

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 REPUBLIC OF SOUTH AFRICA	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

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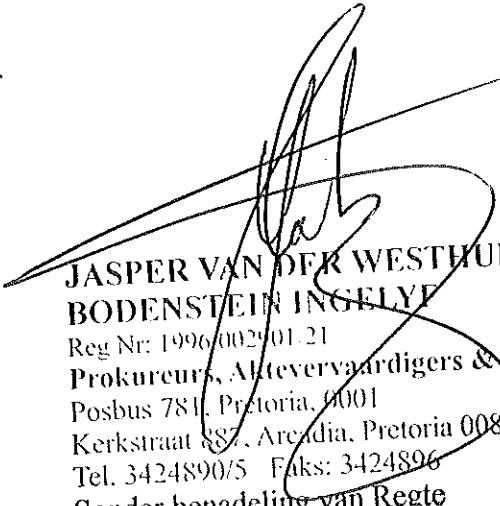
ON ROLL: 24 April 2012

DOCUMENT: SECOND AND THIRD RESPONDENTS' ANSWERING AFFIDAVIT

FILED BY: SECOND AND THIRD RESPONDENTS ATTORNEYS  
THE STATE ATTORNEY  
255 SALU BUILDING  
CNR SCHOEMAN & ANDRIES STREET  
GROUND FLOOR  
PRETORIA  
PRIVATE BAG X 91  
PRETORIA  
0001  
Tel: 012 309 1545  
Ref: 8018/2009/Z65/jb (G P Seleka)

TO: THE REGISTRAR  
NORTH GAUTENG HIGH COURT

AND  
TO: CLIFFE DEKKER HOFMEYR  
ATTORNEYS FOR THE APPLICANTS  
1 PROTEA PLACE  
SANDOWN  
SANDTON, 2196  
PRIVATE BAG X40, BENMORE, 2010  
DOCEX 154 RANDBURG  
TEL: (011) 562 1071  
FAX: (011) 562 1671  
Ref: P J Conradie / 01933299  
c/o JASPER VAN DER WESTHUIZEN & BODESTEIN INC.  
887 Church Street  
Arcadia 0083  
PRETORIA  
P O Box 781  
Pretoria, 0001  
Tel: 012 342 4890  
Fax: 012 342 4896  
Reference: Y Coetzee



12 APRIL 2012  
17h10

**JASPER VAN DER WESTHUIZEN &  
BODENSTEIN INGELYF**  
Reg Nr: 1996/0029/01.21  
Prokureurs, Aktevervaardigers & Notarisse  
Posbus 781, Pretoria, 0001  
Kerkstraat 887, Arcadia, Pretoria 0083  
Tel. 3424890/5 Faks: 3424896  
Sonder benadeling van Regte

FILILING SHEET

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

**CASE NO: 17141/12**

In the matter between:

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

and

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

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**SECOND AND THIRD RESPONDENTS' ANSWERING AFFIDAVIT**

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*MAM* 


I, the undersigned,

**GEORGE MANGISI MAHLALELA**

do hereby make oath and state the following.

1.

- 1.1. I am the Director-General for the Department of Transport.
- 1.2. The facts deposed to herein are within my personal knowledge, save where the contrary is stated or appears otherwise from the context, and are to the best of my knowledge and belief both true and correct.
- 1.3. Insofar as I make legal submissions in this affidavit, those submissions are made on the advice of legal representatives of the second and third respondents which I obtained during the course of preparation of this affidavit.
- 1.4. I have been authorized by the second and third respondents to make this affidavit on their behalf. These respondents oppose the relief

Handwritten signature of George Mangisi Mahlalela, consisting of the initials 'GM' above a stylized cursive signature.

sought in paragraphs 1 to 3 of Part A of the notice of motion, and do so on the grounds more fully set out below.

1.5. I should make it clear, at this stage, that I deal only with the averments made in the founding affidavit in support of the interim relief. In due course, the second and third respondents will deal with the rest of the averments that deal with the relief sought in Part B of the notice of motion, which they also oppose, after the review record and supplementary affidavit, if any, have been delivered.

2. Before I describe the grounds upon which the second and third respondents oppose the relief sought in paragraphs 1 to 3 of Part A of the notice of motion, I set out a brief factual background which explains how the second respondent took the decision sought to be reviewed in Part B of the notice of motion. This background is necessary, in the light of the long history of this matter, which the applicants know or ought to have known. It is also necessary in order to show that,

2.1. the interim relief sought in Part A of the notice of motion is not urgent at all, and that the alleged urgency is of the applicants' own making.

