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Our Reference: Tumisang Mongae/ Nhlanhla Tshabalala - 6119992 Your Reference: Buka Strategic Projects // The Mvula Trust

Direct Line: 011 669 9350/9649 Date: 21 February 2019

Email Address: tumisang.mongae@bowmanslaw.com / nhlanhla.tshabalala@bowmanslaw.com

BY EMAIL

Mr V Mfinci
Mfinci Bahlmann Incorporated
vuvisa@mfincibahlmann.co.za

Copy to-
Adv Terry Motau SC
The Arbitrator
Email: mpa@group621.co.za

Dear Sirs

BUKA STRATEGIC PROJECTS (PTY) LTD (PREVIOUSLY KNOWN AS UBUNTU SIMA TRADING CC) ("UBUNTU SIMA") / THE MVULA TRUST & OTHERS CASE NO. 86536/2017

1. We refer to our letter dated 21 January 2019.
2. We have completed the review record and filed it with the Registrar Gauteng Division, Pretoria (the Registrar) on 20 February 2019. You may according obtain a copy of the record from the Registrar.

Yours faithfully

pp *Lea-ne Van Zyl*

Bowman Gilfillan
per: T Mongae/ N Tshabalala

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Bowman Gilfillan Inc. Reg. No. 1998/021409/21 Attorneys Notaries Conveyancers

Directors RA Lech (Chairman) | PM Maduna (Deputy Chairman) | AJ Kseo (Managing Partner) | AG Angerson | DP Anderson | LJ Anderson | JS Andropoulos | M Angumuthoo | L Avni | AM Barnes-Widde | TL Berra | JM Sallow | F Bhatay | CM Rouvier | IL Bink | FEW Bizman | RM Carr | PM Carter | LA Chater | A Chetty | RA Cohen | CN Cunningham | GH Damant | RA Davey | MEC Davids | D de Klerk | TC Dini | CR Douglas | HD Duffey | L Dyer | S Ebery | L Flester | KA Fulton | BJ Garven | TM Gobashe | DJ Gerall | LHM Gerelle | D Gewer | TJ Gordon-Grant | CB Green | S Girmwood-Norky | A Hale | W Harner | AS Harris | P Hart-Davies | PA Hirsch | JR Janis | JR Kaepu | CP Kennedy | KM Kern | ID Kirkman | JG Kruger | JP Kruger | R la Grange | R Labuschagne | T Laubscher | DA Lotter | J Lurie | KS Makepano | M Makola | HW Manciana | HL Manson | A McAllister | TP McDougall | M McGillicue | JM McKinnell | MC Mkhwa | R Moxika | TL Mongae | L Mongae | SP Naicker | UEBU Naumann | CZ Ndlovu | HB Ngcobo | TH Nichols | X Nyali | MAJ Oppenheim | AJ Pike | P Pillay | JD Prain | DM Pretorius | MA Purchase | Y Ram | LV Raphulu | CL Reidy | JB Ripley-Evans | MS Rusa | GI Rushton | S Saffy | JW Sahli | MY Sassi | CG Schafer | DE Serchuk | RZ Shani | CC Smith | EC Steyn | BGM Strydom | V Subban | H Taylor | CFN Todd | CE Tucker | CL van Heerden | A van Niekerk | MR van Velden | RJ van Voore | MG Vermaak | L Verster | DS Webb | DCJ Woods | RS Wessels | RW Westgate | PE Whelan | EP Williams | HJ Wilson | SS Wilson | SA Wood | KS Wright | DO Yull
Of Counsel S Esterhuysen | CS Franklyn | F Laher | CS Truter | KL van de Pol | A Voges | **Consultants** ARL Bertrand | JWD Brand | G Kekesi | JH Schlotberg | **Special Counsel** CL Valkin
Group COO RJ Smith | **Group CFO** J Pohl | **Company Secretary** NL van Vuuren

KENYA SOUTH AFRICA TANZANIA UGANDA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 86536/2017

In the matter between:-

BUKA STRATEGIC PROJECTS (PTY) LTD

(Previously known as Ubuntu Sima Trading CC)

Applicant

and

THE MVULA TRUST

First Respondent

SEANI SILAS MBEDZI N.O.

Second Respondent

ALUFHELI DOWELANI N.O.

Third Respondent

ASIVHANGA TSHIBUBUDZE N.O.

Fourth Respondent

SUTHU LINDA CORDELIA MAPHAHA N.O.

Fifth Respondent

MICHAEL WILLIAM MARLER N.O.

Sixth Respondent

MAGGY MPHULO KGWANTHA N.O.

Seventh Respondent

TERRY MOTAU SC (ARBITRATOR N.O.)

Eighth Respondent

**MINISTER OF COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS**

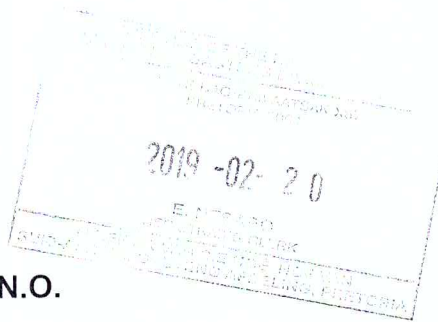
Ninth Respondent

SERITI INSTITUTE

Tenth Respondent

DHLADHLA FOUNDATION

Eleventh Respondent

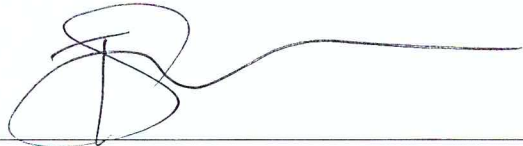


FILING SHEET

DOCUMENTS FILED HEREWITH:

1. The review record together with such reasons as are required by law.

DATED at JOHANNESBURG on this 19 DAY of FEBRUARY 2019.



BOWMAN GILFILLAN

First to Sixth Respondent's Attorneys

11 Alice Lane

Sandton

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Fax: 011 669 9001

c/o GILDENHUYS MALATJI INC

GMI House, Harlequins Office Park

164 Totius Street

Groenkloof

Tel: 012 428 8835

Fax: 012 428 8601

Ref: T Mongae/ 6119992

TO:

THE REGISTRAR

GAUTENG DIVISION, PRETORIA

AND TO:

MFINCI BAHLMANN INCORPORATED

Applicant's Attorneys

341C The Rand Street

Lynwood

Tel: 012 361 1647/8

Fax: 086 573 6631 / 086 589 3987

Email: vuyisa@mfincibahlmann.co.za & esethu@mfincibahlmann.co.za

Ref: VS Mfinci / U04

AND TO:

MVULA TRUST

First Respondent

49 New Road

Block C-IL Piacere, Section 22

Grand Central

Midrand

Gauteng Province

AND TO:

THE TRUSTEES OF THE MVULA TRUST

Second to Seventh Respondents

49 New Road

Block C-IL Piacere, Section 22

Grand Central

Midrand

Gauteng Province

AND TO:

