifying the relevant country, as in ".za" for South Africa. For further information on Moody's approach to national scale ratings, please refer to Moody's Rating Methodology published in March 2011 entitled "Mapping Moody's National Scale Ratings to Global Scale Ratings."

The principal methodology used in rating SANRAL was Government-Related Issuers: Methodology Update published in July 2010. Please see the Credit Policy page on [www.moody.com](http://www.moody.com) for a copy of these methodologies.

#### REGULATORY DISCLOSURES

Although this credit rating has been issued in a non-EU country which has not been recognized as endorsable at this date, this credit rating is deemed "EU qualified by extension" and may still be used by financial institutions for regulatory purposes until

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30 April 2012. Further information on the EU endorsement status and on the Moody's office that has issued a particular Credit Rating is available on [www.moodys.com](http://www.moodys.com).

For ratings issued on a program, series or category/class of debt, this announcement provides relevant regulatory disclosures in relation to each rating of a subsequently issued bond or note of the same series or category/class of debt or pursuant to a program for which the ratings are derived exclusively from existing ratings in accordance with Moody's rating practices. For ratings issued on a support provider, this announcement provides relevant regulatory disclosures in relation to the rating action on the support provider and in relation to each particular rating action for securities that derive their credit ratings from the support provider's credit rating. For provisional ratings, this announcement provides relevant regulatory disclosures in relation to the provisional rating assigned, and in relation to a definitive rating that may be assigned subsequent to the final issuance of the debt, in each case where the transaction structure and terms have not changed prior to the assignment of the definitive rating in a manner that would have affected the rating. For further information please see the ratings tab on the issuer/entity page for the respective issuer on [www.moodys.com](http://www.moodys.com).

Information sources used to prepare the rating are the following : parties involved in the ratings, parties not involved in the ratings, public information, and confidential and proprietary Moody's Investors Service information.

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Moody's considers the quality of information available on the rated entity, obligation or credit satisfactory for the purposes of issuing a rating.

Moody's adopts all necessary measures so that the information it uses in assigning a rating is of sufficient quality and from sources Moody's considers to be reliable including, when appropriate, independent third-party sources. However, Moody's is not an auditor and cannot in every instance independently verify or validate information received in the rating process.

Please see the ratings disclosure page on [www.moody's.com](http://www.moody's.com) for general disclosure on potential conflicts of interests.

Please see the ratings disclosure page on [www.moody's.com](http://www.moody's.com) for information on (A) MCO's major shareholders (above 5%) and for (B) further information regarding certain affiliations that may exist between directors of MCO and rated entities as well as (C) the names of entities that hold ratings from MIS that have also publicly reported to the SEC an ownership interest in MCO of more than 5%. A member of the board of directors of this rated entity may also be a member of the board of directors of a shareholder of Moody's Corporation; however, Moody's has not independently verified this matter.

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Please see Moody's Rating Symbols and Definitions on the Rating Process page on [www.moodys.com](http://www.moodys.com) for further information on the meaning of each rating category and the definition of default and recovery.

Please see ratings tab on the issuer/entity page on [www.moodys.com](http://www.moodys.com) for the last rating action and the rating history.

The date on which some ratings were first released goes back to a time before Moody's ratings were fully digitized and accurate data may not be available. Consequently, Moody's provides a date that it believes is the most reliable and accurate based on the information that is available to it. Please see the ratings disclosure page on our website [www.moodys.com](http://www.moodys.com) for further information.

Please see [www.moodys.com](http://www.moodys.com) for any updates on changes to the lead rating analyst and to the Moody's legal entity that has issued the rating.

end

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