

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

Case number: 2024–068900

In the matter between:

**FIRSTRAND BANK LIMITED**

Applicant

and

**BIRRELL MINING AND**



**INVESTMENTS (PTY) LTD**

First Respondent

**LLOYD DUNBAR BIRRELL**

Second Respondent

**CITY OF TSHWANE METROPOLITAN**

**MUNICIPALITY**

Third Respondent

**THE MINISTER OF FINANCE**

Fourth Respondent

**THE MINISTER OF REGIONAL**

**AND LAND AFFAIRS**

Fifth respondent

**THE REGISTRAR OF DEEDS, PRETORIA**

Sixth Respondent

**THE COMMISSIONER OF COMPANIES**

Seventh Respondent

**SOUTH AFRICAN REVENUE SERVICES**

Eighth Respondent

**MINISTER OF TRADE, INDUSTRY**

**AND COMPETITION**

**THE NATIONAL CREDIT REGULATOR**

**THE NATIONAL CONSUMER**

**COMMISSION**

Ninth Respondent



Tenth Respondent

Eleventh Respondent

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**NOTICE IN TERMS OF UNIFORM RULE 16A(1)(a)**

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**TAKE NOTICE** that the following constitutional issue is raised in the respondents' counter application:

Whether s 4(2)(c) of the National Credit Act 34 of 2005 ('NCA') should be declared unconstitutional in order to extend the full protection of the NCA to all natural persons standing surety for the debts of individuals or entities.

Amongst those agreements to which the NCA does not apply are 1) credit agreement in terms of which the consumer is a juristic person whose asset value or annual turnover, together with the combined asset value or

annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds the threshold value determined by the Minister in terms of section 7(1). (See s 4(1)(a)(i)); and 2) a large agreement, as described in s 9(4), in terms of which the consumer is a juristic person whose asset value or annual turnover is, at the time the agreement is made, below the threshold value determined by the Minister in terms of section 7(1). (See s 4(1)(b)). The thresholds determined in terms of s 4(1)(a)(i) and s 4(1)(b) are currently R1 million and R250 000 respectively.

Section 4(2)(c) of the NCA, stipulates that the Act applies to a credit guarantee *only to the extent that the Act applies to a credit facility or a credit transaction in respect of which the credit guarantee is granted.*

Thus, preferential treatment is afforded to persons, including juristic persons, standing surety for natural persons where the principal agreements entered into qualify as credit agreements governed by the NCA.

The said preferential treatment is in direct contrast with the position of natural persons standing surety for juristic persons in instances where the NCA does not apply to the principal agreements.

The question that arises is whether s 4(2)(c) of the NCA violates the equality clause (s 9), of the Constitution of the Republic of South Africa, 1996.

The respondents contend that there is no rational connection between the differentiation and the two categories of natural person sureties and the lawful government purpose of the NCA and that the differentiation constitutes unfair discrimination.

**TAKE FURTHER NOTICE** that in order to contextualise the constitutional issue, all interested parties are referred to the First and Second Respondents' Answering Affidavit and Founding Affidavit to their Counter Application filed under the above mentioned case number containing the constitutional challenge.

**TAKE FURTHER NOTICE** that any interested party may, with the written consent of all the parties to the proceedings, given not later than 20 (twenty) days after this notice has been filed, be admitted therein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.

**TAKE FURTHER NOTICE** that the written consent referred to above shall, within 5 (five) days of its having been obtained, be lodged with the Registrar and the *amicus curiae* shall, in addition to any other provision of the Rules, comply with the times agreed upon for the lodging of the written argument.

**TAKE FURTHER NOTICE** that if the interested party is unable to obtain written consent as contemplated herein, he or she may, within 5 days of the expiry of the 20-day period prescribed above, apply to the Court to be admitted as an *amicus curiae* in the proceedings. Such application shall—

(a) Briefly describe the interest of the prospective *amicus curiae* in the proceedings;

(b) Clearly and succinctly set out the submissions which will be advanced by the prospective *amicus curiae*, the relevance thereof to the proceedings and his or her reasons for believing that the submissions will assist the court and are different from those of the other parties; and

(c) Be served upon all parties to the proceedings.

**TAKE FURTHER NOTICE THAT** any party to the proceedings who wishes to oppose an application to be admitted as *amicus curiae* shall file an answering affidavit within 5 days of the service of such application upon such party. The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

Dated and signed at Pretoria this 5 day of July 2024.

  
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**KRIGE ATTORNEYS INC. t/a  
TSIHLAS AND KRIGE ATTORNEYS  
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REF: **MR. P W KRIGE/KB0027**

**TO: THE REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

**AND TO: RORICH WOLMARANS & LUDERITZ INC  
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**Service Via Email**