REPUBLIC OF NAMIBIA REPORTABLE

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: A 26/2016

In the matter between:

ARANDIS POWER (PTY) LTD	**APPLICANT**

And

THE PRESIDENT OF THE REPUBLIC OF NAMIBIA	**FIRST RESPONDENT**
CABINET OF THE REPUBLIC OF NAMIBIA	**SECOND RESPONDENT**
MINISTER OF MINES AND ENERGY	**THIRD RESPONDENT**
NAMIBIA POWER CORPORATION (PTY) LTD	**FOURTH RESPONDENT**
XARIS ENERGY (PTY) LTD	**FIFTH RESPONDENT**
SINOHYDRO CORPORATION LIMITED	**SIXTH RESPONDENT**

Neutral citation: *Arandis Power (Pty) Ltd v The President of the Republic of Namibia* (A 26-2016) [2016] NAHCMD 194 (7 July 2016)

Coram: PARKER AJ
Heard: **7 – 8 June 2016**
Delivered: **7 July 2016**

Flynote: Review – Delay in instituting review proceedings – Whether delay was unreasonable – Applicant launching application to challenge applicant not being selected in a tender process as preferred bidder and not being awarded the tender – Court found that there has been unreasonable delay in instituting the application and no cogent and convincing and sufficient facts have been placed before the court to

explain to the satisfaction of the unreasonable delay – Consequently, court refusing to condone the unreasonable delay – Court held that generally prejudice to the other party was not a prerequisite before an application can be dismissed on ground of unreasonable delay – Held further that prejudice was however a relevant consideration in such matter and the existence of prejudice will be material if established. Principles in *Keya v Chief of the Defence Force* 2013 (3) NR 770 (SC); and in *Namibia Grape Growers and Exporters Association and Others v The Ministry of Mines and Energy and Others* 2004 NR 194 applied.

Summary: Review – Delay in instituting review proceedings – Whether delay was unreasonable – Applicant launching application to challenge applicant not being selected in a tender process as preferred bidder and not being awarded the tender – Court found that there has been unreasonable delay in instituting the application – Applicant instituting application to review preferred-bidder-decision some 16 months after that decision came to applicant's attention and to review the award-of-the-tender-decision 12 months after decision was known by the applicant – Court found that delay in instituting application was unreasonable – Court found that applicant has not put forth any cogent and convincing and sufficient facts satisfactory to the court to explain the unreasonable delay – Court found that the explanation concerning unlawful interference by the Minister and other named members of the Executive in the tender process was unlawful and cannot be legitimate ground for the unreasonable delay – Court concluded that if the court accepted the unlawful interference by the Executive as ground for the unreasonable delay and condoned the unreasonable delay and entertained the application it would be setting a very dangerous precedent – Consequently, court dismissed the application on the basis of unreasonable delay.

ORDER

(a) The application is dismissed with costs, including -

(i) in respect of first, second and third respondents, costs of one instructing counsel and two instructed counsel.

(ii) in respect of fourth respondent, costs of one instructing counsel and one instructed counsel.

(iii) in respect of fifth respondent, one instructing counsel and two instructed counsel.

(iv) in respect of sixth respondent, costs of one instructing counsel and one instructed counsel.

JUDGMENT

PARKER AJ:

[1] Once more in proceedings that have now become quotidian, an applicant for a tender ('the tender') to execute works, that is, construction of a power station in the Erongo Region ('the works'), who was unsuccessful in its bid has approached the seat of judgment of the court and prays the court to grant the relief contained in the amended notice of motion.

[2] This matter started its life as an urgent application for interim relief in terms of Part A of the initial notice of motion, pending finalization of the review application contained in Part B of the notice of motion. The urgent application was filed on 3 February 2016 and was set down to be heard on 12 February 2016. I should point it out that 3 February 2016 is therefore the critical date to be taken into account in determining whether there has been an unreasonable delay in instituting the application as contended by fifth respondent, and which is considered below.

[3] For various reasons, Part A of the notice of motion was not moved on the set-down-date of 12 February 2016. By agreement between the parties, and accepted by the court, Part A was not moved on 12 February 2016; and so, the only relief now sought is that contained in the amended notice of motion:

1. Reviewing and setting aside the decisions communicated by the Minister as contained in paragraph 6 of the press statement of 22 December 2015 directing Nampower to negotiate the construction of a 200 KW power station with Xaris Energy (Pty) Ltd.

