IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

Case No: 2022/2958

REPORTABLE: No
OF INTEREST TO OTHER JUDGES: No
REVISED: NO

21 June 2022 ..

In the matter between:

INZALO ENTERPRISE MANAGEMENT SYSTEMS (PTY) LTD **Applicant**

nd

MOGALE CITY LOCAL MUNICIPALITY **First Respondent**

THE MUNICIPAL MANAGER **Second Respondent**

Summary: Urgent application- applicant seeking an urgent interim interdict against Mogale City Municipality. The order sought to restraining the Municipality from implementing and giving effect to the tender or appointing one of the companies as a service provider for the Municipality's financial management system pending a review. Evidence pointing to the Municipality failing, to comply with the Constitution, the legislative framework and its procurement policy. The principles governing urgency and interim interdict restated.

Order

1. *The forms, time periods and service prescribed by the Rules of this Honourable Court are dispensed with and it is directed that the matter be heard and dealt with as one of urgency in terms of Uniform Rule 6(12);*

2. *Interdicting and restraining:*

2.1. *The First Respondent is interdicted and restrained from implementing and giving effect in any manner whatsoever to:*

2.1.1. *the award of a tender under reference number RFP COR(ICT) 05/2021 in respect of the provision of a mSCOA-compliant financial management system ("mSCOA financial management system") for a period of 36 months ("the Tender"); or*

2.1.2. *the appointment of any service provider for the supply of a mSCOA financial management systems or any component of a mSCOA financial management system;*

2.1.3. *Hereinafter referred to as "the Impugned Decision".*

2.2. *The appointed service provider/s as contemplated in paragraph 2.1 above are interdicted and restrained from carrying out any work and/or continuing with any work in terms of the award of the tender and/or any contracts*

which may have been concluded between the First Respondent and the said service provider/s as pertaining to a mSCOA-compliant financial system, or the supply of any component thereof.

3. *The interim relief contained in paragraph 2 above is granted pending:*

3.1. *The institution and final determination of the Applicant's internal remedies in respect of the Impugned Decision within 15 days of receipt of the items set out in paragraph 4 and 5 below; and*

3.2. *The institution and final determination of the Applicant's application to review and set aside the Impugned Decision to be instituted within 15 days of the final determination of the Applicant's internal remedies alternatively within 15 days of receipt of the items set out in paragraph 4 and 5 below.*

4. *The First and Second Respondents are directed to furnish to the Applicant within 10 days of this Court order the following documents in respect of the Impugned Decision:-*

4.1. *The First Respondent's written reasons for the Impugned Decision ("**The Written Reasons**");*

4.2. *The First Respondent's notice of cancellation in respect of RPF CORP(ICT) 05/2021;*

4.3. *The First Respondent's record of decision in respect of the Impugned Decision including but not limited to the reports, meeting agendas, attendance registers, scoring sheets,*

minutes and the like of the following committees:-

4.3.1. *the First Respondent's bid steering committee ("**BSC**");*

4.3.2. *the First Respondent's bid evaluation committee ("**BEC**"); and*

4.3.3. *the First Respondent's bid adjudication committee ("**BAC**").*

4.4. *Proof of the First Respondent's compliance with its state procurement obligations including but not limited to proof of publishing notices in respect of the Impugned Decision on its website and the eTender Publication Portal;*

4.5. *Proof of the First Respondent's compliance with MSCOA obligations in terms of the numerous directives issued by the National Treasury in respect of the appointment and replacement of the Municipality's financial management system and service provider.*

5. *In the event that the First Respondent appointed the service provider in terms of some other procurement process including but not limited to: Regulation 32 or 36 of the Supply Chain Management Regulations, the First Respondent is ordered to provide the following information in respect of the Impugned Decision:-*

5.1. *A copy of the letter sent to the National and/or Provincial Treasury setting out the reasons for the deviation;*

5.2. *A copy of the response received from the National and/or Provincial Treasury;*

5.3. *The bid evaluation committee appointment letters, meeting agenda, report and minutes;*

5.4. *The bid adjudication committee appointment letters, meeting agenda, report and minutes;*

5.5. *The Municipality's written reasons for its decision to appoint the service provider;*

