

ORIGINAL

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

DE SWARDT  
MYAMBO  
HLAHLA  
TEL: (012) 346-0050

**123**

CASE NO: 42338 /2021

In the matter between:

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**  
**("PRASA")**

**PLAINTIFF**

and

**ONICA MARTHA NGOYE**

**DEFENDANT**



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**SUMMONS**

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TO THE SHERIFF:

**INFORM:** **ONICA MARTHA NGOYE**, an admitted attorney with its physical address at **199 PRITCHARD STREET, OLIVEDATE, RANDBURG, GAUTENG.**;  
(the "Defendant"), and

**THAT:** **PASSENGER RAIL AGENCY OF SOUTH AFRICA ("PRASA")**, a state-owned enterprise having its principal place of business at MJANTSHI HOUSE, 30 WOLMARANS STREET, BRAAMFONTEIN, JOHANNESBURG, GAUTENG. PRASA was established in terms of section 22 of the Legal Succession to the South African Transport Services Act, 1989 (as amended) and is a listed enterprise under the Public Finance Management Act, 1 of 1999 ("the PFMA").  
(the "Plaintiff")

hereby institutes action against the Defendant based upon the facts set out in the annexed: **PARTICULARS OF CLAIM.**

**INFORM** the Defendant further that if the Defendant dispute the claim and wish to defend the action, the Defendant shall:

- (i) within **10 (TEN) days** of the service upon the Defendant of this summons file with the Registrar of this Court at corner of Madiba- and Paul Kruger Street, Pretoria notice of the Defendant's intention to defend and serve a copy thereof on the attorneys of the Plaintiff(s) which notice shall give an address (not being a post office or poste restante) referred to in Rule 19(3)(b) for the service upon the Defendant of all notices and documents; in the action and which Notice of Intention to Defend shall contain the Defendant's full residential or business address, postal address and where available, fax and/or electronic mail address within fifteen kilometres of the Offices of the Registrar of this Court for the service upon the Defendant thereof of all documents in this action.

**INFORM** the Defendant that the Plaintiff is prepared to accept service of all subsequent documents and notices in this action to any manner other than the physical address or postal address. The preferred method of service is as follows:

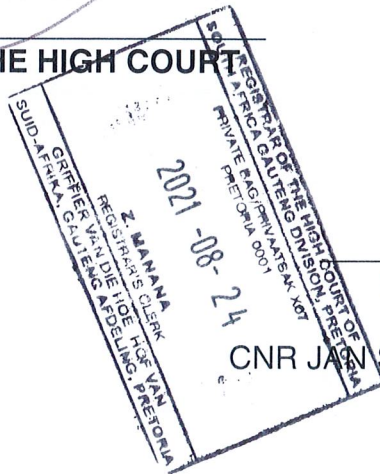
**via e-mail:** [francisca@deswardt.co.za](mailto:francisca@deswardt.co.za) and [michelle@deswardt.co.za](mailto:michelle@deswardt.co.za)

- (ii) Thereafter, and within **20 (TWENTY) days** after filing and serving Notice of Intention to Defend as aforesaid, file with the Registrar of this Court and serve upon the Plaintiff or Plaintiff's attorney a plea, exception, notice to strike out, with or without a counterclaim.

**INFORM** the Defendant further that if the Defendant fails to file and serve notice as aforesaid, judgment as claimed may be given against the Defendant without further notice to the Defendant, or if, having filed and served such notice, Defendant fail to plead, except, make application to strike out or counterclaim, judgment may be given against Defendant. And immediately thereafter serve on the Defendant a copy of this summons and return the same to the Registrar with whatsoever you have done thereupon.

SIGNED at PRETORIA on this the 23<sup>RD</sup> day of AUGUST 2021.

REGISTRAR OF THE HIGH COURT  
PRETORIA



(SGD) MA MYAMBO

DE SWARDT MYAMBO HLAHLA

941 JAN SHOBA STREET  
CNR JAN SHOBA & MACKENZIE STREETS  
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PRETORIA, 0001, DOCEX 244

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REF: MR MA MYAMBO/MS/P1039



## **PARTICULARS OF CLAIM**

### **THE PARTIES**

1. The Plaintiff is the Passenger Rail Agency of South Africa ("PRASA"), a state-owned enterprise having its principal place of business at Mjantshi House, 30 Wolmarans Street, Braamfontein, Johannesburg, Gauteng. PRASA was established in terms of section 22 of the Legal Succession to the South African Transport Services Act, 1989 (as amended) and is a listed enterprise under the Public Finance Management Act, 1 of 1999 ("the PFMA").
2. The Defendant is Onica Martha Ngoye, an admitted attorney, domiciled at 199 Pritchard Street, Olivedale, Randburg, Gauteng.