2. Reviewing and setting aside the decision of Nampower taken on 30 March 2015 to award Nampower Tender No. NPWR/2014/22 to Xaris.

3. Reviewing, setting aside and correcting the decision of Nampower to appoint Xaris Energy (Pty) Ltd as the preferred bidder in respect of Nampower Tender No. NPWR/2014/22.

4. Ordering that applicant be appointed the preferred bidder in respect of the Nampower tender NO. NPWR/2014/22 and that the tender be finalised on this basis.

5. That the respondents who elect to oppose this application pay the costs thereof inclusive of the cost of one instructing and two instructed counsel. In the event of more than one respondent electing to oppose the application, costs (on the aforementioned scale and basis) is sought against all such respondents jointly and severally, the one paying the other to be absolved.

6. Further and/or alternative relief.

[4] The fifth respondent, which was successful in its bid, has moved to reject the application. The other respondents are the President of the Republic of Namibia (first respondent), Cabinet of the Republic of Namibia (second respondent), the Minister of Mines and Energy (third respondent), Namibia Power Corporation (Pty) Ltd ('Nampower'), ie the employer who put out the tender (fourth respondent), and Sinohydro Corporation Limited (sixth respondent), one of the respondents which tendered unsuccessfully for the execution of the works. The first, second and third respondents shall be referred to simply as the GRN respondents.

[5] In these proceedings, Mr Frank SC (with him Ms Bassingthewaighte), represents applicant, Mr Heathcote SC (with him Ms de Jager and Mr Friedman) fifth respondent, Mr Semenya SC (with him Mr Phatela) the GRN respondents, Mr Corbett fourth respondent, and Mr Jones sixth respondent.

[6] I note at this juncture that fourth respondent, the employer, says it does not oppose the application, particularly on account of the fact that applicant has abandoned the relief sought in para 4 of the amended notice of motion. In that regard, I should make the crucial point that nothing significant turns on the attitude of fourth respondent; and, *a fortiori*, any concession made by fifth respondent does not bind this court. See *Swakopmund Airfield v Council of the Municipality* 2013 (1) NR 205 (SC), para 62.

[7] Mr Semenya for the GRN respondents simply made one crisp point and left the further participation in the proceedings from the angle of the GRN respondents in the hands of his junior, Mr Phatela. The point is that the 'decision announced on 22 December 2015 by the third respondent does not fall under the purview of reviewable administrative decisions, and for that reason, counsel contended, the GRN respondents have been dragged to court unnecessarily, and so, appropriate costs order should follow. The sixth respondent does not oppose the application.

[8] The fifth respondent has raised the preliminary point that there has been an unreasonable delay in instituting the review proceedings, and the fifth respondent's

counsel's submission thereanent is that for that reason alone, the application should be dismissed. It behoves me to direct the enquiry to this preliminary point at the threshold because a decision on it can dispose of the application, if it goes fifth respondent's way.

[9] In considering the preliminary point on unreasonable delay, it should be remembered that applicant has applied to review three interrelated, disparate and severable, albeit interrelated, sets of decisions. They are: (a) in para 1 of the amended notice of motion, the announcement of a decision by third respondent on 22 December 2015 ('Decision 1'), (b) in para 3 of the amended notice of motion, fourth respondent's decision on 21 October 2014 to appoint fifth respondent as the preferred bidder and applicant as the reserved bidder ('Decision 2'); and (c) in para 2 of the amended notice of motion, fourth respondent's decision taken on 30 March 2015 to award the tender to fifth respondent ('Decision 3').

[10] I pause here to hold that on the papers it is clear to me that fourth respondent announced on its website in April 2015 that it had awarded the tender to the successful bidder being the fifth respondent. In this regard it is important to note that in the 'Request for Proposal' (RFP) which formed part of the tender documents respecting the tender, shortlisted bidders were advised to register on the fourth respondent's website in order to receive any further information that might apply to the RFP; and so, applicant knew or should have reasonably known that the tender had been awarded to fifth respondent. Therefore any contention that no such decision has been taken is, with respect, fallacious. In this regard, as a matter of law and fact, I should say, generally, taking a decision and communicating the decision are not one and the same thing. And I accept Mr Heathcote's submission that that decision remains valid unless and until set aside by a competent court. (*DFE Properties Number One (Pty) Ltd v DFE Properties Number Two CC* (Case No. A 332/2011) [2012], para 13. And we know that that decision has not been set aside. I now return to the three decisions.