ADVOCATE TERRENCE MOTAU SC

Eighth Respondent

Rex Welsh Chambers, Group 621

Sandown Village Office Park

Corner Gwen and Maude Street

Sandown

Johannesburg

AND TO:

MINISTER OF COOPERATIVE GOVERNANCE

Ninth Respondent
87 Hamilton Street
Arcadia
Preotia
Gauteng Province
Tel: 012 334 0777
Ref: George Seitisho

AND TO:

SERITI INSTITUTE

Tenth Respondent
Western Wood Office Park
145 Western Service Road
Woodmead
Johannesburg
Gauteng Province
Tel: 011 262 7700
Ref: Gavin Anderson

AND TO:

DHLADHLA FOUNDATION

Eleventh Respondent
Mgabadel House
Corner Lever Road and Monica Street
Noordwyk Ext 4
Midrand
Gauteng Province
Tel: 079 962 9529
Ref: Sipho Dhladhla

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TERRY MOTAU SC (ARBITRATOR N.O)

**MINISTER OF COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS**

SERITI INSTITUTE

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

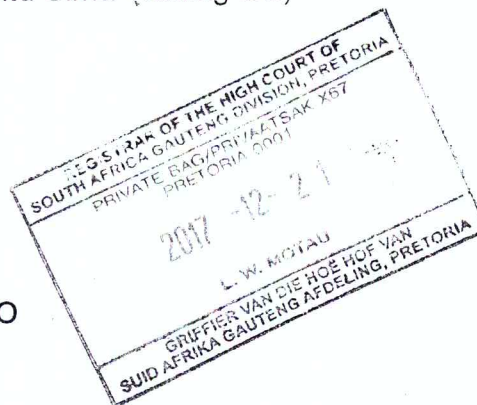
Sixth Respondent

Seventh Respondent

Eighth Respondent

Ninth Respondent

Tenth Respondent



NOTICE OF MOTION

KINDLY TAKE NOTICE THAT application will be made in the above Honourable on behalf of the Applicant for an order in the following terms:

1. Condoning the late filing of this application and permitting the Applicant to enrol this application;

2. Declaring the conduct of the Eighth Respondent in the arbitration proceedings between the Applicant and the First Respondent as represented by its Trustees being the Second to Sixth Respondents and which were finalised on 1 March 2017 was irregular and unlawful;

3. Declaring that the award made by the Sixth Respondent was obtained in circumstances that are improper and is reviewed and set aside;

4. Directing the Ninth Respondent, Tenth Respondent and Eleventh Respondent to furnish to the Applicant and First Respondent within 15 days of granting of this order, all attendance registers and reconciliation of payments done in respect of

the Community Work Programme project as implemented by the First Respondent during the period 2011 to 2013;

5. Permitting the Applicant to discover within 15-days of obtaining the records from the Ninth, Tenth and Eleventh Respondent, and to refer for debatement of accounts, the records obtained in respect of work attendance in terms of the Community Work Programme for 2011 to 2013 financial year;
6. Directing the Applicant to furnish to this Court within ten-days of completion of the debatement proceedings, any joint report of the experts;
7. Pending this Honourable Court's ruling on the relief in prayers 1 to 5 above and or finalisation of the implementation thereof, the Award granted by the Eighth Respondent on 1 March 2017 be stayed;
8. Granting costs against any or all of the Respondents that opposes this application;
9. Granting further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **ZIPHOZETHU MATHENJWA** together with the annexures thereto will be used in support of this application.

TAKE NOTICE FURTHER THAT the Eighth Respondent is required to dispatch, within 10 days after receipt of the notice of motion in this matter, to the registrar of the above Honourable Court, the record of the arbitration proceedings in the matter between the Applicant and the First Respondents, that is sought to be reviewed and set aside, together with such reasons as are required by law or desirable to provide.

TAKE FURTHER NOTICE THAT if you intend opposing this application you are required:

- (a). to notify the Applicants' attorneys in writing within five (5) days upon service of this application on you by serving a copy of your notice to oppose on the Applicant's attorney and file the original with the Registrar of the above court and;
- (b). within thirty (30) days of date of delivery of the Applicant's amended Application, file your answering affidavit, if any, and further that you are required to appoint in such notification an address referred to in rule 6(5) (b) at which you will accept notice and service of all documents in these proceedings.

FURTHER TAKE NOTICE that if no such notice of intention to oppose be given, the application will be made on _____ **2018** at 10h00 or as soon thereafter as counsel for the Applicant may be heard.

DATED at **PRETORIA** on this 21st day of **DECEMBER** 2017

(Sgd) V.S.MFINCI

MFINCI BAHLMANN INCORPORATED

Applicant's Attorneys

341C The Rand Street

Lynnwood

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Fax: 086 573 6631 / 086 589 3987

Email: vuyisa@mfincibahlmann.co.za &

esethu@mfincibahlmann.co.za

Ref: VS Mfinci/U04

TO: THE REGISTRAR
GAUTENG DIVISION, PRETORIA

AND TO: BOWMAN GILFILLAN INCORPORATED

Attorneys for the First to Sixth Respondents

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Email: junaid@bowman.co.za & t.mongae@bowman.co.za

Ref: J Banoobhai/T Mongae/6119992

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No:/2017

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MICHAEL WILLIAM MARLER N.O

Sixth Respondent

MAGGY MPHULO KGWANTHA N.O

Seventh Respondent

TERRY MOTAU SC (ARBITRATOR N.O)

Eighth Respondent

**MINISTER OF COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS**

Ninth Respondent

SERITI INSTITUTE

Tenth Respondent

DHLADHLA FOUNDATION

Eleventh Respondent

FOUNDING AFFIDAVIT

I, the undersigned:

ZIPHOZETHU MATHENJWA

hereby make oath and state that:

1. I am an adult female business woman and am the sole director and shareholder of the Applicant carrying on business at Elethu House, Suite G4, Building 27, Thornhill Office Park, 94 Bekker Road, Midrand, Gauteng Province.
2. The facts deposed to herein are within my personal knowledge and are both true and correct.
3. I am in my aforesaid capacity as the Director of the Applicant duly authorised to represent the Applicant in the proceedings in this matter. I annex hereto the resolution of the Applicant authorising me to act on its behalf, and marked it "ZM-1".
4. On 12 January 2012 at Johannesburg the Applicant and the First Respondent concluded a service agreement. It related to the Community Work Programme ("CWP") for the period of 2011 to 2014 ("the project"). I beg leave to refer to the agreement as the uBuntu Agreement and I attach hereto a copy thereof and mark it as annexure "ZM-2".

