CASE NO.: (P) A 2328/2006

SUMMARY

TUMAS GRANITE CC versus THE MINISTER OF MINES & ENERGY & 2 (TWO) OTHERS

DAMASEB,

JP

26/02/2008

STATUTORY INTERPRETATION:

- **Minerals (Prospecting & Mining) Act, 33 of 1992: s59(1)(a) & (b), and s62(1)**

  - **Whether permissible to grant an exclusive reconnaissance licence to a non-holder of a reconnaissance licence?**
  - **Whether a side note in a statute can be used in the interpretation of a statutory provision?**

- **Held:**

  - **Not competent to grant an exclusive reconnaissance licence to a non-holder of a reconnaissance licence.**
  - **Side note to a statutory provision not a safe guide to interpretation of statute.**

- **Costs:**

  Successful litigant can be denied costs because of its / his conduct. Important for public officials to act in a manner that is accountable & transparent: failure to do so attracting adverse costs order.

CASE NO.: (P) A 328/2006

IN THE HIGH COURT OF COURT OF NAMIBIA

In the matter between:

TUMAS GRANITE CC **APPLICANT**

and

THE MINISTER OF MINES & ENERGY **1ST RESPONDENT**

WALVIS GRANITE (PTY) LTD **2ND RESPONDENT**

CAPRIVI MARBLE AND GRANITE (NAMIBIA) (PTY) LTD **3RD RESPONDENT**

CORAM: **DAMASEB, JP**

Heard: **18th February 2008**

Delivered: **26th February 2008**

JUDGMENT

DAMASEB, JP:

[1] This is a review application in terms of Rule 53 of the Rules of the High Court. In a notice of motion dated 6 December 2006, the applicant sought the following relief:

> **"1. Reviewing and correcting or setting aside the decision taken by the first respondent on the 1st September 2005 to grant EPL 3394 to the second respondent;**
>
> **2. In the alternative to prayer 1 above, that the above decision by the first respondent be declared null and void as being in conflict with Article 18 of the Constitution of the Republic of Namibia and be set aside on that basis;**

3. That ERL-79 be awarded to the applicant as the successful applicant for such licence;

4. That the costs of this application shall be borne by the first respondent save in the event of any of the other respondents opposing the application in which event the costs of this application shall be borne by the first respondent and those respondents opposing the application jointly and severally, the one paying the other to be absolved;

5. Granting such further or alternative relief as the above Honourable Court may deem fit."

[2] The applicant applied for an exclusive reconnaissance licence to the first respondent. That application was received on 27 May 2005. While the applicant's application was pending, the second respondent applied for an exclusive prospecting licence in respect of the same area. The second respondent's application was granted on 1 September 2005, while that of the applicant was refused – a fact communicated to the applicant only on 13 June 2006, by letter dated 26 May 2006.

[3] The first and second respondents oppose the relief sought, while the third respondent has not entered appearance to oppose. The first and second respondents have raised several points *in limine.* Both maintain that there was an unreasonable delay on the part of the applicant to launch the review application and that this Court should dismiss the application on that ground alone. The first respondent also raises the issue that the applicant has no standing because as a non-holder of reconnaissance licence, it could not have applied for

an exclusive reconnaissance licence; while the second respondent says that there is non-joinder of the *Mining Commissioner* and the *Chairperson of the Minerals Board*. Second respondent disputes the existence of the applicant, or that the application is authorized.

[4] At the hearing of the matter, the parties agreed to argue only the issue of standing as raised by the first respondent - which concerns a proper construction to be placed on section 59(1)(a) and (b), read with s62(1) of the *Minerals (Prospecting and Mining) Act*, 33 of 1992 (hereafter the Act), it being common ground amongst the parties that if the issue is decided against the applicant, that would be the end of the entire application.

[5] The following facts are common cause. On 27 May 2005 the applicant submitted an application for an *exclusive reconnaissance licence (ERL79)* for dimension stone group of minerals *'in terms of s59(1)(b)'* of the Act. The applicant admits it was then not the holder of a reconnaissance licence. The ERL 79 application was received on 27 May 2005 by the officials of the first respondent. On 13 June 2006 (11½ months after submitting its ERL 79), the applicant was advised that its

application was not successful.

[6] Upon being informed that the application was unsuccessful, the applicant wrote a letter to the first respondent on 13 June 2006 asking for reasons for the decision.

