



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: No  
(3) REVISED

20 AUGUST 2024

DATE

SIGNATURE

**CASE NO: 019199-2024**

In the matter between:

**DEPHETOGO TRADING CC**

Applicant

**REGISTRATION NO 2007/008821/23**

And

**MINISTER RESPONSIBLE FOR THE DEPARTMENT  
OF FORESTRY, FISHERIES AND ENVIRONMENT  
BARBARA DALLAS CREECY N.O**

First Respondent

This judgment is issued by the Judges whose names are reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Senior Judge's secretary. The date of this judgment is deemed to be 20 August 2024.

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**JUDGMENT**

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COLLIS J

INTRODUCTION

1] The applicant, on an urgent basis seeks inter alia declaratory and interdictory relief against the Minister responsible for the Department of Forestry, Fisheries & The Environment (*'the Minister'*) and the second respondent, the Department of Forestry, Fisheries & The Environment (*'the DFFE'*).<sup>1</sup>

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<sup>1</sup> Notice of Motion [*'NoM'*], prayers 1 to, CaseLines pages [*'p'* or *'pp'*] (sic):

- "1. Dispensing with the normal rules contained in Rule 6 and Practice Directives of the above Honourable Court to allow this application to be heard as one as a matter of urgency.*
- 2. For an order declaring that the purported cancellation by the Second Respondent of all contracts entered into between the Applicant and the Second Respondent is null and void, invalid and of no force or effect.*
- 3. For an order ordering the Second Respondent, within a period of five days from the date of issue of an order to this effect to provide the Applicant's*

2] The relief sought is as a result of the cancellation of a number of security service contracts entered into between the applicant and second respondent towards the end of 2021.

3] The parties requested this Court first to determine the urgency of the application and thereafter whether the requirements for a declaratory relief have been met, together with all the ancillary relief.

## BACKGROUND

4] On 15 September 2021, the applicant and the DFFE entered into 19 agreements with exactly the same terms and conditions in terms of which the applicant had to render guarding and security services to the DFFE at certain locations in the agreed regions.<sup>2</sup>

5] The applicant it is alleged, was in breach of its obligations in terms of the 19 agreements <sup>3</sup> in respect of which the DFFE imposed penalties for certain of the

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*attorneys with the names of three mediators as specified in terms of clause 8 of the service agreements entered into between the Applicant and the Second Respondent.*

- 4. For an order that the Respondents may not cancel any agreements for the provision of security services between the Applicant and the Second Respondent, pending the finalisation of the mediation process.*
- 5. Alternatively to prayer 4, that the Second Respondent, prior to cancelling any of the service agreements between it and the Applicant, provide **14 (fourteen)** days calendar notice specifying a breach and demanding rectification of the said breach, failing which the matter then must be referred to mediation in terms of the prayers above.*
- 6. That the Respondents be ordered to pay the costs of this application.*
- 7. Further and/or alternative relief."*

<sup>2</sup> FA, paras 6 to 10, p 03-3 to 03-5 & AA, paras 3.11; 4.1, p 07-8 to 07-14.

<sup>3</sup> FA, paras 17 to 21, p 03-8 to 03-9 & AA, para 6.1.2, 6.1.6 to 6.1.50, p 07-17 - 07-28

applicant's breaches of contract.<sup>4</sup> On 29 December 2023, the DFFE then sent a cancellation letter to the applicant.<sup>5</sup>

5] The respondents contend that the application is not urgent and that it stands to be dismissed, alternatively struck from the roll with a punitive cost order as it does not meet the requirements for urgency.

6] In its founding affidavit the urgency of the application is addressed in paragraph 72 onwards. Therein, the deponent sets out that the respondents have stopped making payments of the applicant's invoices and is in arrear in an amount of R8 888 000.00. Further that these invoices which remains unpaid is in respect of services already rendered and salaries expended to enable it to render these services.

7] In addition, the deponent sets out that a total number of 395 security officers and a further 8 supervisors will be rendered jobless if these contracts are terminated which could also lead to community unrest.

8] Furthermore, if the applicant employees were to leave the various sites, the respondents' assets will be left unguarded and will be subject to vandalism and theft.

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<sup>4</sup> FA, para 21, p 03-9 & AA, para 6.1.2; 14.4 pp 07-17

<sup>5</sup> FA, para 30, p 03-12 read with Annexure FA7, p 03-120 to 03-121 & AA, para 8.2, p 07-33 & para 16.1, p 07-54

9] The respondent contests the urgency of the application. In its answering affidavit it alleges that the DFFE does not have to make any payments to the applicant due to the improprieties in the procurement of the applicant's services<sup>6</sup> and/or the cancellation of the 19 agreements.<sup>7</sup>

10] In addition, the respondents set out that the applicant fails to take the court into its confidence and state the reasons as to why the DFFE has ceased to make payments to the applicant.

11] Furthermore, if the applicant is entitled to any payment, it will be able to procure substantial redress at the hearing in due course by the issuing of summons for payment and granting such relief on motion will not expedite payment.