[11] It follows from what I have said in para 9, above, about the disparateness and severability of the aforementioned three decisions that it stands to reason and it is prudent to determine the question of unreasonable delay with reference to the different decisions separately.

Decision 1

[12] As respects Decision 1; it is my view that that decision does not constitute administrative action, as explained by the Supreme Court in *Petroneft International Ltd and Others v Minister of Mines and Energy and Others* 2012 (2) NR 781 (SC), paras [33] and [34]. The Minister exercised his executive power (see *Minister of Defence v Motau* 2015 (CC) SA 69, para 49) in terms of art 40*(a)* of the Namibian Constitution as Mr Semenya correctly submitted. It is, accordingly, otiose to consider whether there has been unreasonable delay in attacking that decision by administrative law review. I now proceed to consider the issue of unreasonable delay to review Decisions 2 and 3.

Decisions 2 and 3

[13] In determining the issue of unreasonable delay in instituting application to review acts or decisions of administrative bodies or administrative officials ('public authorities') our beacon should be *Keya v Chief of the Defence Force and Others* 2013 (3) NR 770 (SC); and *Namibia Grape Growers and Exporters Association and Others v The Ministry of Mines and Energy and Others* 2004 NR 194 (SC) – both Supreme Court cases.

[14] The Supreme Court, per O'Regan AJA tells us in *Keya* that -

'[21] This court has held that the question of whether a litigant has delayed unreasonably in instituting proceedings involves two enquiries: the first is whether the time that it took the litigant to institute proceedings was unreasonable. If the court concludes that the delay was unreasonable, then the question arises whether the court should, in an

exercise of its discretion, grant condonation for the unreasonable delay. In considering whether there has been unreasonable delay, the high court has held that each case must be judged on its own facts and circumstances so what may be reasonable in one case may not be so in another. Moreover, that enquiry as to whether a delay is unreasonable or not does not involve the exercise of the court's discretion.

[22] The reason for requiring applicants not to delay unreasonably in instituting judicial review can be succinctly stated. It is in the public interest that both citizens and government may act on the basis that administrative decisions are lawful and final in effect. It undermines that public interest if a litigant is permitted to delay unreasonably in challenging an administrative decision upon which both government and other citizens may have acted. If a litigant delays unreasonably in challenging administrative action, that delay will often cause prejudice to the administrative official or agency concerned, and also to other members of the public. But it is not necessary to establish prejudice for a court to find the delay to be unreasonable, although of course the existence of prejudice will be material if established. There may, of course, be circumstances when the public interest in finality and certainty should give weight to other countervailing considerations. That is why once a court has determined that there has been an unreasonable delay, it will decide whether the delay should nevertheless be condoned. In deciding to condone an unreasonable delay, the court will consider whether the public interest in the finality of administrative decisions is outweighed in a particular case by other considerations.'

[15] Almost a decade earlier the Supreme Court, per Strydom ACJ, had laid down almost the same principles in *Namibia Grape Growers and Exporters Association* at 214C-I thus:

'Because no specific time is prescribed for the institution of review proceedings, the Courts, as part of their inherent power to regulate their own procedure, have laid down that a review must be brought within a reasonable time. The requirement of a reasonable time is necessary in order to obviate possible prejudice to the other party, and because it is in the interest of the administration of justice and the parties that finality should be reached in litigation. Where the point is raised that there has been unreasonable delay the Court must first determine whether the delay was unreasonable. This is a factual inquiry depending on the circumstances of each case. Once it is satisfied that the delay was unreasonable the

Court must determine whether it should condone the delay. In this regard the Court exercises a discretion. Because the circumstances in each particular case may differ from the next case, what is, or what is not, regarded in other cases to be an unreasonable delay is not of much help, except to see perhaps what weight was given to certain factors.

'In the case of *Wolgroeiers Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A), the South African Appeal Court decided that prejudice to the other party was not a prerequisite before an application can be dismissed on the ground of unreasonable delay. Prejudice is, however, a relevant consideration in such matters. It is further clear that the issue of unreasonable delay may also be raised *mero motu* by the Court.'