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- 2.2. the applicants have not shown any *prima facie* right which requires interim protection, pending the outcome of the review.
- 2.3. the applicants have not shown any irreparable harm that they will suffer, in the event the interim relief they seek is not granted.
- 2.4. in the final analysis, the balance of convenience does not favour the grant of interim relief.
- 2.5. in any event, the relief pursued in Part B of the notice of motion constitutes a sufficient alternative remedy open to the applicants, without any need for interim interdict.

### **BACKGROUND**

3. As early as July 2006 the provincial government of Gauteng, led by the then Premier of Gauteng and the predecessors-in-title of the third respondent, confronted the challenges of the diminishing freeway capacity in the Province which drastically affected the vital transportation and movement of goods and people. The drastic

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effects caused by the diminishing freeway capacity led not only to transportation gridlock on the freeways, in the province, but also low productivity output, adverse impact on quality family life, and negative economic outcomes.

4. In order to address the above conditions, the provincial government of Gauteng, together with the Department of Transport ("the DoT") and the first respondent, acting consistent with the constitutional principle of co-operative governance, instituted a joint initiative to investigate a viable option(s) to improve freeway capacity and transport challenges relating thereto, and make a proper recommendation on a viable scheme or schemes which would produce a sustainable solution in the immediate, and medium to long term basis.
  
5. I wish to make it clear that the initiative so instituted had to be pursued in line with the National Transport Policy formulated in the White Paper on National Transport Policy, which requires, amongst others, the development and maintenance of transport infrastructure and priorities in accordance with sustainable economic development principles, in the context of a sound financial base.


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6. The above initiative led to the production of a report, dated September 2006 which is titled "*Gauteng Transport Network Integration Progress: Proposal for a Gauteng Freeway Improvement Scheme*". A copy of that report is annexed hereto and marked "AA1".
  
7. As appears from annexure "AA1" hereto,
  - 7.1. The investigation into the diminishing freeway capacity in Gauteng, the demand for rapid movement of passengers and commodities locally and to foreign based destinations, the existing and potential capacity, were investigated, with reference to facts and figures. I refer, in this regard, to paragraph 2.1 of annexure "AA1" hereto.
  
  - 7.2. The negative impact or consequences arising from capacity constraints were also identified and dealt with. They include, the low productivity levels, diminished quality of life, adverse impact on the environment, increase in the cost of travel based on extended trip time and constraints on economic development. I refer the honourable Court to paragraphs 2.1.1 to 2.1.5 of annexure "AA1" hereto.

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- 7.3. A proposal for the improvement of freeway capacity was recommended, with the view to attain the objectives described in paragraphs 3 and 4 of annexure "AA1" hereto.
- 7.4. The means to achieve and give effect to the proposal was through the adoption of the "user must pay" principle, on an affordable basis, through the introduction of gateless tolling referred to as e-tolling system, in order to avoid traffic congestion which might arise from conventional toll roads. Annexure "AA1" deals with these issues in paragraphs 5 to 6 thereof.
- 7.5. The proposal for and the reasons behind the adoption of e-tolling as a funding model is described in paragraph 7.1 of annexure "AA1" hereto. It is clear, from the reading of paragraph 7 as a whole, that this proposal was recommended after a careful consideration of other possible sources of funding, including the fuel tax by way of a dedicated or ring-fenced fuel levy, which is suggested by the applicants in, amongst others, paragraphs 243 to 247 of their founding affidavit.

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- 7.6. The proposal not only considered five possible funding models, but also analyzed the advantages and disadvantages of each of the funding models. It is clear from that analysis that the recommended e-tolling model was a product of a rational option, justifiable for the reasons set out in paragraph 7.5 of annexure "AA1" hereto.
8. I have drawn attention to the above background in order to show that there was a prior joint initiative which preceded the application for tolling by the first respondent to the second respondent. That joint initiative related to a matter which fell within the legitimate governmental purpose of improving capacity constraints on the freeway network in Gauteng, in order to achieve the objectives set out in annexure "AA1" hereto.
9. I have also drawn attention to the above background in order to show that the proposal for e-tolling was not a product of a decision made irrationally or capriciously. It is a product of a reasonably detailed investigation, based on verifiable data concerning capacity constraints and how to improve the freeway network in Gauteng.
10. It is also a product of a consideration of various models of funding the freeway improvement, and the adoption of one of the available

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options which were justified for the reasons set out in annexure "AA1" hereto. In the circumstances, the applicants are not entitled to review the decision of the second respondent simply because there is, in their view, another option which they prefer.