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JURISDICTION AND PARTIES

5. The uBuntu Agreement was concluded at Johannesburg, Gauteng Province. The First Respondent has its principal address at 49 New Road, Block C-IL Piacere, Section 22, Grand Central, Midrand, Gauteng Province. I submit thus that the above Honourable Court is endowed with the necessary jurisdiction to determine the issues in this application.
6. The Applicant is Buka Strategic Projects (Pty) Ltd, a private company with limited liability and having registration number: 2015/298937/07. It was previously known as Ubuntu Sima CC and conducts its principal business from Elethu House, Suite G4, Building 27, Thornhill Office Park, 94 Bekker Road, Midrand, Gauteng Province.
7. The First Respondent is Mvula Trust, a trust between persons, established during 1993 and having the Master's Trust Reference number: IT1595/93(T) and having its principal offices at 49 New Road, Block C-IL Piacere, Section 22, Grand Central, Midrand, Gauteng Province. The First Respondent is run on a commercial basis, tendering for, and implementing public services relating to social infrastructure such as water and sanitation.
8. The Second to the Seventh Respondents, are all individuals who in their official capacities, are trustees of the First Respondent and are persons whose full and further particulars are to the Applicant unknown. Unless they

personally oppose the current application, no order as to costs will be sought against the Second to Seventh Respondents in their personal capacities. A copy of the First Respondent's Letters of Authority issued by the Master of the High Court at Pretoria is annexed hereto as "ZM-3".

9. The Eight Respondent is Terrence Motau SC, an Advocate of this Honourable Court and holds chambers at Rex Welsh Chambers, Group 621, Sandown Village Office Park, Corner Gwen and Maude Street, SANDOWN, JOHANNESBURG and is the person who was appointed and acted as the Arbitrator in the impugned arbitration proceedings. He is the person who issued the arbitration award dated 1 March 2017 annexed hereto and marked "ZM-4".

10. The Ninth Respondent is the Minister of Cooperative Governance, and is the executive authority for the respective Department having its principal offices at 87 Hamilton Street, Arcadia, Pretoria, Gauteng Province. The Ninth Respondent is the Client that commissioned the CWP project that was implemented as the key object of the uBuntu contract. The Ninth Respondent is a party that ultimately bore the public financial expenditure in respect of the uBuntu contract, and is the party which I submit, would be entitled to receive any wage budget related amounts relating to the project which could be proven to be outstanding. It is further, the party which received accounting and other reports. The Ninth Respondent is cited herein for the public accountability interest it may have and no order is sought against him unless it opposes this application.

11. The Tenth Respondent is Seriti Institute, a non-profit organisation whose full and further particulars are to the Applicant unknown, carrying on business at Western Wood Office Park, 145 Western Service Road, Woodmead, Johannesburg, Gauteng Province.
12. The Eleventh Respondent is Dhladhla Foundation, a non-profit organisation whose full and further particulars are to the Applicant unknown carrying on business at Mgabadeli House, corner Lever Road and Monica Street, Noordwyk Ext 4, Midrand, Gauteng Province.
13. The Tenth and Eleventh Respondents are the entities that acted during the CWP project at issue in this matter, as Provincial Implementing Agents and were responsible both as administrators of the project at provincial and local level. They are cited herein because of the reporting and accounting role they played as repositories of records and information relating to the CWP participants and the delivery of the CWP, and would in the event that the review herein is granted, be required to be directed to produce all the records that relate to the implementation of the CWP and essentially records that would prove that there is no amount due and payable by the Applicant to the First Respondent. There is no costs order sought against the Tenth to Eleventh Respondent unless they oppose this application.



PURPOSE AND STRUCTURE

14. The First Respondent, being the First Respondent, is the party that, through its *persona dramatis* the Second Respondent, instituted arbitration proceedings on 31 October 2014 against the Applicant. The details of those arbitration proceedings are further dealt with below, save to state that such arbitration proceedings were effectively brought to a putative conclusion when the Eight Respondent made an award against the Applicant on 1 March 2017. The arbitration proceedings and the award made are impugned in this application.

15. The Applicant contends that the conduct of the Eight Respondent during the arbitrations proceedings and the findings and award made by him, were as much irregular, unlawful as they were irrational hence the arbitration proceedings are impugned in this application.

16. The Applicant seeks thus in this application, firstly condonation for the late filing of these proceedings, as justified below, and effectively an order reviewing and setting aside the award made by the Eight Respondent, and leave to lodge a fresh debatement procedure directed by this Honourable Court, and thereat to file the relevant and material evidence prohibited by the Eight Respondent during the arbitration proceedings.

17. The arbitration proceedings are, as I will detail further below impugned essentially because the during the arbitration proceedings, the Eight Respondent in a number of ways, displayed a grossly biased attitude towards the Applicant. He further acted irrationally and conflated the issues before him and even more seriously, ignored discrepancies in the joint minutes of the experts and for reasons that are still inexplicable, refused the Applicant's expert witness' affidavit to be admitted when it was necessary to do so. The Eight Respondent further made his award after refusing to allow the Applicant to present at the arbitration proceedings, material evidence justifying the amounts disbursed by the Applicant to the CWP participants, when such evidence was discovered.
18. I shall at the premisc, outline the relevant and pertinent historical facts, and thereafter deal with the pertinent grounds of impugnation against the arbitration proceedings and the award.

HISTORICAL OVERVIEW

19. The Applicant is a wholly empowered company that specializes in community development projects. Its objectives are community development, training and education as well as poverty alleviation. With its expertise in project management, the Applicant had developed a strategy to effectively deliver community projects and disbursement services.
20. On or about November 2011 the Ninth Respondent, issued a Request for Proposal for the delivery of CWP.

21. The Applicant, then known as Ubuntu Sima CC, approached the first responded through its former CEO Mr. Phakamani Buthelezi, to collaborate in the tender and to effectively be a sub-contracted service provider. The proposed agreement would see the parties entering into a sub-partnership agreement, with the First Respondent assuming the leading strategic program management role and Ubuntu Sima assuming the day-to-day technical project implementation role. The First Respondent agreed to the request.
22. Applicant subsequently obtained the tender documentation and informed First Respondent of such and immediately started preparations (after attending the compulsory tender briefing) for the development of a responding technical proposal. Applicant developed the entire technical proposal, with minimal recorded input from the First Respondent.
23. The unique features of the project as proposed by the Applicant, and which I submit, was the sole advantage of the Applicant's proposal to the First Respondent was the technical knowledge of information systems and transactional technologies proposed by the Applicant, which included a customized Cashless Wages Payment System (CWPS). This meant that the CWP participants would not unlike in other areas, be paid in cash, but would receive their payments through a bank system, that enabled bank withdrawals from Automated Teller Machines through-out the respective provinces in which the First Respondent was awarded the contract.

24. After the technical proposal was finalised, the First Respondent then submitted the tender in respect of the CWP and was awarded such tender by the Ninth Respondent.
25. The First Respondent signed a Service Level Agreement with the Applicant with a principal objective being that the Applicant would administer and manage the package of the CWP awarded to the First Respondent by the Ninth Respondent. To the extent that the project was delivered by the Applicant, the Applicant was required to account to the First Respondent and the First Respondent would remunerate the Applicant on the basis of the uBuntu Agreement on a 85/15 basis in terms of which the Applicant would earn 85% of the professional fees out of the total value of R29 999 999 being the amount of the tender over a period of three years commencing in November 2011.
26. The tender was nationally spread and a number of service providers, known as Implementing Agents were appointed across the country to deliver CWP management and disbursements in specified provincial and local municipal areas.
27. The material and relevant terms of the CWP tender were structured as follows:
- The objectives of the CWP are to:
- strengthening community development approaches;



- strengthen the economic agency of people in poor areas;
- provide work experience;
- enhance dignity; and
- promote social and economic inclusion.