[16] Having undertaken a factual enquiry to determine whether the delay is unreasonable (see *Namibia Grape Growers and Exporters Association*, loc. cit.), I make the following factual findings and arrive at the conclusions thereanent as respects Decision 2. The fifth respondent was appointed as the preferred bidder on 24 October 2014. The applicant was informed on or about 21 October 2014 that it had not been selected as the preferred bidder. The applicant chose to attack that decision by review some 16 months after the preferred-bidder-decision had been brought to its attention. On any pan of scale the delay is indubitably unreasonable. Upon the authority of *Namibia Grape Growers and Exporters Association* and *Keya* I should, having so found that the delay is unreasonable, in the exercise of my discretion determine whether to condone the unreasonable delay.

[17] The question now is whether the applicant has placed sufficient facts before the court to explain the unreasonable delay. In this regard, I agree with Mr Frank that it is not necessary to bring a formal application to condone the unreasonable delay. Mr Heathcote too, has no problem with that proposition on practice. But what remains true is that, whether or not a formal condonation application is brought, the applicant seeking an indulgence from the court to condone the unreasonable delay must always place sufficient cogent and convincing facts before the court to explain, to the satisfaction of the court, the unreasonable delay.

[18] In this regard, the general principle in Professor Cora Hoexter, *Administrative Law in South Africa*, 2nd ed, pp 585, referred to the court by Mr Frank cannot assist the applicant. The decision not to appoint applicant as the preferred bidder was final and plenitudinal by all account, and that decision was ripe for adjudication. As I have said previously, the decision not to appoint applicant as the preferred bidder and the decision to award the tender to fifth respondent are severable; and so, I can see no reason why applicant could not have acted with speed and promptness to approach the court so soon after the preferred-bidder-decision (Decision 2) was communicated to it in order to attack that decision by review.

[19] It seems to me that, considering the applicant's papers carefully, the applicant had formed the view that the making of Decision 2 was wrong, and it ought to have known that the alleged unlawfulness in the making of that decision was manifest in a form which could not be corrected no matter how fourth respondent continued to act, and yet the applicant did nothing to attack that decision by judicial review so soon after he become aware of the decision. The applicant did rather wait for 16 months to institute application to review the preferred-bidder-decision, when there had not been a phantom of legitimate indication that former decision would be corrected, if – and this is important – fourth respondent could do that after it had become *functus officio* and that decision had created a legitimate expectation in the mind of fifth respondent that it would be awarded the tender. (See *Minister of Health and Social Services v Lisse* 2006 (2) NR 739 (SC), para 27.) And I should signalize the point that the applicant's unreasonable inaction is not the kind reasonable people would expect from a corporation like the applicant involved in a tender for works worth Two Billion Namibia Dollars and whose execution is subject to 'aggressive' time frames and which is intended to contribute to the socio-economic development of the country in general and the local community in Erongo Region in particular.

[20] On the facts and in the circumstances of the case, I hold that fourth respondent has become *functus officio* on the authority of *Retail Motor Industry Organization v Minister of Water and Environment Affairs* 2014 (3) SA 251 (SCA), para 23, relying on 'The Origins of the *Functus Officio* Doctrine, with Specific

Reference to its Application in Administrative Law' (2005) 122 SALJ 832 at 832. And I hold further that fifth respondent had reasonably entertained such legitimate expectation, as I have said, on the authority of *Lisse v The Minister of Health and Social Services* 2006 (2) NR 739 (SC).

[21] As respects Decision 3 (ie the award-of-the-tender-decision); I have previously found that fourth respondent took the decision to award the tender to fifth respondent on 30 March 2015 and fourth respondent posted the decision on its website in April 2015 which it was entitled to do, as I have held previously. As I can gather from the papers, the bone and marrow of applicant's explanation why applicant did not approach the court to review that decision so soon after April 2015 but did so some 12 months later appears to be articulated by Mr Frank in his submission thus:

'30. The applicant in its founding affidavit explained in detail why it did not act immediately upon unsubstantiated newspaper reports and an unsigned copy of the evaluation report, which was placed on Mr Vernetti's windshield without any indication of its source and instead communicated with the relevant persons being Nampower and the Minister to express its concerns in the hope that reasonable action would be taken in order to ensure the integrity of the tender process. It was not unreasonable of the applicant to assume that under the circumstances, Nampower and the Minister would take reasonable steps to investigate the very serious allegations considering the importance of the tender for the nation as a whole.