11. After the preparation of the report set out in annexure "AA1" hereto, the second respondent's predecessor-in-title, Mr J Radebe, received an application on 15 January 2008 made by the first respondent pursuant to the provisions of section 27 of the South African National Roads Agency Limited and National Roads Act, 7 of 1998 ("the SANRAL Act").
12. In terms of the application, the second respondent's predecessor was requested to consider and approve the declaration of portions of the national road network, comprising about 191.5 kilometers, in Gauteng, as toll roads and the establishment of electronic toll points.
13. The proposed national road network included the following sections:
  - 13.1. National Road 1: Section 20: Armadale to Midrand (50 km);


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- 13.2. National Road 1: Section 21: Midrand to Proefplaas Interchange (N4) (34 km);
  - 13.3. National Road 3: Section 12: Old Barn Interchange to Buccleuch Interchange (36 km);
  - 13.4. National Road 4: Section 1: Koedoespoort to Hans Strijdom Interchange (11,5 km);
  - 13.5. National Road 12: Section 18: Diepkloof Interchange to Elands Interchange (19 km);
  - 13.6. National Road 12: Section 19: Gillooly's Interchange to the Gauteng/Mpumalanga Provincial Boarder (41 km).
14. Annexed to the application were various reports, amongst others;
- 14.1. Report on all the comments, representations and responses received from members of the public and various interest groups on the declaration of intent for the tolling of the identified sections;

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*[Signature]*

- 14.2. Social impact report which covered the impact both positive and negative that a “do nothing” approach or the tolling of the sections is likely to have on road users;
- 14.3. A detailed economic impact report, which considered the economic case for the upgrading and expanding of the relevant freeway network. This report encompassed an economic analysis conducted by the University of Cape Town; and
- 14.4. A report on the investigation on the national and provincial freeways in Gauteng as separate open road tolling projects.
15. After a process of consideration and evaluation, the application made by the first respondent in terms of section 27 of the SANRAL Act was approved by the then Minister of Transport, Mr J Radebe on 11 February 2008.
16. On 20 December 2010, the second respondent received an application made by the first respondent in terms of section 27 of the SANRAL Act for the approval of the proposed toll tariffs on the Gauteng Freeway Improvement Project (“GFIP”). Included in the application for

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approval were also discounts to be levied as from the anticipated date of commencement of tolling on 23 June 2011.

17. On 4 February 2011 the second respondent approved the application for toll tariffs and discounts that were submitted to him on 20 December 2010. The approved tariffs and discounts were published in the Government Gazette published in General Notice 52 of 4 February 2011. A copy of that gazette is annexed hereto and marked "AA2".
18. The tariffs and discounts published in annexure "AA2" hereto were intended to take effect and become payable as from 23 June 2011. In the light of expression of public concern relating to the payment of the tariffs and discounts described in annexure "AA2" hereto, particularly the concern that there had not been sufficient consultation with the public before the determination of the tariffs and discounts, the second respondent decided to postpone the date of commencement and payment of the tariffs and discounts, in order to recommence the process of public consultation.
19. I respectfully submit that there was a justifiable basis to postpone the date of commencement of e-tolling. That postponement was

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necessary in order to consider further public representations, through a process of wide public consultation.

20. In order to facilitate the process of public consultation, the second respondent established a Steering Committee which comprised representatives of the DoT, Gauteng Government, first respondent and the National Treasury, to consult with, obtain representations from, the public.
  
21. The consultative process that was initiated and undertaken by the Steering Committee is described in the report prepared by it, which is annexed hereto and marked "AA3" hereto. It is clear from the contents of annexure "AA3" hereto that:
  - 21.1. The public consultative process was widespread and involved representations received from, amongst others, Business Unity of South Africa ("BUSA") a major representative of Business South Africa, Road Freight Association, the second applicant, Retail Motor Industry, SALGA, SATSA, Afriforum, Johannesburg Chamber of Commerce, Freedom Front Plus, SADTU, COSATU, the ANC Youth League, the National Taxi Alliance, South African Commuters Organization and South African Bus Owners Association.