Deliverables of CWP: -

- The CWP is designed as an employment safety net, not an employment solution for participants. It provides a baseline in terms of income security and economic access and participation;
- It is an area-based programme implemented in a defined local area called "a site." A site is usually a municipal area that extends over several wards. Sites are established in poor areas where unemployment is high and sustainable jobs will take the longest to reach. Each site is sub-divided into a number of sub-sites constituting of wards and villages;
- It is meant to complement and not replace the existing livelihood strategies of unemployed and underemployed people. The CWP is an ongoing programme with participants moving in and out of the programme as their needs change;
- The CWP provides access to a minimum level of regular work on an on-going and predictable basis for those who need it the most at the local level. Currently, it offers 100 days of work a year, managed as either two (2) days a week or eight (8) days of work per month.

The CWP uses community participation processes to identify 'useful work' through Local Reference Committees (LRCs). 'Useful work' is defined as an activity that contributes to the public good. The work undertaken is generally multi-sectoral (undertaken across departmental mandates and spheres) and responds to priorities set at local level through community participation processes. Generally, each site identifies a set of anchor programmes that are ongoing and provide core work.

THE MODEL OF CWP

28. The CWP is part of non-state sector program, grouped under the Extended Public Works Program (EPWP).
29. The program had three distinct, but intertwined tiers of agents, each meant to report to the other in order of responsibility, namely the strategic Lead Agent (LA), the Provincial Implementing Agent (PIA) and the Local Implementing Agent (LIA) for purposes of managing participant workers within a community who are contracted to deliver identified community projects, such as road maintenance and small-scale infrastructure works.
30. In this regard the main contractor, such as the First Respondent directly contracted the PIAs and the PIAs directly contracted the LIAs.

31. The reporting line was from each tier up and accordingly the First Respondent directly had a legal relationship with the agents, including on matters of ownership of initiation, ownership and retention of records.
32. The Applicant, as a sub-contractor was-on a dotted line reporting basis-only responsible to receive completed and uploaded data on the CPWS from the PIAs and to ensure reconciliation, process payment, provide reports and jointly (with the PIA) attend to payment queries. The Applicant did not have a legal relationship with the PIA's and LIA's.
33. The original payment and attendance records were generated and kept at the PIA offices for auditing purpose and the First Respondent had direct solid line responsibility over all the records. The First Respondent thus bore the responsibility to account in turn to the Ninth Respondent as the Client in respect of the reports.
34. In view of the initially good working relations, the First Respondent relied principally upon the Applicant to assist in reporting responsibilities.
35. There was a separation of roles with respect to the generation and consolidation of data as well as the ultimate payment, hence Applicant never assumed the role of payment data generation and capturing. The final responsibility over such information lay with the PIAs, who were responsible and accountable to the First Respondent directly.

THE CASHLESS WAGES PAYMENT SYSTEM (CWPS)

36. The Applicant interpreted the terms of reference to mean a fully or semi-automated system, which will ensure risk management on the handling of cash and ensure a proper control, risk free tool over manual payment sheet management.
37. This was further originally interpreted to mean, a complete system from the origination of participant intake to the payment end.
38. To this regard a system framework was crafted by the Applicant. This already designed system met and surpassed the system specification of the client, being the First Respondent. In this regard, a specialist systems developer organisation, Agile Software was contracted to develop an Enterprise Resource Planning (ERP) System, which was code named Insika.
39. The system was fully deployed at the offices of the PIAs, with LAN Telkom lines installed as well as Vodacom 3-G connection cards deployed, for access to data, as the system utilized the data network, to upload. Once uploaded and stored by Vodacom, the Applicant would then access the data on virtual network.
40. The CWPS was designed as fully deployable integrated system and not web-based. The system encompassed the following key features:



37.1 Biometric registration

This would include that all working sites have a (pre-populated) device which would be utilized for in/out clocking, thus registering payment data, which would be hosted by Vodacom via Telkom connectivity. In consultation with the client, it was decided against utilising this system, as the program support costs would escalate, when the budget should be geared towards payment of wages. To this regard, after already engaging many partners, including (Accsys and Sengo), this part was stopped.

37.2 Modules

- a) This entailed database management, which meant all participants data biographical data could be loaded per site and per work site (under each supervisor), in line with budget spread;
- b) General ledger alignment, which meant all transactions (wage or non-wage) would reconcile and produce general ledger against the budget, thus providing ease in production of cost management and financial management statements;
- c) Payroll management, which meant against each name of a developed database, the PIAs would capture the attendance registers, on a monthly basis and certify the authenticity of data.

Applicant would then pull the data from the system and link up with the bank for payment;

- d) The procurement module, which meant that the supplier database would be generated and kept; orders would be generated in line with authorization line of command, order numbers generated, process tracked, invoice and waybill correlated with order numbers and stored;
- e) Asset management, which meant that all assets would be identified, tagged and registered on the system, with full quantification of their value;
- f) Project management, which meant that all site business plans would be uploaded on the system and reporting would be done on line against the milestones; and
- g) Generated reporting, providing graphs and pictures for high level reporting.

37.3 Wages invoice generation

- a) Ordinarily the First Respondent would receive up to three (3) months of advance averaged wages budget from the Ninth



Respondent for management. Thereafter, the Applicant would then provide required wages budget estimates requests on monthly basis prior to the month-end payment run to the First Respondent. This amount is then processed to the jointly accessed dedicated wages bank account.

- b) Once all data has been loaded by the PIAs on the system and the PIA provide their reports on the work performed by participants, the Applicant would then receive requests for wages amount for the month ending. These reports would then be uploaded by the Applicant's relevant Project Manager, Ms. Nozipho Seme to conclude a realistic estimate figure for wages budget to be requested from the First Respondent;
- c) An invoice would then be generated based on the estimate for the attention of the First Respondent's own Programme Manager, and
- d) After the First Respondent has made payments into the dedicated Wages Account of the Applicant, the wages payment reconciliation report would then be generated and then provided to the First Respondent for onward transmission to the client, the Ninth Respondent who should then further reconcile the accounts and then issue the outlaying three (3) months reserve for wages.



37.4 Link-up with bank for electronic transfer

- a) The suitable banking partner search culminated into an acceptable working relationship with the First National Bank (FNB), which conformed to our specification. The First Respondent was also trained and provided with the profile to access the bank reports, which would enable monthly reconciliation and timely intervention on any queries raised.
- b) The data processed and verified for efficacy on the CWPS will then be developed into bank conforming files and exported directly, as batches to the bank, which be would prior to payment:
- c) Generated first test run for errors over all the accounts due for payments, after which errors are sent back to the PIAs for rectification;
- d) Second generated batch is loaded and run, after which another set of errors is sent back to the PIAs for rectification;
- e) Then the payment is run, where after all the payment reports are generated for attachment with the monthly reports to the client.

