


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



Case number: 49930/2020

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED. YES
22/11/2021 DATE	 SIGNATURE

In the matter between:

TRENCON CONSTRUCTION (PTY) LTD

Applicant

and

PUBLIC INVESTMENT CORPORATION SOC LTD

First Respondent

GOVERNMENT EMPLOYEES PENSION FUND

Second Respondent

GVK-SIYA ZAMA BUILDING CONTRACTORS

(PTY) LTD

Third Respondent

NEUKIRCHER J

- 1] On 8 November 2021 Trencon filed a Notice in Terms of Rule 42(1)(b) in which it seeks an amendment of the order handed down on 2 November 2021. In that

order, the application was dismissed. Trencon alleges that there is a patent error or omission in the order in that it should have read as follows:

- “1. It is declared that the second respondent is an organ of state in terms of section 239(b)(ii) of the Constitution.*
- 2. Save for the aforesaid order, the application is dismissed.”*

- 2] This notice was then sent to the respondents and I asked for their submissions, if any, on the content thereof by 19 November 2021. On that date, an email was received in which the respondents stated:

“Our clients will abide by the Court’s decision in respect of the Applicant’s Request for Amendment.”

- 3] Rule 42(1)(b) provides as follows:

“(1) The court may, in addition to any other powers it may have, mero motu or upon the application of any party affected, rescind or vary:

(a) ...

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission...”

- 4] Trencon states that the error or omission is clear from the following:

4.1 the Notice of Motion seeks a declarator that the GEPPF is an organ of state in terms of section 239(b)(ii) of the Constitution. This was defined as one of the issues in the judgment;

4.2 paragraph 142 of the judgment states:

“Therefore, in my view, in issuing this tender it cannot be said that the GEPF was performing a quintessentially domestic function. In my view both the function and power were public ones and this being so, the GEPF is an organ of state and the action of the award to GVK was an administrative one and reviewable under PAJA.”;

4.3 footnote 85 of the judgment states:

“I am not of the view that the declaratory relief set out in 2.4.1 (supra) is overbroad and shall be limited to this application”;

4.4 paragraph 190 of the judgment reads:


“Both the GEPF and Trencon have been equally successful and it is for this reason that I am of the view that each party should pay their own costs.”

5] I am of the view that Trencon is correct and the order should be amended as it, however not in the terms sought by it. Footnote 85 makes it clear that the order should *“be limited to this application.”*

6] Thus the order is amended to read as follows:

6.1 for purposes of the present application, the second respondent is an organ of state in terms of section 239(b)(ii) of the Constitution.

6.2 save for the aforesaid order, the application is dismissed.



B NEUKIRCHER
JUDGE OF THE HIGH COURT

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 22 November 2021.

Appearances:

For the Applicant:	: Adv M Chaskalson SC Adv S Pudifin-Jones
Instructed by	: Joubert, Galpin Searle Attorneys
For the 1 st and 2 nd Respondents :	Adv K Pillay SC Adv C Tabata Adv M Dafel
Instructed by	: Bowmans (Bongumusa Sibiya)
Date of judgment	: 22 November 2021