

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

Case Number: 2023-110354

- 1. Reportable: No
- 2. Of interest to other judges: No
- 3. Revised

A handwritten signature in blue ink, appearing to read 'Wright J'.

WRIGHT J

8 October 2026

In the matter between:

TEG ASSET & RISK MANAGEMENT CC

APPLICANT

and

**THE COMMISSIONER FOR THE SOUTH AFRICAN
REVENUE SERVICE**

RESPONDENT

JUDGMENT

WRIGHT J

1. The applicant close corporation, TEG, submitted a return for income tax for 2017 and it submitted returns for Vat for various periods between 2015 and 2017. It was assessed by Sars. TEG, unhappy with the assessments, asked Sars for reduced assessments. Sars refused. TEG seeks now to review the decisions by Sars to refuse reduced assessments. TEG seeks also the sending back of the assessments to Sars for fresh decisions.
2. The impugned decisions are those of 28 October 2022 and 23 February 2023. Both, in written form, are signed by an auditor and a manager.
3. Mr Yates is the sole member of TEG. He manages it. He deposed to the founding and replying affidavits.
4. Mr Yates makes a number of allegations in his founding affidavit.
5. In 2010, he appointed Mr Bowman, an accountant to provide accounting services to TEG. These services included the filing of tax returns. Mr Bowman was granted full access to the financial records of TEG.
6. In May 2019, Mr Yates became aware that Sars was auditing the income tax return of TEG for the 2017 year and its Vat returns for periods between 2015 and 2017. Mr Fairlee, then managing the business of TEG while Mr Yates was out of the country, was phoned by Ms Olivier of Sars and the matter was discussed. Mr Yates was then assured by Mr Bowman that Sars had made a mistake. Mr Yates asked Mr Bowman for the profile codes for the Sars e-filing platform but was told by Mr Bowman to contact Sars. Mr Yates could not get the codes from Sars. Sars would release the codes only if Mr Bowman agreed.
7. Later, it turned out that Mr Bowman had sub-contracted a Ms Buitendag, a tax consultant, to file the tax returns. She had the e-filing codes but Mr Bowman did not.

8. On 30 September 2019, Ms Olivier emailed Mr Bowman advising him that objections to the assessments had been declined.
9. In June 2020, Sars obtained payment from the bank account of TEG. Mr Yates contacted Mr Bowman about this and was assured by him that Sars had made an error and that it would be corrected.
10. In July 2022, Mr Yates was phoned by Ms Botha of Sars who told him that TEG had a substantial tax liability. Mr Yates terminated the mandate of Mr Bowman.
11. In paragraph 34 of his founding affidavit, Mr Yates says, despite his allegations referred to above, that “ *I have been advised by my legal team to retain Mr Bowman as public officer of TEG pending finalisation of this matter due to the implications that may follow the public officer as a result of any unpaid debt.* “
12. On 7 October 2022, the attorneys for TEG wrote to Sars requesting reduced assessments. It was stated in the letter that Mr Bowman is the registered public officer for TEG and that at all material times Sars’ engagements with TEG were with Mr Bowman. It was stated that Mr Bowman’s mandate had been terminated but that he remained the public officer.
13. The letter accuses Mr Bowman of gross negligence and of having appointed Ms Buitendag, apparently without authority from TEG, to submit tax returns for TEG.
14. There is an express allegation in the founding affidavit that Ms Buitendag was never authorised by TEG to submit returns and that, on 6 September 2022, Mr Yates learned that “ *she had been submitting TEG’s tax returns to SARS.*” An email from Ms Buitendag to Mr Bowman dated 12 March 2015, referring to TEG’s tax matters, appears to bear out Mr Yates’s allegation.
15. An allegation is made in the letter that because supporting documentation was not provided to Sars, Sars treated deposits to bank accounts of TEG as income and it

treated payments as expenses. This led to the alleged incorrect assessments. This seems to be at the heart of the dispute.

16. The letter does not expressly say that the returns were incorrect. The tacit allegation is that Sars made mistakes when treating deposits as income and payments as expenses, apparently because Sars had not been supplied with supporting documentation.

17. The letter states that the relevant supporting documents had been collated by TEG and sent to Mr Bowman so that he could prepare returns.

18. The letter concludes with a request for reduced assessments in terms of section 93(1)(e)(iii) of the Tax Administration Act 28 of 2011 on the basis that the returns were fraudulently submitted by a person not authorised to do so.