MEM  


- 21.2. The representations of, and engagement with, these organizations are described from page 59 of annexure "AA3" hereto. Having regard to the public concerns and representations from the organizations to which I have referred, the Steering Committee made a proposal for the reduction in the toll tariffs, taking into account international comparative toll tariffs. The extent of the reductions on toll tariffs, as well as the comparable international toll tariffs are set out from pages 95 to 99 of annexure "AA3" hereto.
22. I have drawn attention to the above further background facts in order to show that the second and third respondents have sought to promote the widest public consultation process in the determination of the toll tariffs. They also ensured that the views of the public are taken into account in the determination of affordable toll tariffs. They did not act unilaterally or irrationally as is alleged by the applicants.
23. After the proposal contained in annexure "AA3" was presented to the second respondent, the latter agreed to reduce the toll tariffs in accordance with the proposal of the Steering Committee. The revised tariff determination made by the second respondent is annexed hereto and marked "AA4". In terms of that determination, the revised toll tariff will commence and become payable as from 30 April 2012.

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24. Again, the revised tariff determination was made taking into account the concerns expressed by the public, and in order to ensure that a balance is struck between the need to obtain sufficient source of revenue to fund the debt arising from the GFIP and the need to ensure affordability for the payment of the relevant tolls.
25. I should add that the National Government itself is also acutely aware of the need to ensure that tolls that are payable are affordable. It is for that reason that the Minister of Finance committed the National Government to pay an amount of approximately R5.75 billion as a contribution to the repayment of the debt arising from the GFIP and the reduction of the toll tariff.
26. The interim relief sought in Part A of the notice of motion will require a further postponement of the commencement of e-tolling. I submit that there is no justification for such a further postponement. The concern that there was not a reasonable public consultation has been adequately addressed, through a process of a widest public consultative process that was implemented by the Steering Committee. The views of the broadest section of the public have been taken into account by the second respondent, in the re-determination of toll tariffs and discounts.

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27. As I shall indicate more fully below, a further postponement of the commencement of the e-tolling will lead to adverse consequences which ought to be avoided.
28. Against the above background, I now proceed to deal with the applicants' claim for interim relief by way of urgency.

**LACK OF URGENCY**


29. The applicants describe the grounds of urgency from paragraphs 498 to 506 of the founding affidavit. They claim that the determination of Part A is necessary in order to "*preserve the rights of the parties, and prevent the Applicants and hundreds of thousands of members of the public from suffering the cost and inconvenience of the implementation of e-tolling,*" and for that reason the matter must be heard before 30 April 2012.
30. The grounds of urgency asserted by the applicants are materially defective in that they singularly fail to explain why the applicants would not be afforded substantial redress, in due course, should the matter be heard in the ordinary way.

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31. What is troubling about the applicants' claim of urgency is that they do not explain the alleged inconvenience which they and others would suffer as a result of the implementation of e-tolling, as from 30 April 2012, and why the alleged inconvenience merits legal protection, and outweighs the adverse consequences arising from the further postponement of e-tolling.
32. As I have already explained, e-tolling will be implemented in a way which does not result in inconvenience or congestion to motorists who make use of the improved freeways in Gauteng.
33. In so far as motorists who make use of the improved freeway network will incur the cost of payment of the tolls, that form of payment is not by way of cash. It is paid through e-tags that are purchased in advance from various outlets administered by the first respondent. If it ultimately happens that motorists incurred the expense of purchasing the e-tags when they were not lawfully required to do so, then the first respondent would be required to reimburse them. It has never been the contention of the applicants that the first respondent would not be able to do so. Absent such a contention, the applicants have failed to show why they would not be afforded substantial redress in due course.

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34. I emphasize that the freeways on which toll roads have been established have been fundamentally improved, both in terms of increased capacity and safety, as well as travel time period. It is justifiable that those who decide to use the improved freeways should pay for such a use, as they enjoy the benefits of the use of improved network. The postponement of payment for such a use would not be justifiable, as the applicants have not tendered to reimburse the first respondent if their view is ultimately dismissed.
35. Furthermore, the use of the improved freeway network is not obligatory. It is not as if the applicants and those who share their concerns are obliged to use the improved freeway network, when they do not want to pay for the use. There are options available to the applicants to resort to alternative means of transport, in the event they do not wish to pay the applicable tolls.
36. I emphasize that the claim that alternative road networks are congested is not sound, as a matter of logic and practical considerations. I say so because there is always a public transport available to those who wish to avoid payment of the applicable tolls. In fact, the whole point of imposition of tolls is to encourage the use of public transport, and change the mindset of overuse of private motor vehicles, often with one occupant.