34. Secondly, as a result of the allegations of irregularities in the tender evaluation process and the appointment of Xaris as a preferred bidder, the Minister halted the process during mid-April 2015 to investigate the correctness of the allegations and also to conduct an independent study on the entire project and its implications on the long-term energy sustainability for the country. The applicant was also informed at a meeting held on 17 August 2015 with the Minister that the tender was put on hold pending a review and that the decision regarding the tender no longer vests with Nampower but instead with the office of the President. This process in itself took 8 months.'

[22] The talisman in which applicant puts its faith in applicant's explanation of the unreasonable delay in instituting application to review the fourth respondent's award-of-the-tender-decision (Mr Heathcote characterizes it as 'the high watermark' of applicant's case on the unreasonable delay) is that it was known by all that the project had been placed on hold and so applicant was justified to await the outcome of the Government's investigations into the tender process before instituting its review application. Like all talismans, I should say, this talisman, too, is an illusory charm: it has no seeable substance; it has no legal leg to stand on.

[23] I accept Mr Heathcote's submission that fourth respondent's award-of-the-tender-decision, like the preferred-bidder-decision, was valid unless and until set aside by a competent court. And what is more; I should stress, the Minister, the Cabinet and the President have no power of any hue or shape to interfere with decision making of parastatals made by independent Boards created by parastatals, including fourth respondent. (*Roads Fund Administration v Government of the Republic of Namibia* 2012 (1) NR 28) Any interference, as mentioned in the papers with reference to any investigations into the tender process by the Minister and other members of the Executive, was undoubtedly ultra vires unlawful and an affront to the rule of law. Therefore, if the court were to accept the unlawful conduct as legitimate and sufficient ground for the applicant not acting with speed and promptness to institute review proceedings, the court will be creating a very dangerous precedent; and what is more, the court will be setting at naught – without justification – the law so clearly enunciated by the court in *Roads Fund Administration*.

[24] Based on these reasons, I am not satisfied that the applicant has given adequate, cogent and convincing explanation for the unreasonable delay. Thus, on the facts and in the circumstances of the case, 'it would be unjudicial, unjust and unreasonable for this court to condone the unreasonable delay in launching the application'. (See *Peter v Jacobs* (A 100/2013) [2016] NAHCMD 11 (28 January 2016).)

[25] One important consideration; the general principle that prejudice to the other party is not a prerequisite before an application can be dismissed on the ground of unreasonable delay. In *Keya v Chief of the Defence Force*, para 22, O'Regan AJA states thus:

'[22] The reason for requiring applicants not to delay unreasonably in instituting judicial review can be succinctly stated. It is in the public interest that both citizens and government may act on the basis that administrative decisions are lawful and final in effect. It undermines that public interest if a litigant is permitted to delay unreasonably in challenging and administrative decision upon which both government and other citizens may have acted. If a litigant delays unreasonably in challenging administrative action, that delay will often cause prejudice to the administrative official or agency concerned, and also to other members of the public. But it is not necessary to establish prejudice for a court to find the delay to be unreasonable, although of course the existence of prejudice will be material if established.'

[26] Almost a decade earlies, as intimated previously, the Supreme Court in *Namibia Grape Growers and Exporters*, at 214H-I, per Strydom ACJ, had held that 'prejudice is not a prerequisite before an application can be dismissed on the grounds of unreasonable delay', but that '[p]rejudice is a relevant consideration'.

[27] In the instant case, the prejudice that has been occasioned to fifth respondent by the unreasonable delay to attack by judicial review the preferred-bidder-decision and the award-of-the-tender-decision is this. The fifth respondent was selected as the preferred bidder in October 2014, as I have said more than once. That decision had not been set aside by a competent court. Accordingly, in my view fifth respondent had legitimate expectation that the tender would be awarded to it (see paras [19] and [20] above).

[28] Accordingly, in my opinion, it was reasonable and prudent on the part of fifth respondent to put things in motion in order to meet the aforementioned strict time frames in respect of project development and due diligence work. It did so because, as I have said more than once, it entertained the legitimate expectation that the

tender would be awarded to it, and it would be expected of it to commence executing the works immediately on account of the fact that that decision, as I have said previously, had not been set aside by a competent court.