38 Despite the fact that we had several meetings, training sessions and workshop over the system, where the First Respondent's officers were present, it later dawned that the functioning of the cashless system was never fully appreciated, especially its framework and configuration. Hence, some misunderstanding, reflected in many questions posed by the First Respondent in the course of the CWP and the arbitration proceedings. In fact, a classic example was the fact that in the course of arbitration proceedings, the First Respondent demanded through its attorneys, to be furnished with bank statements from the Wages Account held at the FNB. This in itself was not unreasonable, however, it was completely awkward because actually the First Respondent had direct access to the cashless system at all levels, including the deployed system and the bank access code.

39 The wages bank account had been accessible to the First Respondent and its managers. They could thus independently and even without requesting transaction statements from the Applicant. In this regard, I refer to confirmation from the bank, the letter dated 29 October 2013 and marked "ZM-5" indicating who had access to the to the bank account and who did not. I point out that Moses Makhwenyane and Siyabonga Dube were representatives of the First Respondent and Ninth Respondent respectively.

DEALING WITH ERROR AND NON PAYMENTS

- 40 From time to time, the Client would refer to the Applicant and the First Respondent, queries dating as far back as prior to 1 November 2011. This was prior even to the engagement of the Applicant. As an example of such a query, I refer hereto to annexure "ZM-6" being written correspondence regarding wages allegedly unpaid.
- 41 Wages queries would be generated from many sectors, namely the current and departed participants, local councillors, LIA's, PIA's and sometimes by the Ninth Respondent at a political level with an instruction to pay via officials, some of whom are still employed to date.
- 42 In a number of instances, other discrepancies were discovered such as irregular payments or payments made into non-FICA compliant bank accounts that were either closed, or blocked. These were even considered and brought the attention of the First, Ninth, Tenth, Eleventh Respondents as well as other PIA's and LIA's.
- 43 It must be noted that whilst in terms of the contract, the Applicant was responsible for the actual disbursement, it did so purely on the basis of records, reports, and data provided to it (loaded directly onto the system) by the PIA's electronically, whilst the documentary records were delivered, or rather, supposed to have been delivered to the First Respondent for record keeping.

RISK MANAGEMENT ISSUES IDENTIFIED

- 44 I have to mention that the risk of fraud befell the CWP project as much as it befalls many other government and private institutions. The Applicant had put in place a formidable financial transactional system in the form of the cashless payment system. However upon discovering any suspicious undertakings, the Applicant, out of its own volition, investigated and or sometimes referred the matter to the Ninth Respondent as well as law enforcement agencies. One such instance was when the system appeared to have once been breached by a former employee of the Applicant, one Mr. Leonard Masilela who was the Applicant's Finance Manager.
- 45 During February to April 2013 Mr. Masilela managed to embezzle approximately a sum of R776 543.00 from the wages account. Upon discovery of the amounts and the fraud, the Applicant duly reported the matter to the First Respondent and the police. A criminal case number 1036/10 of 2013 was opened at the Midrand SAPS. That case was successfully prosecuted and concluded with a conviction and custodial sentence of eight years of the offender at the Wynberg Regional Court under case number: RC590/14. A letter of confirmation from the Midrand SAPS Detective Unit is annexed hereto as "ZM-7".
- 46 In another case, a matter regarding Ms. Ntombikayise Mncwabe was also reported and handed to the SAPS Midrand under case number: 875/12/2012.

REPORTING AND ACCOUNTABILITY

- 47 The Applicant reported to the First Respondent in and across multiple-structures and levels. A Local Reference Committee would receive monthly reports from the LIA's and compile the relevant reports. Thereafter, a multi-sectoral Provincial Government Forum (PGF) would receive reports from the PIAs.
- 48 At national level, a National Steering Committee (NSC) would receive reports from the LIA's and the PIA's.
- 49 Furthermore, each Lead Agent, which the First Respondent was one, would submit a report to the next senior-tier, divided into two, namely, the financial and operational (narrative) tier.
- 50 In this regard, the Applicant consolidated all the operational reports from the PIA's and submitted to the First Respondent on a monthly basis. The First Respondent was then required to consolidate the Financial Report from all the PIAs and together with the operational (narrative) report and further submit to the Client.
- 51 The reports would be accompanied by the invoice as well as a detailed justification of claim, indicating the resource utilization and the activities undertaken. I attach hereto, three sets of such typical reports as "ZM-8". I am advised that it may not be necessary to furnish all such reports at this stage,

save unless the above Honourable Court so determines, in the event of which I could make such available.

PERFORMANCE OF UBUNTU CONTRACT

- 52 During the period 01 November 2011 to 31 May 2013 when the Applicant was on site, and thus prior to the unlawful termination of the uBuntu Agreement, a total of R286 241 579.01 was received or requisitioned in respect of the Wages Account. These were thus amounts meant to be paid to participants as per the three-month requisitioning process outlined above.
- 53 The wages were paid out of the above amount as verified through the Bank records. Some of these payments would from time to time be returned to the Applicant's Wages Account as it was due to discrepancies such as closed bank accounts or accounts that were non-existent and the amounts so returned, were recorded and the amounts place in pool for the next round of payments.
- 54 An amount of R776 543.00 was lost due to fraudulent payments made by the persons referred to above, and these amounts were in the process of being recovered when the uBuntu Agreement was terminated.
- 55 In essence, the Applicant has accounted for all the wages amounts and the balance is R1 999 444 of which is currently due to the Ninth Respondent.

56 The arbitration proceedings were initiated on the basis of a debatement of accounts, principally because the First Respondent charged that the Applicant failed to account to it in respect of the funds disbursed.

57 I pause to mention that initially, a letter of demand claiming an amount of R56 132 918 was received from the First Respondent which demand also wanted records and proof of payments from the Applicant. A copy of this letter of demand with this amount forms part of the record of proceedings, however, I annex it hereto for ease of reference as "ZM-9".

58 In response to its demands, the First Respondent was provided with various sets of report and proof of payments through its attorneys of record herein during 2013 and 2014.

59 In their response, the First Respondent in issuing its statement of claim in October 2014, replied with a reduced claim of R49 322 158.48. This was based on the fact that the First Respondent was appraised of the records and the relevant bank statements.

60 I expected that the process of the debatement exercise, would endeavour to, or would be embarked upon under the auspices of the Eighth Respondent with a keen purpose and resolve to verify all records and documentation regarding the CWP project as implemented by the Applicant.

61 However, as it turned out, the Eighth Respondent and the First Respondent's attorneys, were rather eager to prove a civil damages claim on the allegations

that the Applicant misappropriated funds. This was, and remains unfair but definitely is an untruth.

62 As I will show later below, even after the debatement exercise, a number of attendance registers and reports were discovered (from mainly the originators an audit owners of the documents), which closed the gap identified by the experts in their reports. This gap was in respect of amounts disbursed but which could not, at the time of debatement, be verified through written documentation and the bank account statements.