19. The relevant part of section 93 reads -

“ Reduced assessments.—(1) SARS may make a reduced assessment if...

(e)

a senior SARS official is satisfied that an assessment was based on -

(iii)

a return fraudulently submitted by a person not authorised by the taxpayer...”

20. On 28 October 2022, Sars declined the request. It did so for the reason that Mr Bowman is, on TEG's own version, the legally appointed public officer and accordingly section 93(1) does not apply.

21. On 8 November 2022, TEG's attorneys wrote to Sars, in effect re-arguing the point of Mr Bowman having not been appointed as public officer of TEG by TEG.

22. On 1 December 2022, TEG's attorneys emailed Sars, referring to complaints made by TEG to regulatory authorities about the conduct of Mr Bowman and Ms

Buitendag. A detailed affidavit by Mr Yates is attached to the email in which affidavit he complains to the regulatory authorities about the conduct of Mr Bowman and Ms Buitendag. Both of these persons appear to have been disciplined by the regulatory authorities.

23. On 23 February 2023, Sars replied, in effect restating its position about Mr Bowman having been the validly appointed public officer of TEG. It seems to be the view of Sars that as Mr Bowman was the public officer it was he who submitted the returns and that he did so duly authorised.

24. TEG relies on four grounds for review. Firstly, the decision was unlawful because Mr Bowman was never appointed as public officer of TEG. Secondly, the decision was based on material errors of law, it being alleged that Sars had expressed the view that any defect in the appointment of Mr Bowman as public officer of TEG was a matter between TEG and Mr Bowman. Thirdly, Sars ignored relevant considerations, it being alleged that Sars declined reduced assessments only because it was of the view that Mr Bowman had been validly appointed as public officer. Fourthly, material errors of fact and procedural unfairness, it being alleged that Sars, having simply decided that Mr Bowman was the public officer, failed to take into account the merits of the request for reduced assessment.

25. The allegation in the founding affidavit that Ms Buitendag was not authorised to submit returns and that she nevertheless did in fact submit returns is not denied by Ms Olivier in the answering affidavit.

26. Regarding the detailed complaints about the conduct of Mr Bowman and Ms Buitendag sent to Ms Olivier on 1 December 2022, Ms Olivier says in her answering affidavit that Sars was not requested to consider the complaint to the regulatory authorities as part of the reconsideration of the refusal to reduce the assessments.

She says that the complaints to the regulatory authorities were therefore not considered relevant to reassessment of the returns. She says that the complaints to the regulatory authorities do not prove either fraudulent submission or submission by an unauthorised person.

27. It is beyond doubt, given the case made out by GET, that as a matter of fact and law Mr Bowman was the public officer validly appointed for GET at all relevant times.

28. A notional taxpayer might, as a fact, appoint or encourage a public officer to submit a fraudulent return but this would be a criminal offence. No person could ever be lawfully authorised to submit a fraudulent return. A return is not fraudulent just because it is submitted by a person who is not the public officer of the taxpayer. At the end of the day, the obligation to furnish correct, timeous returns remains that of the taxpayer.

29. In my view, section 93(1)(e)(iii) has two requirements which must be met by a taxpayer before a senior official at Sars becomes bound to consider reassessment. Firstly, the return must have been fraudulent itself and secondly, it must have been submitted by a person not authorised by the taxpayer to submit returns at all. This second finding follows from what I say in the previous paragraph.

30. Sars gave one reason for declining the request, namely that the returns were submitted by an authorised person. On the evidence before me, particularly the allegation that Ms Buitendag submitted the returns without being authorised by TEG to do so, which allegation is not denied, the reason for the decisions is wrong. Review of the decisions must follow and the matter must go back to Sars for fresh consideration.

31. The evidence supports grounds two, three and four for review, as set out in paragraph 24 above.

32. A word about the decision makers at Sars. While the review succeeds, the decision makers can hardly be blamed for their decisions. Documents were not always placed before them in a clear manner. The significance of Ms Buitendag in the matter, particularly the fact that she filed returns without being authorised by TEG to do so, only crystallized in the founding affidavit. The decision makers can't be blamed for not appreciating facts that became clear only when the founding affidavit was filed.

ORDER

1. The decisions of Sars of 28 October 2022 and 23 February 2023 are reviewed and set aside.
2. The matter is sent back to Sars for decision.
3. The respondent is to pay the applicant's costs, including those of counsel. Scale C applies.



WRIGHT J

Heard 7 October 2026

Delivered 8 October 2026

Appearances

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