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37. I therefore submit that the applicants have failed to comply with the material requirements of Rule 6(12) of the Rules of Court.

**NO PRIMA FACIE RIGHT**

38. It is not clear from the allegations made in the founding affidavit, what is the right asserted by the applicants which requires immediate protection by way of interim relief. Other than a description of the grounds of review, in paragraph 194 of the founding affidavit, the applicants do not explain at all what is the *prima facie* right which they have established that requires immediate protection. I respectfully submit that their failure to do so is fatally defective.

39. I have also indicated that the applicants have not described the nature of the inconvenience alleged by them, which they claim they and other motorists will suffer, in the event the matter is not heard by 30 April 2012. Their allegations in that regard do not establish at all a *prima facie* right. Similarly, I have dealt with the issue of cost and indicated that that cost would be dealt with by the first respondent, in the event that motorists who used the improved freeway network were not lawfully required to pay the applicable tolls.

MAM  


40. In the final analysis, the case of the applicants is that the e-tolls must be funded from a different source of funding. They prefer a ring-fenced fuel levy as a form of funding the cost of the GFIP. The claim they assert in that regard, relates to a matter of polycentric choice which fundamentally reposes in the executive authority of national and provincial governments.
41. I have explained the relevant policy considerations and policy choices made by the relevant executive authorities of both Gauteng Provincial Government and National Government, which led to the decision to adopt e-tolling as a source of funding. I have also explained how the Steering Committee considered but declined to accept the applicants' preferred policy choice. I refer, in this regard, to pages 26 and 27 of annexure "AA3" hereto.
42. Having regard to these considerations, I respectfully submit that the applicants have not shown a right, at least one that merits interim protection, to dictate a policy decision to the first and second respondents. I respectfully submit that, having regard to the polycentric nature of the decision to impose e-tolling as a source of funding the GFIP, this honourable Court will be reluctant to intrude into that domain of executive decision-making, and will also be circumspect to avoid a delay in the implementation of that decision.

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**NO IRREPERABLE HARM**

43. The applicants have again failed to disclose in their papers what harm, if any, they would suffer if the interim relief was not granted by the honourable Court. Other than describing their contentions in respect of the issues in respect of the review, the applicants do not describe what harm they will suffer, and why such harm would be irreparable.
44. As I have already indicated, the first respondent will be in a position to refund anyone, including the applicants, were the applicants to succeed in due course. The applicants have not stated why this would not be the case.

**BALANCE OF CONVENIENCE**

45. Any harm that the applicants may suffer as a result of the implementation of e-tolling on 30 April 2012 is far outweighed by the adverse consequences that are likely to ensue to the first respondent and the country were e-tolling not to commence on that date.
46. The first respondent relies, for its funding, on borrowings from international markets. Such a debt is serviced through interest

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payment which is determined by the first respondent's ability to implement its projects and service the loan. As far as I am aware, the first respondent has working capital to meet its obligations only until May 2012 unless it is able to implement the e-tolling. Any failure by the first respondent to implement the e-tolling on 30 April 2012 will have the adverse consequence of international lenders having no certainty that they will be repaid. I must also point out that any default by first respondent on the repayment of its debt as scheduled will result in the termination of its business and the amount of R31 billion becoming immediately payable.

47. I point out, in this regard, that one of the credit rating agencies has already down-graded the first respondent's status from A3 (upper medium grade) to Baa1 (lower medium grade) citing concerns over e-tolling implementation and income. The direct consequence of such down grading makes not only the first respondent, but also the country as a whole, to be seen as being less able to service its debt.
48. In the final analysis, such a situation negatively impacts on the government credit rating and increases the cost of borrowing for all borrowers. In other words, the poorer the credit rating of the first respondent and/or the country, the higher the interest rate the country will have to pay. The consequences of any delay in the implementation of e-tolling are therefore dire for the entire country.

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49. Given what I have said above, I submit that it is essential that the e-tolling be implemented by 30 April 2012. The applicants, on the other hand, have not shown what inconvenience they will suffer were e-tolling to be implemented by 30 April 2012. As I have already indicated, if the applicants were to succeed in due course, there would be no reason why the first respondent would not be in a position to refund them.