[7] On 14 August 2006, the first respondent wrote a long letter to the applicant in which he sets out the reasons for refusing the applicant's application for the ERL 79. In that letter the first respondent gave the following *'main'* reasons for refusing the applicant's ERL 79 application:

(a) the applicant already held several dimension stone licences covering an area of 15 000 ha which made the applicant guilty of land-locking;

(b) the applicant was taking too long to explore its licences and did not apply for mining licences;
(c) the applicant did not have sufficient financial resources to work on ERL 79 and was therefore looking for state funds for the purpose;
(d) the applicant made discriminatory remarks towards government officials;
(e) that first respondent was not required by s125 of the Act to grant applications in the order they were lodged
(f) the applicant should ideally apply for an exclusive prospecting licence for dimension stone.

[8] It has now turned out that, on first respondent's own admission, some of these reasons are '*inaccurate*'. In his answering affidavit in opposition to the relief sought by the applicant, the first respondent states that the applicant, by its own admission, applied for an exclusive reconnaissance licence for dimension stone *'as contemplated in s59(1)(b)'* of the Act

when it was not the holder, again by its own admission, of a reconnaissance licence. This, the first respondent says, is not sanctioned by the Act and there was therefore no valid application for an exclusive reconnaissance licence before the first respondent which could be granted or refused.

[9] In the replying affidavit, the applicant denies that an application for an exclusive reconnaissance licence by a non-holder of a reconnaissance licence is not competent. In oral argument however, Mr Smuts SC conceded on behalf of the applicant that since the applicant was not a holder of a reconnaissance licence when it applied for ERL 79, it could not have applied for an exclusive reconnaissance licence in terms of s59(1)(b); but that an exclusive reconnaissance licence was competent under s59(1)(a) of the Act and that the reference to s59(1)(b) was erroneous. Messrs Oosthuizen and Heathcote for the first and second respondents respectively, retort that s59(1)(a) only authorizes the granting of a reconnaissance licence *simpliciter* and not an exclusive reconnaissance licence. Mr Smut's counter argument was that reconnaissance licences are granted under s62 (1) and that s59, as shown by its side note which reads *'Exclusive rights to carry on reconnaissance operations licences'* deals only with exclusive

reconnaissance licences and that, for that reason, the licence envisaged in s59 (1) (a) is an exclusive reconnaissance licence and not an ordinary reconnaissance licence.

[10] Mr. Smuts did not deal with this issue in the heads of argument because, throughout, the applicant had maintained that its application was *'in terms of s59 (1) (b)'*. After hearing oral argument on 18 January 2008, I reserved judgment and invited counsel for the parties to submit further written submissions on or before 25 February, if they wanted to, in order to elaborate on the point of law that I am being asked to decide. The applicant and second respondent submitted further submissions to which I have had regard.

[11] As I stated before, the applicant now concedes that as a non-holder of a reconnaissance licence, it could not have applied for an exclusive reconnaissance licence under s59 (1) (b). This is what the section states:

> **"59(1) Subject to the provisions of subsection (2), the Minister may, on application by –**
>
> (a) ...
> **(b) <u>the holder of a reconnaissance licence</u>, cause an endorsement to be made on such reconnaissance licence;**
>
> by virtue of which an exclusive right is conferred upon such person ..."

[12] The concession is therefore properly made and that ends that party of the debate. I must now decide whether s59 (1) (a) authorizes the granting of an exclusive reconnaissance licence as contended by the applicant.

[13] Part IX of the Act comprises *'Provisions relating to reconnaissance licences'*. The first section in Part IX is 58. Subsection (1) thereof sets out the activities the holder of a reconnaissance licence is authorized to undertake, while subsection(2) sets out things a holder of a reconnaissance licence may not do. Subsection (3) then states that a reconnaissance licence does not confer on a holder of a reconnaissance licence any preferential right to any other licence while the reconnaissance licence exists. It also states that the Minister is not prevented from granting any other licence in respect of any mineral or group of minerals or any area of land in the reconnaissance area to which the licence relates.

[14] That is the reason why the applicant wants an exclusive reconnaissance licence. It wants exclusivity which an ordinary reconnaissance licence does not confer. That exclusivity arises under s59 (1), in the words beginning with 'by virtue'

after the semi-colon at the end of the sentence appearing at para (b).