63 In this regard, I beg leave of this Honourable Court to furnish the annexed Spreadsheet marked "ZM-10" and the pictorial evidence of the registers concerned. The actual registers are voluminous and are contained in bulks but are available to be furnished. In fact, the Applicant's legal representatives had, as the transcribed record should show, tendered the delivery of these documents. The Eighth Respondent blatantly refused to have any of these documents produced, principally under the pretext that such a move was a further delay. It must be noted, that even at this stage, the Ninth Respondent itself had not completed the process of reconciliation of these payments and collecting the information from all PIA's.

64 It was sought to be explained to him that the reason there was a delay is because the custodian of the documents, the First Respondent itself, had failed to request or demand submission of such documents from its PIA's and these PIA's had then to be admonished by the Ninth Respondent, at a very late stage to produce such. In this regard, I refer to a confirmatory affidavit of

Mr Eric Mhlanga a director of the Limpopo Sustainability Institute(LIMSI) , one of the PIA's, attached to this affidavit.

65 As appears in the minutes and records of meetings between the Applicant's representatives and the Ninth Respondent as the party who is ultimately entitled to payment of any refund, should it be due from the wages account, the process of reconciliation and sourcing of records was still ongoing as late as September 2016 and May 2017. I attach hereto as annexure "ZM-11", "ZM12" and "ZM-13" copies of correspondence and minutes of meetings held between the Applicant and Ninth Respondent.

66 In the final analysis, the Applicant's ability to account and to prove its case was hindered and effectively barred by the Eighth Respondent. This I submit, was an aberration of a gross extent that not only prejudiced the Applicant, but also demotivated it in the conduct of the arbitration proceedings. The Applicant was even pressed to release my legal team as the cost of running the arbitration had already exceeded the Applicant's ability to pay and was increasing tremendously despite the initial intention to have an effective arbitration process both in terms of cost and time. The arbitration proceedings commenced in 2014 but partially ended only in January 2017. In fact, they were not even properly concluded as the Applicant's case was not even presented due to the bar imposed by the Eighth Respondent.

ARBITRATION PROCEEDINGS

- 67 The Applicant and the First Respondent, acting through the principality of the Second Respondent, engaged in an arbitration dispute in terms of which, essentially the First Respondent alleged that the Applicant had not accounted to it in respect of an amount of R49 322 158.48 (Forty Nine Million Three Hundred and Twenty Two Thousand One Hundred and Fifty Eight Rand forty eight cents) as required in terms of the uBuntu Agreement.
- 68 The parties agreed that the dispute is arbitrable and to this end, the minutes of a pre-arbitration meeting held on 17 February 2015 refer. I attach hereto a copy of these minutes and mark these as annexure "ZM-14".
- 69 It is was essentially the parties' intention that the award of the arbitrator is final and could be appealed against to a panel of three appeal panellists. In this regard, I refer to paragraph 7 of the said minutes.
- 70 The parties however contemplated that the arbitration proceedings would be subject to the ordinary principles of justice and should it be necessary to deal with aspects of irregularity and otherwise procedural unfairness, they would be entitled both in terms of the common law and in terms of the laws regulating arbitration in the Republic, to bring a review application where such is necessary.
- 71 I am advised that the provisions of section 33 of the Arbitration Act 42 of 1965 deal with review of arbitration awards. It provides thus:

“33 Setting aside of award

(1) Where-

(a) any member of an arbitration tribunal has misconducted himself in relation to his duties as arbitrator or umpire; or

(b) an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded its powers; or

(c) an award has been improperly obtained,
the court may, on the application of any party to the reference after due notice to the other party or parties, make an order setting the award aside.

(2) An application pursuant to this section shall be made within six weeks after the publication of the award to the parties: Provided that when the setting aside of the award is requested on the grounds of the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, such application shall be made within six weeks after the discovery of that offence and in any case not later than three years after the date on which the award was so published.

(3) The court may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

(4) If the award is set aside the dispute shall, at the request of either party, be submitted to a new arbitration tribunal constituted in the manner directed by the court.”

72 The current application is thus, a review application contemplated in section 33 of the Arbitration Act dealing with the irregularities and unfairness in the procedure which the Applicant will argue, were unlawful and should be set aside.

AD CONDONATION FOR LATE FILING

73 I am advised that in view of the requirements to file its application within six weeks of the publication of the award, this application is thus outside of the stipulated timeframes. I beg herein, leave for this Honourable Court to grant condonation for the late filing hereof. The current award was published on 1 March 2017 and it came to the attention of the Applicant on 02 March 2017 after it was delivered to me by the Applicant's attorneys.

74 The due date for filing of this review was thus on 13 April 2017. The period of delay in the filing of this application is thus in excess of 240 days. I submit that for reasons stated below, the delay is not lengthy and on the basis of the explanation I furnish hereunder, is reasonable and justifiable.

75 When the award was delivered to me, I was on maternity leave in KwaZulu-Natal at my family home away from the office in Midrand in Gauteng Province. Due to the situation of my health at the time I was unable to deal with award in the sense of properly analysing it and considering the records which were at the office at the time. I was unable thus to attend to any consultations and take legal advice on it and nor could I properly deal with the instructions attorneys and counsel required to institute these proceedings.

76 I submit that the reasons for the delay were principally due to my health reasons and the well-being of my infant child. I, immediately after returning to the office on 1 October 2017 called for a consultation with my then attorney

and counsel, who gave me their new terms of engagement and which I managed to fully comply with later in the month and thus engaged them as my legal team in the beginning of November 2017.

77 I submit that there is no prejudice that may be suffered under the circumstances by the Respondents in particular the First Respondent as the Ninth Respondent has in its reconciliations confirmed that the amount claimed by the First Respondent is not what is due to it.

78 In view of the grounds set out further below, and especially considering the immense financial implications for the Applicant in the award and in the costs orders that were granted interlocutorily by the Eighth Respondent, I submit that the Applicant should be afforded an opportunity to ventilate as much of its relevant defences and basis for review, and not be cajoled by strictness of procedure.

GROUNDS OF REVIEW

79 In this affidavit, I set out the grounds based on current information available to me, upon of which the application for review is sought. They are, the gross misconduct of the arbitrator, the Eighth Respondent, the failure to admit further discovered evidence, the irrationality of ignoring relevant information whilst taking irrelevant information into account; the barring of the Applicant in circumstances in which the parties never intended to have in their dispute resolution mechanism.

80 As I stated, these are the initial grounds. The Applicant reserves its rights herein to further supplement or amend its grounds for the review upon receipt of the full record of decision and award. I thus set out below, the initial grounds of review.

A: AD ARBITRATOR'S CONDUCT

81 During the proceedings in this matter, a number of interlocutory applications were brought by the First Respondent and one was brought by the Applicant. In this regard, on 2 September 2015 the Arbitrator was requested to deal with alleged delays in the discovery of documents by the Applicant.

82 When the explanation was provided to the Arbitrator, he unreasonably failed to consider the fact that the parties were agreed to approach the financial institutions that kept all the records in respect of the uBuntu bank account, namely FNB Limited. He ignored to take into consideration the explanation that the delays were caused by the fact that according to FNB, the records were archived and could not be summarily obtained.