#### **RESPONSES TO AVERMENTS IN THE INDIVIDUAL PARAGRAPHS**

50. I now proceed to respond to the averments in the individual paragraphs of the founding affidavit in so far as they are relevant to and made in support of Part A of the notice of motion. I want to make it clear that allegations contained in the founding affidavit made in support of the interim relief which are inconsistent with what I have set out above, which I do not specifically deal with, are denied in so far as they are inconsistent with what I have set out above.

51. **Ad paragraph 1**

I do not dispute the averments made in this paragraph.

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52. **Ad paragraph 2**

I deny the averments in this paragraph.

53. **Ad paragraph 3**

I have no knowledge of the averments made in this paragraph. For the purposes of the determination of the interim relief, I do not dispute them.

54. **Ad paragraph 4**

I deny the averments in this paragraph.

55. **Ad paragraphs 7 to 22**

I do not dispute the averments in these paragraphs.

*MCM*




56. **Ad paragraphs 24 to 27**

56.1. I deny that the applicants have made out a case for the interim relief sought in Part A of the notice of motion, for the reasons I have described elsewhere in this affidavit.

56.2. I accept that the date of commencement for the levying and collection of e-tolling on the toll road network is 30 April 2012. If granted, the interim relief will require a postponement of that date. For the reasons I have already explored, the applicants have not shown any basis for the postponement of that date.

57. **Ad paragraph 28**

57.1. In so far as it affects the second respondent, the relief sought in Part B of the notice of motion is described in paragraph 28.2 of the notice of motion. That relief is directed at the decision taken by the second respondent on or about 4 February 2011, published in the government gazette which appears on annexure "AA2" hereto, of the same date.

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57.2. I respectfully submit that the applicants were or ought to have been aware of the decision sought to be reviewed as from 4 February 2011. Despite that fact, the applicants have launched the review proceedings, well after the time period prescribed in section 9 of PAJA. Their delay in bringing the review was inordinate and remains unexplained.

57.3. The applicants' failure to act with a reasonable degree of expedition shows that the urgency contended by them is of their own making.

58. **Ad paragraphs 97 to 129**

58.1. I do not dispute the averments in these paragraphs, for the purposes of the interim relief.

58.2. I point out that the averments set out in the paragraphs under reply show that the applicants were aware, or ought to have become aware, by exercise of reasonable care, of the decision to declare sections of the freeway as toll roads well before the launch of the review but failed to do so.

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59. **Ad paragraphs 146 and 147**

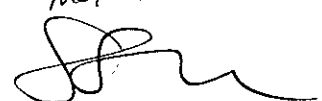
59.1. I do not dispute the averments in these paragraphs.

59.2. Again, the applicants became aware of the decision of the first respondent which is sought to be reviewed on or about 4 February 2011, yet, they did not institute any interdict or review proceedings. Instead, it waited for a period of more than a year. I submit that the conduct of the applicants manifest an unreasonable delay which ought not to be countenanced by this Court, having regard to the drastic consequences of the interim relief.

60. **Ad paragraph 148**

60.1. I do not dispute the averments in this paragraph.

60.2. I refer to the steps taken by the second respondent to deal with the public outcry which resulted from the publication of the toll tariffs gazetted in annexure "FA35" of the founding affidavit.

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60.3. In so far as it is reasonably practicable, the second respondent has accommodated the public concerns about lack of sufficient consultation and affordability of the toll tariffs, through a re-determination of the new toll tariffs, in line with the report which appears on annexure "AA3" hereto.

61. **Ad paragraphs 149 to 153**

I admit the averments in these paragraphs in so far as they are not inconsistent with the contents of this affidavit and annexure "AA3" hereto.

62. **Ad paragraphs 154 to 156**

62.1. I deny the averments in these paragraphs.

62.2. The second and third respondents have not received the confirmatory affidavit referred to in these paragraphs.

Meem  


63. **Ad paragraphs 157 to 159**

63.1. I have now attached the report of the Steering Committee as annexure "AA3". The excerpts of that report referred to in the paragraphs under reply must be considered and understood in the context of the whole of that report.

63.2. Save as aforesaid, I deny the averments in these paragraphs in so far they differ with what I say herein.

64. **Ad paragraphs 160 and 161, 163 and 164**

64.1. I deny the averments made in these paragraphs.

64.2. It is clear, from the whole of the report set out in annexure "AA3" hereto that there was broad consultation and that the views expressed by organizations who participated in the consultations were considered in the process of consultation.