### **JURISDICTION**

3. This Honourable Court has jurisdiction to entertain this action by virtue of the provisions of Section 21 of the Superior Courts Act, 10 of 2013 in that, *inter alia*, the cause of action arose within this court's jurisdiction.

### **THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT**

4. On or about 25 March 2013 PRASA and SA Fence and Gate Investment Holdings (Pty) Ltd ("SA Fence and Gate"), pursuant to a tender process, concluded a contract for the supply, provision and installation of a security fence at PRASA's depots nationally under contract number HO/SCM/225/11/2011 ("the National Depot and Fencing and Security contract").
5. The contract amount was for R209 874 559.79 (two hundred and nine million eight hundred and seventy-four thousand five hundred and fifty-nine rand and seventy-nine cents).
6. During or about December 2014 and January 2015, the Defendant was appointed to act in the position of Group Executive Officer of PRASA.

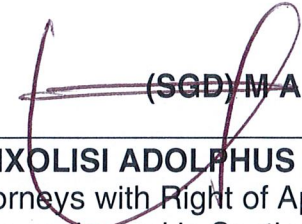
7. On or about 20 January 2015, the Defendant, under the National Depot and Fencing and Security contract, purported to approve to condone further business to SA Fence and Gate for the supply, storage and installation of lights in the amount of R58 153 296.72 vat inclusive ("the lights contract").
8. The Plaintiff in seeking to approve the condonation and/or extending of the scope and amount of the National Depot and Fencing and Security contract:
  - 8.1. acted beyond her authority;
  - 8.2. breached the provisions of section 217(1) of the Constitution and section 83 of the PFMA;
  - 8.3. breached PRASA's Powers and Authority of the Board and Delegation of Authority, 2009 ("PRASA's Delegation of Authority"), PRASA's Supply Chain Management Policy ("PRASA's SCM Policy") and National Treasury's Irregular Expenditure Framework ("National Treasury's Irregular Expenditure Framework") as more fully dealt with below.
9. The lights contract did not follow a process that was fair, equitable, transparent, competitive and cost effective.
10. The Defendant breached PRASA's Delegation of Authority in that any contract above R100 million required the approval of the Board.
11. The Defendant breached PRASA's SCM Policy in that the Defendant failed to comply with PRASA's Delegation of Authority, reject the lights contract for non-compliance with SCM Policy, failed to take due cognisance as far as value for money was concerned.
12. The Defendant breached National Treasury's Irregular Expenditure Framework in that the Defendant wilfully or negligently failed to take effective and appropriate steps to prevent irregular expenditure.

13. The Defendant's aforesaid conduct was unlawful and wrongful resulting in the Plaintiff incurring wasteful and irregular expenditure as contemplated in the PFMA.
14. The actual value received by the Plaintiff in respect of the lights contract is the amount of R1 644 406. 00 excluding vat (one million six hundred and forty-four thousand four hundred and six rand).
15. The Plaintiff paid R 47 034 026, 91 excluding vat (forty seven million thirty four thousand and twenty six rand and ninety one cents) in respect of the lights contract and has suffered a loss of R45 389 620, 90 (forty five million three hundred and eighty nine thousand six hundred and twenty rand and ninety cents).

**Wherefore** the Plaintiff prays for an order against the Defendant as follows:

- (a) Payment of the amount of R45 389 620, 90;
- (b) Interest from date of service of summons to date of payment;
- (c) Costs on a punitive scale.

**SIGNED at PRETORIA on this the 23<sup>RD</sup> day of AUGUST 2021.**

  
~~(SGD) M A MYAMBO~~  
**MXOLISI ADOLPHUS MYAMBO**  
Attorneys with Right of Appearance  
as envisaged in Section 25 of the  
Legal Practice Act, Act 28 of 2014

  
~~(SGD) M A MYAMBO~~

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**DE SWARDT MYAMBO HLAHLA**

941 JAN SHOBA STREET

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