## URGENCY

12] An urgent application pertains to the abridgement of times prescribed by the rules and the departure from established filing and sitting times of the Court.<sup>8</sup>

13] In every affidavit filed in support of any urgent application, the applicant

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<sup>6</sup> Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others 2014 (4) SA 179 (CC) [71] ['the Allpay-matter']; Central Energy Fund SOC Ltd and Another v Venus Rays Trade (Pty) Ltd and Others [2022] 2 All SA 626 (SCA) [38] ['the Central-matter'].

<sup>7</sup> Thomas Construction (Pty) Ltd (in Liquidation) v Grafton Furniture Manufacturers (Pty) Ltd 1988 (2) SA 546 (A); Naka Diamond Mining (Pty) Ltd v Klopper & Another (277/2021) [2022] ZASCA (17 June 2022) [23].

<sup>8</sup> Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W) 136H.

must set forth explicitly the circumstances which are averred that render the matter urgent, and the reasons why the applicant claims the applicant could not be afforded substantial redress at a hearing in due course.<sup>9</sup>

14] In the present matter it is common cause that this urgent application was first issued and served on 20 February 2024,<sup>10</sup> as it was clear from the onset that the DFFE was not going to allow the applicants on the premises and that it was not going to mediate with them.

15] It is common cause the application was issued after the cancellation letter was sent to the applicant on 29 December 2023 and its written response received, some two days later on 31 December 2023. In the said letter the applicant first threatened to institute urgent proceedings, if the DFFE did not permit the applicant to continue to render its services.<sup>11</sup>

16] In terms of the Rule 6(12) an applicant is required to explicitly set for the circumstances which render the matter urgent and is further required to satisfactorily explain why it nonetheless waited for nearly two months before it instituted proceedings. This the applicant has failed to do.

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<sup>9</sup> Rule 6 (12) (b).

<sup>10</sup> AA, para 9.26.4 to 9.26.5, p 07-41.

<sup>11</sup> FA, Annexure FA 8, para 8: "Should you not permit our clients to continue to render their services pending the above our client will apply for appropriate urgent relief against the Department" & AA, para 9.26.4 to 9.26.5, p 07-41.

17] From its founding papers the applicant seeks damages for terminated contracts. This relief the applicant can obtain in the form of substantial redress in the near future for monies allegedly due to it, and any loss of profits for the balance of the outstanding contractual period, as set out in its letter dated 11 January 2024.<sup>12</sup> Differently put, if the application is not entertained in the Urgent Court, the applicant will not be without recourse.

18] The applicant further avers that if the security contracts were to be terminated, and its staff required to leave the individual sites of the respondent, that the possibility exists that the applicant's security officers and supervisors will be rendered jobless which will lead to community unrest and violence.<sup>13</sup> The Applicant contends that its employees are vulnerable security guards from all over the country and especially rendering services in remote areas of the country. That these employees will suffer not only irreparable harm should the relief not be granted, but may in all likelihood not be able to have any income in the foreseeable future.

19] The applicant, save for making bold averments of community unrest, provides no substantiation or objective evidence to support same. Even if it did, this per se, does not cause the application to be urgent.<sup>14</sup>

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<sup>12</sup> FA, Annexure FA11, p 03-133 - 03-139, p 01-137 at para 30: "Our client reserves its rights, however, to cancel the contract on appropriate notice to yourselves and to claim damages in the form of outstanding monies due, and loss of profits for the balance of the outstanding contractual period" (own emphasis).

<sup>13</sup> FA, para 75-76, p 03-32.

<sup>14</sup> AA, para 9.26.7 (f)-(g) (i-xi), p 07-43 - 07-45.

20] This Court further, has also not been taken into its confidence as to why the staff of the applicant cannot be employed elsewhere. No evidence has likewise been presented before this Court.

21] Given the exposition of what has been set out above, this Court is not convince that the application should be enrolled and ventilated in the Urgent Court and that the applicant will not be afforded substantial redress at the hearing in due course.

#### COSTS

22] The respondent in respect of costs, requested this Court that in the event that this Court does not consider this application urgent to struck the application and to grant a punitive costs order in its favour.

23] I am of the opinion that a punitive costs order is not warranted under the circumstances.

#### ORDER

24] Consequently, the following order is made:

24.1 The application is struck from the Urgent Roll, for lack of urgency;

24.2 The applicant is to pay the costs of the respondents on a part and party scale, including the costs of two counsel where so employed.





C. COLLIS

JUDGE OF THE HIGH COURT

GAUTENG DIVISION PRETORIA

APPEARANCES:

Counsel for the Applicant: Adv. M Snyman SC

Instructed By: M J Hood and Associates

Counsel for the Respondents: Adv. B D Du Preez SC

Adv. P Bindza

Instructed By: Office of the State Attorney, Pretoria

Date of Hearing: 13 March 2024

Date of Judgment: 20 August 2024







