

**IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)**

CASE NO: 9987/2001

In the matter between:

ECAAR SOUTH AFRICA

First Applicant

TERRY CRAWFORD-BROWNE

Second Applicant

and

**THE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA**

First Respondent

THE MINISTER OF FINANCE

Second Respondent

**THE NATIONAL GOVERNMENT OF
THE REPUBLIC OF SOUTH AFRICA**

Third Respondent

THE SPEAKER OF PARLIAMENT

Fourth Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

KINDLY TAKE NOTICE that the abovenamed Applicants intend to apply, on a date and at a time to be determined in consultation with the learned Presiding Judge, for leave to appeal to the Supreme Court of Appeal of South Africa, against the whole of the judgment of his Lordship Mr Justice Blignault (Mr Justice Yekiso concurring) delivered in the above matter on 4 March 2004.

Filed by: Abrahams & Kiewitz
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KINDLY TAKE NOTICE FURTHER that the proposed grounds of appeal are the following:

1. The learned Judges erred and/or misdirected themselves in holding that Applicants' primary attack was misconstrued and/or should have been directed against the Cabinet's decision; and that the merits of such decision, the reasons for it and the documentation that was before the Cabinet ought to have been "properly analysed" in the review application – notwithstanding the fact that Applicants were denied access to proof of the merits of and reasons for the Cabinet decision, and the documents that were before the Cabinet, by the Honourable Court in an earlier application for discovery.
2. The learned Judge erred in failing to hold that the ultimate responsibility for government expenditure lies with Second Respondent in terms of common law, the State Liability Act 20 of 1957, and the Constitution; and that it was accordingly in any event incumbent on Applicants to direct their primary attack against him.
3. The learned Judges erred in holding, expressly or by implication, that Second Respondent was confronted with a *fait accompli* and reduced to a mere

functionary tasked with "finding the necessary funding" – notwithstanding the evidence of Ramos to the effect that Second Respondent was responsible for taking the decision relating to *inter alia* the affordability of servicing the loan agreements.

4. The learned Judges erred and/or misdirected themselves in holding that the warnings contained in the Affordability Report were not intended to advise Second Respondent to desist from concluding the transactions in question (notwithstanding that they were contained in the Affordability Report which purported to provide advice to Government in regard to the affordability of the transactions in question), but to be merely informative as to the risks that had to be taken into account should Second Respondent proceed to enter into the loan agreements.
5. The learned Judges in any event erred in failing to hold that, had Second Respondent properly applied his mind to the advice contained in the Affordability Report, he would have been constrained to desist from concluding the relevant transactions; *a fortiori*, if Second Respondent had properly weighed up the costs of servicing the loan agreements against the negative impact they will have on socio-economic rights.

6. The learned Judges accordingly erred and/or misdirected themselves in finding –
 - 6.1 that Second Respondent had applied his mind to the warnings contained in the Affordability Report;
 - 6.2 that Second Respondent's decision to enter into the loan agreements was not irrational, unreasonable and unlawful;
 - 6.3 that there was no merit in the review.
7. The learned Judges erred and/or misdirected themselves in failing to find that any infringement of or threat to rights took place within the area of jurisdiction of the Honourable Court.
8. The learned Judges erred and/or misdirected themselves in failing to find that Applicants (or either of them) had *locus standi*.
9. The learned Judges accordingly erred in dismissing the application.
10. The learned Judges erred in awarding costs against Applicants, particularly when the likely chilling effect of the award on public interest litigation in general is

considered; and more particularly, in that their Lordships' award has the effect of diminishing rather than enhancing the common law.

DATED at CAPE TOWN on this 26th day of MARCH 2004.

ABRAHAMS & KIEWITZ

Per: _____

First and Second Applicants'

Attorneys

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CAPE TOWN

TO: THE REGISTRAR
High Court
CAPE TOWN

AND TO: THE STATE ATTORNEY
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