83 A further complication, was that despite it being presented during arguments on the issue, the Arbitrator decided that the responsibility to obtain the information was that of the First Respondent. However, this was blatantly incorrect because the First Respondent had 24/7 access to the Bank account



as well and could reconciled the account every month over a period and also could have requested such statements at will if it required them.

84 What was rather unexpected and raised the Applicant's eyebrows was the order as to costs that was awarded immediately against the Applicant. There was no success in the sense that the Respondent had proven their innocence in the alleged delay.

85 On another occasion, the Senior Counsel of the Applicant could not make it to the hearing and thus impacted on the presentation of the Applicant's case in the proceedings. On this date, the Applicant sought a postponement because its Senior Counsel was attending to her mother who was admitted unexpectedly to Hospital.

86 The record will show that the junior counsel of the Applicant was at pains to explain the predicament and the fact that he was unable to proceed with the arbitration hearing as it was unexpected that the Senior Counsel would not be available.

87 However, what was rather unexpected of the Eighth Respondent, was that on the date of the hearing on 19 July 2016 he instead considered without a properly filed application, and without any affidavit supporting such application being put forward by the First Respondent's representatives, an application to bar the Applicant from proceeding with its defence and/or counterclaim until the costs order were paid.

88 The afore-mentioned was neither necessary nor was it justified. I beg leave to further supplement the grounds upon consideration of the record to be filed.

89 In all events, it is the Applicant's contention that the conduct of the Arbitrator, whilst ignoring the need to balance the rights to representation of the parties, placed over-emphasis on the costs and used this aspects, unnecessarily and thus created an occasion that led to only the version of the Respondents being availed to the arbitration.

IGNORING RELEVANT INFORMATION AND ACCEPTING IRRELEVANT ONE

90 The Eighth Respondent failed to take into account the evidence that was presented to him regarding the existence of the registers and reports from the PIA's which would reasonably justify the significant amounts in the claim.

91 These evidentiary documents relate to the works schedules and registers kept (in terms of the contract and also since they were the audit data initiators) by the PIA's at the very instance of the First Respondent. The First Respondent had failed to make discovery thereof, even when so requested by the Applicants in terms of Rule 35.

92 During July and August 2016, the Applicant, after the initial debatement report was compiled as a joint minutes of accountants, the Applicant discovered

further documents, which it was unable to obtain on time prior to the debatement.

93 In this regard, the debatement report had shown that the experts were at odds and did not agree that they had all the required documents to properly establish the full extent of the accounting in respect of the project. This was essentially because the First Respondent's external services providers, who were referred to as the Provincial Implementing Agents ("PIA), had kept records of timesheets, attendance registers or monthly reports instead of these being delivered to the Department of Cooperative Governance and/or First Respondent. This fact was discovered after I had met with Mr Eric Mhlanga of Limpopo Sustainability Institute(LIMSI), being one of the PIAs on 19 July 2016.

94 The essence and crux of the records discovered was that the LIA's records would prove that a huge chunk of the amounts that were paid from the Ubuntu Bank account, were genuine payments to the beneficiaries that were due to receive such payments. There was thus a total amount of R12 million which would have been accounted for, and the remittal of the debatement based on the records discovered, would have presented the experts with an opportunity to reconcile their reports and the amount of R20 million awarded in the arbitration, would thus not have been ordered. In any event, the Eighth Respondent refused to allow the evidence, and this as unreasonable and his conduct in this regard, rendered him liable to be deemed to have acted irregularly and against the standard of a reasonable arbitrator.

- 95 The said registers were discovered at the penultimate stages, when the arbitration proceedings were set-down for hearing in January 2017. However, the Eighth Respondent ruled that the Applicant could only present this evidence when it led its evidence in its case. This was unamusingly held in the face of the very ruling barring the Applicant pending its payment of the costs of the interlocutory applications of the First Respondent dated 18 July 2016.
- 96 The process was such that, until the Applicant paid those costs, it could not thus present the evidence it could have utilised in the arbitration.
- 97 The Eighth Respondent's ruling and bar, were irregular in that, the presentation of availing of documents, was required solely for purposes of the debatement by the experts, and was required to be availed to the experts and for them to the analyse the value thereof separately from the oral presentation of evidence in an arbitration hearing.
- 98 The experts would have gained value from the evidence as they had almost unanimously agreed that the real missing link, was registers and reports regarding work attendance which could be reconciled with payments disbursed by the Applicant.
- 99 To have evidence of records and attendance registers which were discovered later by the Applicant excluded from the debatement process, and effectively

to close debatement when it was evident that information relevant thereto was available, was not only irrational, but was also unjustified and thus unlawful.

- 100 The Eighth Respondent ought to have acted reasonably, and permit the evidence tendered to be entered into the record, and to grant a request to have the debatement of the account be remitted to the financial experts.

REFUSAL TO PERMIT EXPLANATORY AFFIDAVIT OF EXPERT

- 101 On the penultimate occasion, on 22 January 2017 and after the Applicant's own debatement expert, Nompumelelo Mokou of Ngubane and Associates Auditors and Accountants had discovered that the narratives attributed to her in the joint expert report, a copy of which is annexed hereto and marked "ZM-15" were incorrect, the Applicant brought an application to have such evidence corrected.

- 102 On the strength of an incorrect analysis of the legal position, the Seventh Respondent acted in an irregular if not unlawful manner and he refused to grant that interlocutory application. The effect of his decision was that, despite the glaring admission by the First Respondent's legal representative that there were discrepancies about the actual amount, the Seventh Respondent refused to allow the expert's affidavit to be entered into the record.

- 103 Essentially, the joint report had stated in a narrative attributed to Ms Nompumelelo Mokou that she found liability on the part of the Applicant for an

amount of R16 894 879.00. Ms Mokou's affidavit clarified that she had never intended to accord liability as the only issue at the debatement, was whether the information furnished to the experts reasonably accounted or justified the amounts paid out. She sought to clarify that she meant to state that should the information be furnished, the amounts could well be accounted for and there would be not possibility of a claim. In this regard, I annex hereto Ms. Mokou's affidavit as was intended to be filed, and marked "ZM-16". I do so because I am advised that whilst this Honourable Court generally is reluctant to admit evidence that was not presented at arbitration, the conduct of the Eighth Respondent was laced with gross impertinence against an otherwise innocent explanation by an expert. I further advised that unlike and appeal court, this Honourable Court would be inclined to permit the Applicant to traversed beyond the arbitration record subject to the reasonableness and relevance principles. The filing of the affidavit of Ms Mokou is thus reasonable and materially relevant to the grounds of the review.

- 104 Despite that aforesaid, and in spite of a formal request, the Eighth Respondent acted irregularly when he refused to permit the Applicant's expert to excise incorrect references made about her in the joint minute.
- 105 The failure by the Eighth Respondent to exercise his judicial discretion to allow the excision at best, and at worst to refer the matter of the application for such excision to a separate and oral hearing, where the parties could lead evidence on the veracity of the excision, was unlawful.

