IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, MTHATHA)

Case No: 2047/2024
Heard: 1505/2024

Delivered: 30/5/2024

In the matter between:

NINJA PROTECTION SERVICES & SECURITY

(PSIRA REG. NO. 2261662) **1ST APPLICANT**

THAMSANQA STEVEN HAKO

(PSIRA REG. NO. 2074755) **2ND APPLICANT**

and

PRIVATE SECURITY REGULATORY AUTHORITY **RESPONDENT**

This judgment was handed down electronically by circulation to the parties' legal representatives via e-mail. The date and time for hand-down is deemed to be 09H30 on 30 May 2024.

REASONS FOR THE ORDER

MJALI J

1. On 15 May 2024 immediately after hearing the matter I gave an order dismissing the application with costs on the scale C. I indicated that the reasons would follow. This judgment is aimed at providing reasons for that order.

2. The applicant approached this court on an urgency basis seeking an order suspending the decision of the respondent to immediately suspend the registration of the first respondent and second applicant with the respondent, pending an appeal to be lodged by the applicants in terms of section 30(1) of the Private Security Regulation Act No.56 of 2001 as well as the review process that was to be launched. The applicants also sought an order authorising them to operate as security service providers pending the finalisation of the appeal. They also sought a punitive cost order against the respondent.

3. The first applicant is a security company registered in terms of the laws of South Africa and provides security predominantly in the area of the Eastern Cape. The second applicant is the Director of the first applicant. The respondent is the private security regulatory body established in terms of the Private Regulatory Security Industry Regulation Act No. 56 of 2001(The PSIRA Act).

4. Following upon the information it had at its disposal the respondent addressed a letter to the applicants on 15 March 2024, calling upon them to submit written representations answering to the allegations and stating reasons as to why their registration as service provider should not be suspended. Upon consideration of the representations dated 4 April 2024, the respondent nevertheless decided to suspend the registration of the applicants pending the outcome of the Code of Conduct Enquiry. A letter in this regard was penned to the applicants on 25 April 2024. It is not in dispute that the applicants' attention to the letter was

drawn when it was called to attend to the local offices of the respondent and served with the letter of suspension on 10 May 2024.

5. The aforesaid letter of suspension informs the applicants inter alia that following the consideration of their representations by the Industry's Regulatory Sub-Committee, it was the view of the committee that the facts presented fall within the ambit of the provisions of section 26(1) of the PSIRA Act. That section empowers the respondent to suspend the registration of the security service provider pending the conclusion of an investigation or enquiry by the authority into the alleged improper conduct. Further that it was concluded that it would be in the best interests of the Private Security industry to suspend their registration as security service provider. The applicants were thus required in terms of section 26(6) of the PSIRA Act to return to the Authority the certificate of registration that was issued to them in terms of section 25 of the PSIRA Act. Importantly, the applicants were informed of the right to appeal the decision to suspend in terms of section 30(1), the time within which to launch the appeal as well as the address to which the appeal were to be submitted.

6. This application is a sequel to that suspension of the operating licence of the first and second applicants pending the envisaged investigation into the alleged improper conduct by the applicants.

7. The application is opposed on the grounds that the applicants have not made a case for the relief sought. In this regard the respondent argued that the applicants have not pleaded any case for either interim or final relief. No prima facie or clear right has been pleaded in the applicants' founding affidavit.

8. Considering the fact that the applicants' relationship with the first respondent is governed by the PSIRA Act and that the applicants are subject to the provisions of that Act in terms of which the respondent exercised its authority, it is difficult, if at all possible, for the applicants to claim any right albeit prima facie or clear, to have the decisions taken in terms the Act suspended. That is particularly so when one considers that all the challenges put up by the applicants on the validity of the decision taken or procedural fairness namely, that it is unreasonable, irrational, or unjustifiable. Further it constitutes an unlawful act, violates the constitutional rights of NINJA's clients to private security and is in conflict with the PSIRA's legislative mandate, simply do not hold water.