MGM  


65. **Ad paragraphs 165 to 174**

I do not dispute the averments in these paragraphs.

66. **Ad paragraphs 175 to 177**

It is denied that the MEC for Transport Gauteng chaired the meeting of 11 November 2011. What transpired is that the meeting was convened by the Gauteng Legislature Petition Committee on Roads and Transport following a petition received from members of the public. The MEC's role on the date was to answer to the petition. He responded to the contents of the petition as placed before him.

67. **Ad paragraphs 185 to 189**

I do not dispute the averments in these paragraphs.

68. **Ad paragraphs 196 to 200**

I deny the contentions made in these paragraphs.

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69. **Ad paragraphs 201 to 205**

69.1. The averments in these paragraphs relate to the steps taken by the first respondent.

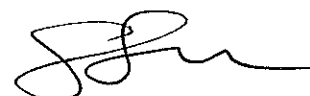
69.2. I have been advised that the first respondent will deal with these averments' in its opposing affidavit.

70. **Ad paragraphs 206 to 275**

70.1. I deny the averments made in these paragraphs, and will deal with them in detail when the second and third respondents respond to Part B of the notice of motion.

70.2. On the applicants' version, they have failed to make out a case for the review of the decision made by the second respondent.

Wam

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71. **Ad paragraphs 276 to 280**

71.1. The averments made in these paragraphs relate to actions taken by the first respondent. I have been advised that the first respondent will deal with these averments.


71.2. As I have explained, the second respondent did revise the toll tariffs, in line with the recommendation made by the Steering Committee in annexure "AA3" hereto in order to ensure that the revised toll tariffs are affordable.

72. **Ad paragraphs 281**

I deny the contention made in this paragraph.

73. **Ad paragraphs 282 to 322**

73.1. The averments made in these paragraphs relate to the conduct of the first, fourth and fifth respondents and I do not deal with them in this affidavit.

Meem  


73.2. All I wish to say is that the decision sought to be reviewed have been taken as long ago as 2007 and 2008. Yet the applicants do not explain why they failed to challenge these decisions immediately.

73.3. By now, it is common cause that the first respondent has acted in accordance with the environmental approvals, and records of decision which are sought to be reviewed, when it effected the freeway improvements, most of which have now been completed, and whose benefits the applicants enjoy.

73.4. The actions of the first respondent, relying on the approval given by the fourth and fifth respondents have become irreversible. I have been advised and respectfully submit that this honourable Court will be inclined to refuse the remedy of review, under these circumstances. The interim interdict premised on a review, under these circumstances, will similarly be refused.

74. **Ad paragraphs 323 to 497**

74.1. I take note of the averments made in these paragraphs, and wish to point out that they will be dealt with in detail, when

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the second and third respondents respond to Part B of the notice of motion.


74.2. For the purposes of the determination of the interim relief, I submit that the averments concerned do not make out a case for the grant of the interim relief, and the condonation of the prescribed time periods, in terms of section 7 of PAJA.

75. **Ad paragraphs 498 to 506**

75.1. I have dealt with the lack of urgency, in paragraphs 29 to 37 above.

75.2. I submit that the applicants failed to make out a case for urgency.

76. I therefore respectfully request this honourable Court to dismiss the interim relief sought in Part A of the notice of motion, and if necessary, issue necessary directions as to the finding of the review record and affidavits required in connection with Part B of the notice of motion.

Meem  




DEPONENT

THUS SIGNED AND SWORN TO before me at Pretoria on this the 12 day of April 2012 by the Deponent who acknowledges that she/he knows and understands the contents of this affidavit; that it is the truth to the best of her/his knowledge and belief and that she/he has no objection to taking the prescribed oath and regards same as binding on her/his conscience and the administration of the oath complied with the Regulations contained in the Government Gazette No. R1258 of 21 July 1972 as amended.

  
COMMISSIONER OF OATHS

**SYDWELL S. MKETSU**  
PRACTISING ATTORNEY  
COMMISSIONER OF OATHS (Ex Officio)  
Bank Towers Building  
190 Andries Str, First Floor, Suite 114  
P.O. Box 3280, Pretoria, 0001  
Tel: 323 6795 / 8061 Fax: (012) 323 2105