Section 59 reads as follows:

> **"(1) Subject to the provisions of subsection (2), the Minister may, on application by –**
>
> **(a) a person applying for a reconnaissance licence, grant to such person a reconnaissance licence; or**
>
> (b) the holder of the reconnaissance licence, cause an endorsement to be made on such reconnaissance licence;
>
> **by virtue of which an exclusive right is conferred upon such person to carry on in the reconnaissance area to which such reconnaissance licence relates, reconnaissance operations in relation to any mineral or group of minerals specified in such licence, if the Minister is on reasonable grounds satisfied that the extent of the reconnaissance operations to be carried out and the expenditure to be incurred in or in relation to the reconnaissance area justifies the grant of such exclusive right."**

[15] If the applicant's alternative argument is to succeed, then it would mean that s59(1)(a) creates a special class of reconnaissance licence which, without more, attracts exclusivity and, therefore, not subject to the limitations of subsection (3) of s58 which I set out in para 13 of this judgment. In that case s59 (1) (a) would read as follows:

> **"Subject to the provisions of subsection (2), the Minister may, on application by-**

(a) a person applying for a reconnaissance licence, grant to such person a reconnaissance licence;

> **by virtue of which an exclusive right is conferred upon such person to carry on in the reconnaissance area to which such reconnaissance licence relates , reconnaissance operations in relation to any mineral or group of minerals specified in such licence , if the Minister is on reasonable grounds satisfied that the extent of the reconnaissance operations to be carried out and the expenditure to be incurred in or in relation to the reconnaissance area justifies the grant of such exclusive right.'**

The question is, is that what the legislator intended?

[16] During oral argument, Mr. Smuts relied, in part, on the marginal note to s59 in support of his submission that the legislator so intended. In the supplementary heads of argument filed on 25th February 2008, Mr. Smuts, correctly, concedes that a marginal note is not to be had regard to in the interpretation of a statute. Mr. Smut's argument is further predicated on the thesis that the power to grant an ordinary reconnaissance licence is contained in s62(1) and not in s59(1)(a), and that the legislator could not have intended the two provisions to do the same thing as one of them would then be superfluous. Mr Smuts also submitted that if there is ambiguity about s59(1)(a) i.e. whether it contemplates the granting of an exclusive reconnaissance licence or not, I must find that the provision does so provide, based on the fact that the first respondent and his officials had since the inception of the Act so interpreted it and granted exclusive reconnaissance licences to persons who applied therefor without holding any reconnaissance licence.

[17] Section 62(1) states:

> **"Subject to subsections (4) and (5) of section 48, the Minister shall upon the granting of an application for a reconnaissance licence, direct the Commissioner to issue to the person who applied for such reconnaissance licence, a reconnaissance licence on such terms and conditions as may be agreed as provided in the said subsections."**

[18] Section 62(1) is remarkable in this sense: firstly, it

requires that *'upon the granting of an application'*, the Minister *'shall'* direct the Mining Commissioner *'to issue'* a licence. The section thus draws a distinction between the act of *'granting'* an application for a reconnaissance licence and the act of *'issuing'* a reconnaissance licence. The section is silent about the Minister's discretionary power to grant 'an application' for a reconnaissance licence. It certainly assumes that the Minister exercises a power to '*grant*' under another provision. Had s59 (1) (a) not existed – note that in it, it is said the Minister <u>may</u> (which denotes a discretionary power) upon application by <u>a person</u> <u>grant</u> – and the only provision which allowed the Minister to grant a reconnaissance licence was s62 (1) as contended by the applicant, on what basis could the Minister have refused an application for a reconnaissance licence? That sections 59(1) (a) and 62(1) complement each other is, therefore, obvious. My point here is that the word '*may*' is absent in s62 (1) and does not precede the words '*upon the granting'* in that provision, while it is present in s59 (1) and precedes the word '*grant*' in (a). The significance of that is that where the legislature does not want the Minister to enjoy discretionary power in granting a licence, it says so specifically (vide s69(1)(a)&(b);s79(2); s92(1)(a)&(b)). Remarkably sections 59 and 62 follow that pattern.

[19] In my view, the scheme and context of the Act supports the conclusion that what is referred to in s59(1)(a) is an ordinary reconnaissance licence , which has the attributes contemplated in s58(1), the requirements for application in s60, the disqualifications in s61; and to be issued by the *Mining Commissioner* under s62(1).