9. On the issue of the rationality or otherwise of the decision to suspend the registration of the applicants, it is crucial to bear in mind that the respondent is the registering authority with a primary objective of regulating the private security industry and to exercise effective control over the practice and occupation of security service providers. It derives that mandate from the PSIRA Act. The applicants are as described in paragraph 3 of this judgment registered with the respondent and subject to the PSIRA Act which governs their relationship with the respondent as well as the manner of conducting their business. The respondent had received information pertaining to allegations of conduct by the applicants which in its view is in contravention of the provisions of the PSIRA Act. The applicants' registration was suspended as a precautionary measure pursuant to them being afforded an opportunity to make representations to influence that decision. Quoting from the decision of the Constitutional Court in Long v South African Breweries[1], that "*where the*

[1] (CCT61/18) [2019 ZACC 7;2019 (5) BCLR 609 (CC);2019 6 BLLR515(CC) (19 February 2019) para 24.

suspension is precautionary and not punitive, there was no requirement to afford ……..an opportunity to make representations", the respondent contends that there was no obligation on it to request for representations from the applicants. Bearing all the aforesaid facts, the argument that the decision to suspend the registration of the applicants was irrational has no basis and must fail. On the same considerations, the same goes for the argument that the decision to suspend the registration was unreasonable and unjustifiable.

10. As regards the argument that the decision to immediately suspend the registration was unlawful, the applicants' only basis thereof is that it lacks practicality by not taking account of the many clients that would be without security services. It is not in dispute that the PSIRA Act makes provision to suspend the registration of the service provider under certain circumstances and further that the circumstances under which the impugned decision was taken fall squarely within the provisions of the Act. Further, it is not in dispute that the respondent acted in terms of that Act in this case. There is no challenge to the validity of the Act itself. The return of the certificate of registration is not a decision that was taken by the respondent but is a consequence provided for by the Act itself. Regard being had to the above facts, the argument that the decision is unlawful must fail. On the same basis the same can be said about the argument that the decision is in contravention of the PSIRA Act.

11. That being the case it is unclear on what the basis the appeal or review foreshadowed in paragraph 2 of their Notice of Motion can be launched. The fact that the applicants' challenge on the lawfulness of the decision to suspend has flopped, is as good as no challenge to the lawfulness and is fatal to the

application[2].

12. There are yet other hurdles that compound the problem for the applicants. The first one is that this application was launched without taking advantage of the appeal process that is provided for in the PSIRA Act. In the very letter of suspension, the applicants' attention was drawn to the availability of that process as well as the procedure to be followed should the applicants wish to take that route. In the applicants' own case that route has not been followed. As such the applicants do have an adequate alternative remedy in terms of the provisions of the PSIRA Act to have the suspension lifted. That would be an adequate redress considering the relief sought in the notice of motion.

13. In the view that I take of this matter, I do not consider it necessary to address other issues as the application falls flat on the issues already addressed in this judgment.

14. On the issue of costs. The general rule is that costs follow the event. I find no reason to deviate from the general rule. The applicants brought this ill-conceived application on an urgency basis without properly following the internal processes. This kind of behaviour is something that our court should frown upon and show their disapproval by means of punitive cost orders. The applicants were warned very early in the answering affidavit of this fact and that a punitive cost order will be sought yet they persisted with the application. There is no reason that the respondent in the circumstances of this matter should be left out of pocket and not be able to fully recover it fees.

15. In the result the following order shall issue.

[2] Democratic Alliance and Another v Public Protector of South Africa and Others (CCT252/22; CCT299/22[2023] ZACC 25(13July 2023) para103.

The application is dismissed with costs on the scale C.

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GNZ MJALI

JUDGE OF THE HIGH COURT.

On behalf of the applicant	Adv. Matera
Instructed by	Notyesi Attorneys
On behalf of the respondent	Adv. Mvubu
Instructed by	Seanego Incorporated