[29] We should not lose site of the fact that the works are a Two-Billion-Dollar-project and is of social and economic importance to the nation, particularly the local community in Erongo Region, as I have said previously. And need I say; the cost of such preparatory work performed by fifth respondent is not that which this court can justly overlook in considering the issue of prejudice. The fifth respondent speaks of N$451 458. Of course, this amount should be minus the cost of preparing the site since no site had been handed over the fifth respondent, as Mr Frank submitted. Of course, this fact alone cannot, detract from my finding that prejudice is established by the fifth respondent; not to speak of the prejudice to the country as a whole and the local community in the Erongo Region in particular, who are, geographically, the immediate beneficiaries of the project. Such prejudice, in my opinion is 'material' (see *Keya*, para [22]), and it must carry a great deal of weight in considering the question whether due to the unreasonable delay the court should dismiss the application.

[30] And, besides; there has been an unacceptable illegal inaction on the part of fourth respondent. The fourth respondent's exercise of discretion in the tender process ended when the decision to award the tender to fifth respondent was taken in March 2015. More than 16 months have passed and fourth respondent has not done that which is reasonably necessary and required of it to enable fifth respondent to execute the works. Thus, now, as I have intimated previously, fourth respondent has had that duty since March 2015, which it has illegally failed to perform.

[31] With the Minister's illegal inaction, by neglect of duty, stalling the implementation of the project (see *Nguvauva v Minister of Regional and Local Government* 2015 (1) NR 220, para 24), if the court were to condone the unreasonable delay and entertain the application that will surely exacerbate the halt

that has crippled execution by fifth respondent of the socially and economically important works.

[32] In virtue of the foregoing, I find that the unreasonable delay in instituting the application greatly prejudices fifth respondent. It also prejudices the nation and the local community, the geographically immediate beneficiaries of the works. It follows reasonably that the application should fail; and, it fails.

[33] I should say in parentheses that on the facts and in the circumstances of the case, if fifth respondent had instituted a counter application for mandamus directed at fourth respondent to perform its duty by doing all that is required and necessary to enable fifth respondent to execute the works, this court would have, as it did in *Nguvauva v Minister of Regional and Local Government*, considered such counter application in the light of what I have said about the duty – as opposed to discretion – of fourth respondent in the tender process. I have restrained myself from looking at the matter in that direction because there is no counter application to that effect which would have called upon applicant and interested parties to meet. I hasten to add that this, of course, is no license for fourth respondent to continue to dabble in its illegal inaction, by neglect of duty.

[34] It remains to consider the matter of costs. In his submission, Mr Frank sought costs in respect of one instructing counsel and two instructed counsel, if the application succeeded. Mr Semenya seeks costs in respect of one instructing counsel and two instructed counsel. Mr Corbett seeks costs in respect of one instructing counsel and one instructed counsel. Mr Heathcote seeks costs in respect of one instructing counsel and three instructed counsel. The fifth respondent has been successful: the application has been dismissed. I think the nature of this case justifies the employment of two counsel, but I do not think the employment of an additional counsel is justifiable.

[35] In the result, I make the following order:

(a) The application is dismissed with costs, including -

(i) in respect of first, second and third respondents, costs of one instructing counsel and two instructed counsel.

(ii) in respect of fourth respondent, costs of one instructing counsel and one instructed counsel.

(iii) in respect of fifth respondent, one instructing counsel and two instructed counsel.

(iv) in respect of sixth respondent, costs of one instructing counsel and one instructed counsel.

C Parker

Acting Judge

APPEARANCES

APPLICANT: T J Frank SC (assisted by N Bassingthwaighte)
Instructed by Etzold-Duvenhage, Windhoek

FIRST, SECOND
THIRD RESPONDENTS: I A M Semenya SC (assisted by T C Phatela)
Instructed by Government Attorney, Windhoek

FOURTH RESPONDENT: A W Corbett SC
Instructed by Shikongo Law Chambers, Windhoek

FIFTH RESPONDENT: R Heathcote SC (assisted by B de Jager and A Friedman)
Instructed by Engling, Stritter & Partners, Windhoek

SIXTH RESPONDENT: J P R Jones
Instructed by Theunissen, Louw & Partners, Windhoek