[20] Although remarkable in the sense that I have pointed out, s59 (1) (a) is not unique. Mr. Heathcote correctly submitted that the following provisions follow the same scheme and pattern as ss58-62, in the sense that the power to grant the licence, and the Minister's direction to the Mining Commissioner to issue the licence after the Minister had granted it, are in different provisions which must be read as complementing each other. I will illustrate:

"PART X

Provisions relating to exclusive prospecting licences

Rights of holders of Exclusive prospecting licences.	**67.**	**(1)**	**Subject to the provisions of subsection (2) and the other provisions of this Act, the holder of an exclusive prospecting licence** shall be entitled -
		(a)	**to carry on prospecting operations …**
		(b)	**to remove any mineral or group of minerals …**
			…
		(2)	**The provisions of subsection (1) shall not be construed as –**
		(a)	conferring on the holder of an exclusive prospecting licence any preferential right to any other licence in relation to any mineral or group of minerals, other than a mineral or group of minerals to which such

exclusive prospecting licence relates, during the currency or on expiry of such exclusive prospecting licence;

Exercise of powers by Minister to grant or refuse **exclusive prospecting licences.**

69. (1) Subject to the provisions of this section, the Minister -

(a) shall, in the case of an application for an exclusive prospecting licence by the holder of a reconnaissance licence to whom an exclusive right has been conferred in terms of section 59, subject to the provisions of sections 48(4) and (5) and 49, grant such application if such application relates to an area of land and a mineral or group of minerals to which such exclusive right relates; or

(b) may, in the case of any other application for an exclusive prospecting licence, subject to the provions of sections 48(4) and (5) and 49, grant or refuse such application.

Issue of exclusive prospecting **licences.**

70. (1) Subject to subsections (4) and (5) of section 48, **the Minister shall, upon the granting of an application for an exclusive prospecting licence, direct the Commissioner to issue to the person who applied for such licence, an exclusive prospecting licence on such terms and conditions as may be agreed upon as provided in the said sub-sections.**

(2) The provisions of section 62 shall apply *mutatis mutandis* in relation to an exclusive prospecting licence.

PART XI

Provisions relating to mineral deposit retention licences

Rights of holders of mineral deposit retention **licences.**

77. (1) Subject to the provisions of subsection (2) the other provisions of this Act, the **holder of mineral deposit retention licences** shall be entitled -

(a) to retain the retention area to ...
(b) to carry on ...
(c) to remove any mineral or group of minerals ...

Persons who may apply for mineral deposit retention licences.

78. Notwithstanding the provisions of section 48, no person shall apply ...

Application for mineral deposit retention licences.

79. An application by any person for a mineral deposit retention licence –

(a) shall contain -
...

(2) The Minister shall not refuse to grant an application for a mineral deposit retention licence on any grounds contemplated in subsection (1)(b), unless the Minister –

(a) has by notice in writing informed such holder of his or her intention to so refuse such application –

...

(b) has taken into consideration any representations made by such person.

Issue of mineral deposit retention licences.

81. (1) Subject to subsections (4) and (5) of section 48, **the Minister shall, upon the granting of an application for a mineral deposit retention licence, direct the Commissioner to issue to the person who applied for such licence, a mineral deposit retention licence on such terms and conditions as may be agreed upon as provided in the said subsections.**

(2) The provisions of section 62 shall apply *mutatis mutandis* in relation to a mineral deposit retention licence.

PART XII

Provisions relating to mining licences

Rights of holders of mining licences.

90. (1) Subject to the provisions of subsection (2) and the other provisions of this Act, the holder of a mining licence shall be entitled -

(a) to carry on mining operations …

…

Exercise of powers of Minister to grant or refuse **mining licences.**

92. (1) The Minister -

(a) shall in the case of an application for mining licence by –

(i) the holder of a reconnaissance licence to whom an exclusive right has been conferred in terms of section 59;

(ii) the holder of an exclusive prospecting licence;

(iii) the holder of a mineral desposit retention licence; or

(iv) the holder of a mining claim,

subject to the provisions of subsections (2) and (4) of this section, grant such application, if such application relates to an area of land and a mineral or group of minerals to which such exclusive right or mineral deposit retention licence or the claim area in question relates;

(b) may, in the case of any other application for a mining licence, subject to the provisions of sub-sections (3) and (4) of this section, grant or refuse such application.

