

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
(BRAAMFONTEIN)

CC Case no. _____

SCA Case no. 378/2023

HC Case no. 47405/2020

In the matter between:

THOLO ENERGY SERVICES CC

Applicant

and

**COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

Respondent

NOTICE OF MOTION

TAKE NOTICE THAT the abovenamed applicant hereby applies for leave to appeal to this Court against the judgment and order of the Supreme Court of Appeal under case no. 378/2023 dated 06 August 2024 per Schippers JA (with Hughes, Weiner and Kgoele JJA and Tolmay AJA concurring) a copy of which is attached hereto as annexure "A".

TAKE NOTICE FURTHER THAT the applicant intends to seek an order in the following terms:

1. The applicant is granted leave to appeal to this Court against the Supreme Court of Appeal's judgment and order;
2. The costs of the application for leave to appeal shall be costs in the appeal;
3. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT should leave to appeal be granted, the applicant will seek an order on appeal in the following terms:

1. The appeal is upheld with costs, including the costs of two counsel;
2. The order of the Supreme Court of Appeal is set aside and replaced with an order in the following terms:

"1. The appeal is upheld with costs, including the costs of two counsel, and the judgment and order of the High Court dated 02 February 2023 is set aside;

2. The court *a quo*'s order is replaced with the following order:

"1. *The respondent's final tariff determination made on 20 July 2017 to disallow the applicant's following claims for refunds of fuel and Road Accident Fund levies under Rebate Item 671.11, is set aside:*

- 1.1 *Claim No. 23568 for a refund in the total amount of R 679,421.84;*
 - 1.2 *Claim No. 23569 for a refund in the total amount of R 339,200.00;*
 - 1.3 *Claim No. 23570 for a refund in the total amount of R 2,555,698.16; and*
 - 1.4 *Claim No. 23654 for a refund in the total amount of R 680,604.80.*
 2. *The respondent's aforesaid tariff determination is substituted with a determination that the applicant's claims for refunds of the fuel and Road Accident Fund levies under claim no. 23568, 23569, 23570, and/or 23654 are allowed;*
 3. *Payment of the amount of R 4,254,924.80 within one (1) month from the date of order, together with interest at the rate of 10.5% per annum from 17 March 2017 until date of final payment;*
 4. *The respondent is ordered to pay the costs of the application, including the costs of two counsel."*
3. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **THABISO MOROAHAE** together with its annexures will be used in support thereof.

TAKE NOTICE FURTHER THAT the applicant does not intend to apply for leave or special leave to appeal to any other court, the applicant having already prosecuted an appeal before the Supreme Court of Appeal.

TAKE NOTICE FURTHER THAT the applicant has appointed the address of its attorneys as set out hereunder as the address at which it will accept notices and service of all documents in these proceedings.

TAKE NOTICE FURTHER THAT the applicant consents to and requests service by email.

TAKE NOTICE FURTHER THAT in accordance with Rule 19(4) of this Court's Rules, the respondent may within ten days of the date on which this application is lodged respond thereto in writing, indicating whether the application for leave to appeal is being opposed, and if so the grounds for such opposition, and further that the respondent may lodge a cross-appeal as provided for in Rule 19(5) of this Court's Rules.

TAKE NOTICE FURTHER THAT if no notice of intention to oppose or a response in terms of Rule 19(4) of this Court's Rules is given, the applicant will request the Registrar to place the matter before the Chief Justice to be dealt with in terms of Rule 11(3)(c)(i) read with Rule 11(4) of this Court's Rules.

DATED at SANDTON on this the 28 day of AUGUST 2024.

J. Schalkwyk

CLIFFE DEKKER HOFMEYR INC.

ATTORNEYS FOR APPLICANT

1 PROTEA PLACE

(CORNER FRIEDMAN & PROTEA PLACE)

SANDTON, JOHANNESBURG

TEL: (011) 562 1450

FAX: (011) 562 1451

EMAIL: Petr.Erasmus@cdhlegal.com

REF: Mr Petr Erasmus

**TO: THE REGISTRAR OF THE CONSTITUTIONAL COURT
BRAAMFONTEIN, JOHANNESBURG**

**AND TO: KLAGSBRUN EDELSTEIN BOSMAN DU PLESSIS INC
ATTORNEYS FOR RESPONDENT
220 LANGE STREET
NIEUW MUCKLENEUK, PRETORIA
TEL: (012) 452 8900
EMAIL: ronie@kebd.co.za
REF: MR NYAMA/MD/BC001198**

