

**IN THE HIGH COURT OF SOUTH AFRICA**  
**TRANSVAAL PROVINCIAL DIVISION**

In the matter between

Case no:4636/2002

**CCII SYSTEMS (PROPRIETARY) LIMITED**

Respondent (Applicant *a quo*)

and

**SHAUKET FAKIE N.O.**

First Applicant  
(First Respondent *a quo*)

**'S A M BAQWA N.O.**

Second Applicant  
(Second Respondent *a quo*)

**BULELANI NGCUKA N.O.**

Third Applicant  
(Third Respondent *a quo*)

**M G P LEKOTA N.O.**

Fourth Respondent *a quo*

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**APPLICATION FOR LEAVE TO APPEAL**

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**BE PLEASED TO TAKE NOTICE THAT** the First, Second and Third Applicants intend to apply for leave to appeal to the Supreme Court of Appeal *alternatively* the Constitutional Court, against the whole of the judgment and order made by his Lordship Justice Hartzenberg in the Above Honourable Court on 25 November 2002.

**TAKE FURTHER NOTICE** that the Applicants will contend that his Lordship erred in one or more of the following respects (the parties are referred to as they were *a quo*):

1. His Lordship erred in attaching no weight, alternatively inadequate weight to the limit of the First Respondent's resources that would be needed to find and evaluate the documents and information initially requested by the applicant.
2. His Lordship should have found that the First Respondent has limited resources available to find and evaluate all documents requested by the applicant and that in terms of Section 45(b) of Act 2 of 2000 ("the Act") the work involved in processing the request would substantially and unreasonably divert the resources of the First Respondent.
3. His Lordship should have found that the Applicant's Managing Director knew the size of the record requested, given the fact that he participated during the Joint Special investigation processes of the Procurement of the Strategic Defence Packages ("SDP").
4. His Lordship erred in finding that the First Respondent knew what documents the Applicant required save for the entire record.

5. His Lordship should have found that the initial request was cast in the widest possible terms and related to the entire audit file, rendering it practically impossible for the First Respondent to comply with.
6. His Lordship should accordingly have found that an attempt to comply with the initial request would substantially and unreasonably have diverted the First Respondent's resources.
7. His Lordship should have found that the Applicant's limited request for the documents known as "the reduced record" which relate to the acquisition of the Corvettes constituted a new request.
8. As a consequence of the above His Lordship should have found that the request for the reduced record was an irregular request in that it was not preceded by a request in terms of Section 18 of the Act.
9. His Lordship erred in not finding that the request for the record may be refused in terms of Section 44(2)(c) of the Act, as it contains preliminary, working or other drafts of officials of a public body.
10. His Lordship should have found that in terms of Section 44 (1)(b) and 44(2)(c) of the Act, the draft reports are subject to non-disclosure.

His Lordship should have found that classified information relating to military matters in respect of contracts and execution thereof is worthy of protection

- 2 His Lordship should have found that the maintenance of effective military capability, the capability of the Republic of South Africa adequately to be able to defend itself, sound interstate relationships, and the relationships, and the relationship of the Republic of South Africa with foreign companies are worthy of protection.
13. His Lordship should have found that the release of confidential information relating to the military information may pose danger that any such information may be used against interest of the Republic of South Africa. The request should accordingly have been refused.
4. His Lordship erred in finding that all documents including draft versions of the report submitted to Parliament by the joint investigating team regarding the so called Strategic Defence Packages for the Procurement of Armaments for South African National Defence Force forms part of the information the respondent is entitled to release.

His Lordship erred in finding that draft reports are only of historic importance and cannot obstruct the joint commission in its work.

16. His Lordship should have found that the draft reports referred to are protected by the provisions of Section 44.
17. His Lordship should accordingly have found that the information officer was entitled to refuse access if disclosure would have led to a breach of confidence of a third party other than public bodies which are specifically excluded such as other sources of information and third parties.
18. His Lordship erred in finding the onus created in Section 81 of the Act requires the information officer to identify documents which he wants to withhold.
19. His Lordship erred in not finding that the First Respondent duly and properly exercised his discretion in refusing to disclose draft reports and that he was entitled to refuse to disclose the draft reports.
20. His Lordship should accordingly have found that the first Respondent considered the applicant's request carefully and exercised his discretion in a *bona fide* manner.
21. His Lordship should have found that the request for the "reduced record" in terms of the Act falls foul of the provisions of Section 7 in that on the 8<sup>th</sup> of August 2002 the Applicant issued summons under Case No. 21785/02 in the

High Court, in which damages in the sum of R99 3 6 346,00 and R49 943 506,00 were being claimed from the Minister of Defence, the Armaments Corporation of South Africa Ltd, and African Defence Systems (Pty) Ltd.

- 22 His Lordship erred in not finding that the causes of action brought by the applicant relate directly to the arms procurements in which the applicant was an unsuccessful tenderer and therefore fall within the provisions of Section of the Act.

His Lordship erred in finding that one of the objects of the Act is that citizens can get information regarding wrongs perpetrated against them to hold the wrong doers accountable with specific reference to Section 9(c) and 9(

- 24 His Lordship should not have accepted the via Media which seeks to order the first respondent to make available those records to which no objection raised within stated period of time and in respect of balance of the reduced records, to identify them and state the reasons why access may or must be refused in respect of which portion of the record to be refused

His Lordship erred in not dismissing the application.

**AND TAKE FURTHER NOTICE** that in the event of the Above Honourable Court granting leave to appeal directly to the Constitutional Court, His Lordship is

respectfully requested to issue a Certificate in accordance with the provisions of Rule 18 of the Constitutional Court Rules.

DATED AT PRETORIA ON THIS THE 6<sup>th</sup> DAY OF DECEMBER 2002.

MAPONYA INCORPORATED  
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TO: THE REGISTRAR  
THE ABOVE HONOURABLE COURT  
BRAAMFONTEIN

AND TO:

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day of December 2002.

*Ans 12:06*