- 106 The direct consequence of the Eighth Respondent's conduct thus led to a grossly irregular outcome of the arbitration proceedings, leading to the Applicant being mulcted with a judgement that is unnecessary and costs orders that are inhibitive.
- 107 What was even untenable, is the fact that whilst the uBuntu agreement was running, the role that the First Respondent played in relation to the client Department was to report and account on payments made.
- 108 In their accounting to the Department, First Respondent only reported an amount R1 million as the shortfall of amounts unaccounted for, yet it demands R20 million from the Applicant. In this regard I refer to an extract of the 2014 annual report of First Respondent marked "ZM-17".
- 109 It has never been and the First Respondent has led no evidence in the arbitration proceedings, that it had out of its own funds, covered any shortfall of R20million to cover beneficiaries. In fact, First Respondent could not successfully prove this even if it so wanted, as the Ninth Respondent made advance payments to it based on requisitions of payments. This evidence and more, was prevented to be made at the hearing due amongst others, to the Eighth Respondent's barring order against the Applicant.
- 110 I shall further supplement where necessary, the grounds of review upon receipt of further records of proceedings from the Eighth Respondent.

111 Based on the above-stated, it is submitted that the award dated 1 March 2017 in the arbitration matter between the parties, be reviewed and set aside as it was based on irregularity of conduct by the Eighth Respondent and was obtained improperly in circumstances where the Applicant was prevented to lead its own evidence.

WHEREFORE the Applicant prays for the granting of the relief contained in the Notice of Motion to which this affidavit is annexed.

Z. B. Makhijwa

DEPONENT

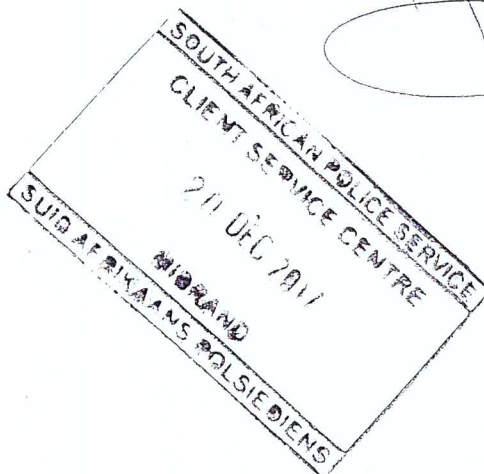
SWORN TO BEFORE ME AND SIGNED in my presence at Michael on this the 20 day of DECEMBER 2017, the deponent having declared that she knew and understood the contents of this affidavit, that she had no objection to taking the prescribed oath and that she considered the prescribed oath to be binding on her conscience. The oath has been administered in accordance with the regulations published in Government Notice R1258 printed in Government Gazette No. 3619 dated 21 July 1972, and promulgated in terms of Act No. 16 of 1963.

[Signature]

COMMISSIONER OF OATHS

CAPACITY: *1010*

ADDRESS: *Sprouts ORR ORACLE
Halfway Garden*



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No:/2017

In the matter between:

BUKA STRATEGIC PROJECTS (PTY) LTD
(Previously known as Ubuntu Sima Trading CC)

Applicant

and

THE MVULA TRUST

First Respondent

SEANI SILAS MBEDZI N.O

Second Respondent

ALUFHELI DOWELANI N.O

Third Respondent

ASIVHANGA TSHIBUBUDZE N.O

Fourth Respondent

SUTHU LINDA CORDELIA MAPHAHA N.O

Fifth Respondent

MICHAEL WILLIAM MARLER N.O

Sixth Respondent

MAGGY MPHULO KGWANTHA N.O

Seventh Respondent

TERRY MOTAU SC (ARBITRATOR N.O)

Eighth Respondent

MINISTER OF COOPERATIVE GOVERNANCE AND
TRADITIONAL AFFAIRS

Ninth Respondent

SERITI INSTITUTE

Tenth Respondent

DHLADHLA FOUNDATION

Eleventh Respondent

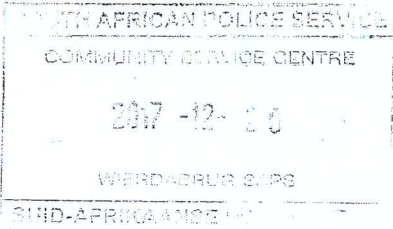
CONFIRMATORY AFFIDAVIT

I, the undersigned,

NOZIPHO SEME

State the following under oath:-

- 1. I am an adult female Project Manager residing at 161A Moonflower Street, Thatchfield Crescent, Centurion 0157.
- 2. Unless stated otherwise or apparent from the context, the facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
- 3. I have read the founding affidavit of Ziphozethu Mathenjwa concerning this matter and confirm the contents thereof as true and correct insofar as they relate to me.



N. Seme

DEPONENT

This affidavit was signed and sworn to before me at WIERDA BRUG on this the 20 day of DECEMBER 2017, the deponent having acknowledged that she knows and understands the contents of this affidavit, are true and correct and that they binding on her conscience. I certify that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.

J. S. Ratlabanya
(S. RATLABANYA)
COMMISSIONER OF OATHS
SEPEDE RATLABANYA
6400 WIERDA BRUG²
75 YINDHELLA ROAD
VALHALLA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No:/2017

In the matter between:

BUKA STRATEGIC PROJECTS (PTY) LTD (Previously known as Ubuntu Sima Trading CC)	Applicant
and	
THE MVULA TRUST	First Respondent
SEANI SILAS MBEDZI N.O	Second Respondent
ALUFHELI DOWELANI N.O	Third Respondent
ASIVHANGA TSHIBUBUDZE N.O	Fourth Respondent
SUTHU LINDA CORDELIA MAPHAHA N.O	Fifth Respondent
MICHAEL WILLIAM MARLER N.O	Sixth Respondent
MAGGY MPHULO KGWANTHA N.O	Seventh Respondent
TERRY MOTAU SC (ARBITRATOR N.O)	Eighth Respondent
MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS	Ninth Respondent
SERITI INSTITUTE	Tenth Respondent
DHLADHLA FOUNDATION	Eleventh Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

ERICK GIYANI MHLANGA

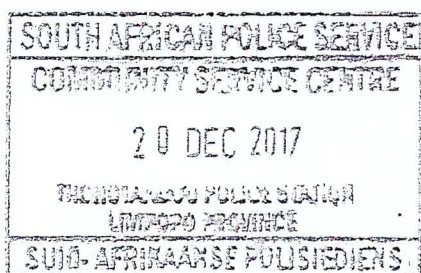
state the following under oath:-

1. I am and an adult male and director of Limpopo Sustainability Institute (LIMSI), carrying on business as such at 90 Tambotie Street, Sibasa, Limpopo Province.
2. Unless stated otherwise or apparent from the context, the facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the founding affidavit of Ziphozethu Mathenjwa concerning this matter and confirm the contents thereof as true and correct insofar as they relate to me.

E Mhlanga

DEPONENT

This affidavit was signed and sworn to before me at Tlokweng on this the 20 day of DECEMBER 2017, the deponent having acknowledged that he knows and understands the contents of this affidavit, are true and correct and that they binding on his conscience. I certify that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with



Commissioner

COMMISSIONER OF OATHS