



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 6568/2023

In the matter between:

UNITRADE 1047 (PTY) LTD T/A ISIDINGO SECURITY Applicant

and

METSIMAHOLO LOCAL MUNICIPALITY First Respondent

FUSI JOHN MOTLOUNG Second Respondent

PROMPTIQE TRADING 7 CC t/a WHITE LEOPARD SECURITY Third Respondent

CORAM: LOUBSER, J

HEARD ON: 13 DECEMBER 2023

DELIVERED ON: 14 DECEMBER 2023

[1] This is an application that came before this court on an urgent basis. It is common cause that the Applicant has a service level agreement with the First Respondent, and that the First Respondent had summarily terminated that agreement on 1 December 2023. In terms of the agreement, the Applicant had provided security services to the First Respondent. When the agreement was terminated, the First Respondent awarded the security services in question to the Third Respondent.

[2] In the notice of motion, which consists of a part A and a part B, the Applicant moves in part A for certain urgent relief pending the final determination of a

review application, the prayers of which are contained in part B. This court is therefore only seized with the determination of part A, although the Applicant's prospects of success in the later review proceedings stand to be considered in the determination of part A.

[3] On review the Applicant moves for the review and setting aside of the First Respondent's decision to terminate the agreement on 1 December 2023, to award a contract to the Third Respondent, and any service level agreement that may be concluded between the First and Third Respondents. Pending the outcome of this review, the Applicant moves for certain urgent relief, *inter alia* that the First Respondent be interdicted from taking any further steps towards the termination of the agreement, from implementing further effect to the award made to the Third Respondent and from concluding any contract with the Third Respondent for the provision of security services.

[4] Unlike most urgent applications where legal intricacies play a large part in the determination thereof, practical considerations relating to the urgent relief sought in the present application are of paramount importance. In this respect clause 4.1 of the agreement stipulates that the agreement shall commence on 1 January 2023, renewable annually for a period of three years up to 31 December 2025. The agreement does not set out the circumstances under which the agreement may or may not be renewed annually. The fact remains that the First Respondent may elect not to renew the agreement in two weeks' time. In my view, this is what will happen in all probability, since it had already decided to terminate the agreement on 1 December 2023.

[5] Assuming for the moment that the Applicant will be successful in its review application for the setting aside of the termination of the agreement on 1 December 2023, such setting aside will have no influence on the likely decision of the First Respondent at the end of December 2023 not to renew the agreement. The setting aside will therefore only have a practical impact for a very limited period of time. At the same time, if the urgent relief is granted, such relief will not extend beyond the end of December 2023. It will

only be effective for a period of some two weeks, which period includes the coming festive season.

[6] This outcome has a serious effect on the urgency of the application. It speaks for itself that the relief sought in part A can never be urgent if it would in all probability only be effective for two weeks. I therefore come to the conclusion that the Applicant has not shown urgency. Should it suffer any damages during the two weeks leading up to 1 January 2024, it may claim such damages from the First Respondent, if it elects to do so. In any event, the Court cannot interdict the First Respondent from taking any further steps towards termination of the agreement, in view of the provisions of clause 4.1.

[7] The following order is made:

1. The application is removed from the roll for want of urgency.
2. Applicant to pay the wasted costs occasioned by the removal.

P.J. LOUBSER, J

On behalf of the applicant:
Instructed by:

Adv. C.D. Pienaar
Woodhead Bigby Inc, La Lucia
c/o Lovius Block Inc., Bloemfontein

On behalf of the first and second respondents:
Instructed by:

Adv. S.J. van Rensburg SC
Ntleru Inc. Attorneys, Pretoria
c/o Amade and Company Inc.,
Bloemfontein