

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Case No: 3662/08
Date heard: 09/05/2008
Date of judgment: 13/05/2008

UNREPORTABLE

In the matter between:

PUBLIC SERVICE COMMISSION

Applicant

And

GOBODO FORENSIC & INVESTIGATIVE
ACCOUNTING

1st Respondent

TELKOM SA LTD

2nd Respondent

JUDGMENT

DU PLESSIS J:

The applicant is responsible for the management of the National Anti Corruption Hotline (NACH) on behalf of all state departments. After having called for tenders, the applicant appointed the first respondent to establish and manage the NACH-call centre and to collate data of the NACH. To this end the parties entered into a service level agreement. The contract was for a period of 4 years ending on 31 August 2007.

In terms of the contract the first respondent was to provide to the applicant a specified "toll free number which shall be managed live for 24 hours per day". The specified number was 0800701701. Before the contract

was concluded, the applicant had rented the relevant line from the second respondent. When the contract was concluded, the line was transferred to the name of the first respondent so that it rented the line from the second respondent.

After the contract terminated at the end of August 2007, the first respondent, claiming an entitlement thereto, instructed the second respondent to re-route calls made to the hotline to its (the first respondent's) own telephone numbers. The applicant by way of urgency obtained a *rule nisi* calling upon the respondents to show cause why orders to the effect that the first respondent is not entitled to use the hotline-number and is not entitled to have it re-routed, should not be made. This is the extended return day of the *rule nisi*.

The first respondent indeed contends that it is entitled to the use of the hotline-number and to have it re-routed. The second respondent does not oppose the applicant's application and abides the court's decision. The effect of the first respondent's contention is that, as it rented the relevant telephone line from the second respondent, it has always been and still is entitled to use the line and therefore its number which also is the hotline number. It was one of the first respondent's contractual obligations to make available to the applicant the relevant hotline with its distinctive number. The contract is silent as to what is to happen to the number when the contract is terminated. Having

regard to all the surrounding circumstances and the terms of the parties' contract, there is in my view no doubt that the parties' unexpressed intention was that the number should after termination of the contract still be available for the applicant to use it as the National Anti Corruption Hotline. Any other interpretation will lead to the absurd result that members of the public calling the NACH, will reach not the NACH but the first respondent. To the extent that further motivation might be necessary, it is clear from the evidence that the relevant number as such belongs to the NACH and was made available to the first respondent only for the purpose and duration of the contract between the parties.

There are further aspects that are dealt with in the rule nisi but I have been informed that that has been dealt with between the parties and that the rule in respect thereof need not be confirmed.

The first respondent has filed a counter application that, apart from relief relating to the NACH, seeks an order interdicting the applicant from utilizing the first respondent's intellectual property in connection with the NACH. The applicant concedes that it is not entitled to use such intellectual property, but denies that it does so or intends to do so.

The first respondent seeks to sustain the interdict it seeks with a terse allegation that "with regard to IP, the applicant continues to unlawfully use the

property of the First Respondent, e.g. the domain address and the website developed by the First Respondent." The applicant, as I have pointed out, denies that it uses the relevant intellectual property. The first respondent's allegation is patently insufficient to base on it a finding that it has proved to the required degree, the requirements for an interim interdict, which is what it seeks.

The parties were both represented by two counsel and neither side argued that the other, if successful, should not be ordered to pay the costs of two counsel.

In the result the following order is made:

1. Paragraphs 1.1, 1.2 and 1.5 of the rule nisi issued on 26 January 2008 are confirmed.
2. The first respondent's counter application is dismissed.
3. The first respondent is ordered to pay the applicant's costs which shall include the costs of two counsel.

B. R. DU PLESSIS
JUDGE OF THE HIGH COURT

Applicants' Legal Representation:

Adv: N. Cassim, SC & S.D.K. Motsiri

The State Attorney (012 309 1501, Ref: Ms. A.M. Masodi (0280/08/Z1/PM))

Respondents' Legal Representation:

Adv: A.C. Ferreira, se & M.J. Botha

MSMM (012 322 0158 Ref: Mr. Maluleke/SSM/G0026/C10G26)