(2) Notwithstanding the provisions of subsection (1)(a), the Minister shall not grant an application by an person for a mining licence –

…

Issue of mining licences

93. (1) Subject to subsections (4) and (5) of section 48, **the Minister shall, upon the granting of an**

application for a mining licence, direct the Commissioner to issue to the person who applied for such licence, a mining licence on such terms and conditions as may be agreed upon as provided in the said subsections.

(2) The provisions of section 62 shall apply *mutatis mutandis* in relation to a mining licence.''

[21] That the interpretation of s59(1)(a) clamored for by the first and second respondents accords with the legislative intent is clear if one has regard to the above provisions and compare them with s59(1)(a)'s scheme, to wit:

"PART IX

Provisions relating to reconnaissance licences

Rights of holders of reconnaissance licences.	58.	(1)	Subject to the provisions of this Act, a reconnaissance licence shall authorize the holder of such licence -
(a) to carry on reconnaissance operations in the reconnaissance area ...			
			...
Exclusive rights to carry on reconnaissance operations.	**59.**	**(1)**	**Subject to the provisions of subsection (2) the Minister may, on application by –**
		(a)	**a person applying for a reconnaissance licence, grant to such person a reconnaissance licence; or**
		(b)	the holder of a reconnaissance licence, cause an endorsement to be made on such reconnaissance licence,
			...
Applications for reconnaissance licences.	**60.**		**An application by any person for a reconnaissance licence –**
		(a)	**shall contain –**
			...
	62.	**(1)**	**Subject to subsections (4) and (5) of section 48, the Minister shall upon the granting of an application for a reconnaissance licence, direct the Commissioner to issue to the person who applied for such reconnaissance licence, a reconnaissance licence on such terms and conditions as my be agreed upon as provided in the said subsections."**

[22] Thus, looking at the language of s59 (1) (a), the scheme

and context of the Act overall, and reading the various provisions in relation to one another, the intention of the legislator becomes clear. Where, as here, the intention of the legislator is clear from placing the natural meaning on the words used in the Statute , the Court must give effect thereto and not place a forced construction thereon which has the effect of defeating the intention of the lawmaker.

[23] Why the draftsman chose the marginal note to s59 to read *"Exclusive rights to carry on reconnaissance operations"*, is a mystery. If ever there was any reason needed to justify the rule that a marginal note to a statutory provision is no safe guide in its interpretation, the present case provides it. Marginal notes are not regarded as part of the statute. (See: *Government of the Republic of Namibia and another v Cultura 2000 and another* 1994 (1) SA 407 (NmS) at 425G; 1993 NR 328 at 347 E-F .) As De Villiers AJA said in *Durban Corporation v Estate Whittaker* 1919 AD 195 at 201-2:

> **"Under out system of legislation they are not considered or passed by the legislature."**

In *Chandler v DPP* [1964] AC 763, the House of Lords held that the marginal note *'Penalties for spying'* to s1 of the Official

Secrets Act 1911, did not restrict the wide words of that section making it an offence for any person for any purpose prejudicial to the safety or the interests of the State to approach or be in the neighborhood of or enter any prohibited place. The offence, it was held, could be committed by political demonstrators who had no intention of spying. Lord Reid stated (at 789-90):

> **"… in my view side notes cannot be used as an aid to construction. They are mere catchwords and I have never heard of it being supposed in recent times that an amendment to alter a side note could be proposed in either House of Parliament. Side notes in the original Bill are inserted by the draftsman … So side notes cannot be said to be enacted in the same sense as the long title or any part of the body of the Act."**

(See also: *Union Government v Tonkin* 1918 AD 533 at 544; *Rose's Car Hire (Pty) Ltd v Grant* 1948 2 SA 466 (A) 474; *Rossouw v Sachs* 1964 (2) SA 551 AD at 561 , and *Cornelissen v Universal Caravan Sales (Pty) Ltd* 1971 (3) SA 158 (A) 175A .)

