



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- | | | |
|-----|------------------------------|----------------|
| (1) | REPORTABLE: | |
| (2) | OF INTEREST TO OTHER JUDGES: | |
| (3) | REVISED: | |
| (4) | Signature: | Date: 03/02/25 |

CASE NO.: 2024/149484

In the matter between:

FRESHMINDS MARKETING AND COMMUNICATIONS CC

Applicant

and

VODACOM GROUP LIMITED

Respondent

JUDGMENT

Kumalo J

INTRODUCTION

- [1]. The applicant in this matter seeks urgent interim relief to restrain and interdict the respondent from continuing or implementing any request for proposals for event management services that overlap with those governed by a contract entered between the parties dated 1 October 2024.

- [2]. The above stated order is sought pending the finalization of legal proceedings yet to be instituted by the applicant within 30 days of the order. The applicant further prays for an order that the respondent comply with the terms of the October 2024 contract including ensuring that applicant's uninterrupted performance of the contract it services.
- [3]. The application is opposed on several grounds. The respondent contended that the applicant has neither demonstrated urgency nor shown that it cannot obtain substantial redress in the ordinary course. It is further argued that if there is any urgency in the matter, it is self-created.
- [4]. It is further argued that the applicant has failed to establish a prima facie right, even one open to doubt. The agreement between parties grants the respondent an unfettered discretion to use the applicant's services and when to do so.
- [5]. It is further argued that there is no evidence of harm nor reasonable apprehension thereof and that the applicant has alternative remedies in contract, including damages, if any.
- [6]. The factual matrix of this matter is that on 8 September 2017, By Design Africa Group ("By Design") concluded what is termed Vodafone Procurement Agreement to provide event management services to Vodacom Group Limited. On 16 July 2019, By Design, the applicant and respondent concluded

a novation agreement under which the applicant acquired By Design's business as the supplier and the respondent agreed to continue procuring services from the applicant.

- [7]. On 17 October 2024, the parties to this matter concluded a separate agreement referred to as the Agency Adherence Agreement, through which the respondent would from time to time procure event management services on the same terms as contained in the Vodafone Procurement Agreement.
- [8]. I must hasten to state that a proper reading of the Vodafone Procurement Agreement does not guarantee that the services required by Vodacom Group in this regard would automatically be sourced from the service provider. Vodacom, it would appear would issue a purchase order for any services and parties would have to agree specifically on the services to be rendered.
- [9]. It is alleged that early November 2024, the respondent verbally informed the director or employee of the applicant of its decision to embark on an Request for Proposals ("RFP") process due to a change in its business model and on 27 November 2024, the applicant was formally notified in writing about the process. Which was scheduled to begin in January 2025 with potential date for commencement for the services around April 2025.
- [10]. Further additional details were provided to the applicant on 2 December 2024 regarding the RFP process, confirming further that it encompasses all types of event management services.

- [11]. On 9 December 2024, the applicant was informed that, should it wish to participate in the RFP process, a declaration of interest was to be submitted by the 20th of December 2024.
- [12]. On 13 December 2024, the applicant demanded the respondent to withdraw the RFP process, failing which, it would seek urgent relief.
- [13]. Urgent applications are regulated by Rule 6(12) of the Uniform Rules of this Court.
- [14]. I do not intend to regurgitate the rule as I believe practitioners of this Court are familiar with it. Rule 6(12), in essence, ensures that justice is not delayed in situations where waiting for the regular legal process could lead to dire consequences. It affords the court the ability to act swiftly and the flexibility to protect parties' rights.
- [15]. The test for urgency has always been whether the applicant can obtain substantial redress in due course. The applicant must sufficiently explain why s/he cannot be afforded substantial redress at a hearing in due course and make out a case in this regard.
- [16]. Thus, before a court can consider the merits in an urgent application, it must first consider whether the application is indeed urgent that it must be dealt with in the urgent court roll. Where the applicant fails in convincing the court that it

will not be afforded substantial redress at ¹ a hearing in due course, the matter ought to be struck off from the roll. This would enable the applicant to set the matter down again on proper notice and compliance.

[17]. Where the facts of the matter indicate that the urgency is self-created, the application would not be entertained and would be struck off the roll.

[18]. In *National Union of Metalworkers of South Africa v Bumatech Calcium Aluminates*², the Court held that-

“Urgency must not be self-created by the Applicant, as a consequence of the Applicant not having brought the application at the first available opportunity. In other words, the immediate the reaction by the litigant to remedy the situation by way of instituting litigation, the better it is for establishing urgency. But the longer it takes from the date of the event giving rise to the proceedings, the more urgency is diminished. In short, the applicant must come to court immediately, or risk failing on urgency. In Collins t/a Waterkloof Farm v Bernickow NO & Another the court held that-

If the applicants seek this court to come to its assistance, it must come to the court at the very first opportunity. It cannot stand back and do nothing and some days later seek the court’s assistance as a matter of urgency.”

¹ *SARS v Hawker Air Services (Pty) Ltd* 2006 (4) SA 292 (SCA).

² (2016) 37 ILJ 2862 (LC).

- [19]. *In casu*, the applicant was advised as early as 4 November 2024 of the respondent's intentions to embark on an RFP process albeit informally. It was formally advised of the plan on 27 November 2024. This was the first opportune moment for the applicant to launch its application, if indeed it believed that it had a case against the respondent's conduct.
- [20]. It only set the matter down for a hearing on 28 January 2025 when it could have done so early of mid December 2024. No cogent explanation has been provided for the delay.
- [21]. Further, it must be borne in mind that the applicant seeks an interim interdict pending it instituting some proceedings against the respondent in some near future.
- [22]. Having regard to the facts of this matter and when the applicant became aware of the respondent's intended actions that it believes infringed on its right, I am of the view that there has been undue delay, which delay has not been sufficiently explained to this Court.
- [23]. There is no urgency in this matter and if there is any, it would have been self-created.
- [24]. In the circumstances, the following order is made:
1. The applicant's application is struck off the roll for lack of urgency; and

2. The applicant is to pay the costs on Scale "C".



MP Kumalo

Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicant: Adv JP Slabbert

Instructed by: Mafona Ramothwala Inc

For the respondents: Adv T Mathopo

Instructed by: Mathopo Moshimane Mulangaphuma Inc

Date of the hearing: 28 January 2025

Date of judgment: 03 February 2025