[24] That the legislature intended to make a distinction between the granting of a reconnaissance licence, and the issuing of it, is reinforced by the '*definitions*' section in the Act which defines a *'reconnaissance licence'* as *'a licence*

***issued under section 62 …'*. In my view, this demonstrates that no direction to issue a licence can be given and no licence can be issued under s62 (1), unless it was first granted under s59 (1) (a). On the other hand, a person who has been *'granted'* a licence by the Minister under s59 (1) (a), cannot enforce it until issued by the Mining Commissioner under s62 (1). (Compare the *regime* created by the definition 'n*on-exclusive prospecting licence'* under s21, read with s18 (3) of the Act.) Looking at the provisions I have referred to, one discerns a common thread and harmony in the Act's provisions which deal with the Minister's discretionary power to grant or refuse applications for various licences - which cannot be disturbed by using the marginal note to s59 to hold that the section only deals with exclusive reconnaissance licences. That would be usurping the function of the legislature and defeating the statutory intention which is, with respect, unambiguous.**

[25] I come to the conclusion therefore that only the holder of a valid reconnaissance licence may apply for and be granted an endorsement of exclusive reconnaissance rights on a reconnaissance licence under s59(1)(b) of the Act. I also find that s59(1)(a) of the Act contemplates the granting of an ordinary reconnaissance licence and that that provision

cannot be relied upon by a person who is not a holder of a reconnaissance licence to apply for and be granted an exclusive reconnaissance licence.

Costs

[26] As between the applicant and the second respondent, costs must follow the event. The position of the second respondent is somewhat different. The first respondent, the *Minister of Mines & Energy*, is the maker of the decision which is sought to be reviewed and set aside. The conduct of the first respondent and his officials is a source for concern. It is common cause that after the applicant submitted its application for ERL 79 on forms provided by the Ministry for the purpose, it took the Ministry 11½ months to inform the applicant that its application was not successful. The applicant, in writing, enquired about progress of the application on four different occasions. Not only did it not receive a reply to the queries, but the first respondent's officials did not advise it that its application was legally defective.

[27] The applicant was informed on 13 June 2006 that its application was unsuccessful. Immediately, the applicant

asked for reasons and directed several reminders to first respondent for reasons. Those reasons were forthcoming only two months later (on 14 August 2006) after threats were made of litigation. Not only that, the reasons provided on 14 August 2006 made no mention whatsoever of the ground on which the first respondent has now successfully resisted the applicant's challenge to the first respondent's decision making, or the conceded ground pertaining to s59(1)(b). To crown it all, a raft of the reasons given in the letter of 14 August 2006 were admitted later to be *'inaccurate'*. The ground on which the first respondent now succeeds was raised for the first time in the first respondent's answering affidavit which was filed of record on 15 June 2007.

[28] Mr. Smuts asked me to have regard to this conduct of the first respondent which, in his submission, deserves censure by denying first respondent his costs up to the point when the decisive law point was raised.

[29] Apportionment of costs is a matter in the discretion of the Court but it must be done judicially. I have considered the matter carefully, including all the unexplained delays by the first respondent, shown in the papers, in handling the

applicant's application for ERL 79, and the failure to provide reasons as soon as possible after they were asked for. It is also worthy of special mention that annexure JH14 (the Ministry's internal assessment sheet of ERL79 application) to the applicant's Hoffmann's affidavit shows that the officials of the first respondent who are responsible for the administration of the Act had actually made a positive recommendation of ERL 79 application to first respondent. All these factors, in the exercise of my discretion, are sufficient to deny the first respondent his costs up to the point when the decisive point was raised.

[30] The *first -principle* that a successful litigant should ordinarily get his costs is not lost on me, but it is important that a clear message is given that those who hold public office should in the conduct of public affairs act in a manner that is accountable and transparent. Denying the first respondent his costs up to the point when the decisive law point was raised is intended to mark disapproval of his and his official's conduct to the contrary. I am, however, not prepared to go beyond 15 June 2007 in denying applicant his costs because, had the applicant properly considered the law point after it was raised, the litigation should really have been discontinued.

The first respondent is therefore entitled to his costs after 15 June 2007.

[31] In the result:

(1) The application is dismissed;

(2) with costs, in the case of second respondent - including the costs of two instructed counsel;

(3) with costs, in the case of first respondent - including the costs of one instructed counsel but only from 15 June 2007 until the hearing of the matter.

_____
DAMASEB, JP

ON BEHALF OF THE APPLICANT: **Mr D F Smuts SC**

Instructed By: **Lorentz Angula Inc.**

ON BEHALF OF THE 1ST RESPONDENT: **Mr H J Oosthuizen**

Instructed By: Government-Attorney

ON BEHALF OF THE 2ND RESPONDENT: **Mr R Heathcote**

Assisted by: **Mr A W Corbett**

Instructed By: Theunissen, Louw & Partners

ON BEHALF OF THE 3RD RESPONDENT: **No appearance**