5.6. *The service provider's bid and/or quotation; and*

5.7. *The record of the decision and the First Respondent's written reasons for the Decision ("**the Written Reasons**"), including but not limited to:-*

5.7.1. *proof that the First Respondent published the Notice of Intention to Award (i.e. successful preferred bidder) on the eTender Publication Portal within 7 days of the Impugned Decision;*

5.7.2. *proof that the First Respondent published the Notice of Final Award (i.e. success bidder) on the eTender Publication Portal within 7 days of the Impugned Decision;*

5.7.3. *proof that the First Respondent published the Notice of Unsuccessful Bidder on the eTender Publication Portal within 7 days of the Impugned Decision;*

5.7.4. *proof that the Notice of Intention to Award (i.e. preferred bidder) was published on its website;*

5.7.5. *proof that the First Respondent published the Notice of Final Award (i.e. success bidder) on its website;*

5.7.6. *proof that the First Respondent published the Service Level Agreement concluded between the First Respondent and service provider on its website timeously;*

5.7.7. *proof that the First Respondent conducted a due diligence in terms of the National Treasury's Circular No.6 of the MFMA;*

5.7.8. *proof that the First Respondent obtained the approval and/or commentary of the Provincial Treasury or the National Treasury in terms of National Treasury's Circular No.6 of the MFMA;*

5.7.9. *proof that the First Respondent obtained the approval of its council and its budget in terms of National Treasury's Circular No.6 of the MFMA;*

5.7.10. *bid adjudication and bid evaluation reports and the First Respondent's Written Reasons (for both its decision for the purported award, its failure*

to cancel the Invalid Tender and its decision to appoint a service provider by means of a deviation).

6. *The relief sought in paragraph 2 above will lapse in the event of the Applicant failing to exhaust its internal remedies as set out in paragraph 3.1 above or to bring a review application as set out in paragraph 3.2 above.*

7. *The First and Second Respondents are directed, jointly and severally, the one paying the other to be absolved pro tanto from liability, to pay the Applicant's costs.*

8. *The Applicant may, if it so wish, bring its review application referred to in paragraph 3.2 above on these papers duly supplemented, as and where it may be necessary.*

REASONS FOR THE ORDER

MOLAHLEHI J

[1] The purpose of this judgment is to provide the reasons for the above order made on 14 June 2022. The order was made pursuant the urgent application in which the applicant sought an interim order restraining the respondent, Mogale City Municipality (the municipality), from implementing and giving effect to the tender under RFP COR (ICT) 05/2021 or appointing a company known as SOLVEM (Pty) Ltd (SOLVEM) as a service provider for its financial management system. The relief is sought pending either

the exhaustion of the internal remedies or the review of the decision to appoint (the impugned decision) SOLVEM to provide the services in the financial management system.

[2] The applicant further sought a mandamus directing the municipality to provide it with the following documents:

“51.1. A notice of cancellation in respect of RPF CORP(ICT) 05/2021;

51.2. The record of the decision including but not limited to the reports, meeting Agendas, minutes and appointment letters of the following committees:

51.2.1. The Municipality's bid steering committee (mBSC");

51.2.2. The Municipality's bid evaluation committee ("BEC"); and

51.2,3. The municipality's bid adjudication committee(mBAC)."

[3] The applicant further sought written reasons from the municipality for the impugned decision. It also required the time frame provided for in section 5 read with section 9 of Promotion of Administration of Justice Act 3 of 2000 (PAJA) be truncated. The applicant also demanded proof of compliance with MSCOA obligations and the numerous directives issued by the National Treasury regarding the appointment and replacement of the municipality's financial management system and the appointment of SOLVEM by the municipality. The MSCOA directives are specific to the tender's nature for financial management systems.

[4] As will appear below, the municipality contends that SOLVEM was never awarded the tender, which was advertised in the second bid; instead, it was issued a

contract through the deviation process. For this reason, the applicant sought the following documents:

"53.1. A copy of the letter sent to the National and /or provincial Treasury setting out the reasons for the deviation;

53.2. A copy of the response received from the National and/or Provincial Treasury;

53.3. The Bid Evaluation Committee Appointment letters, Meeting Agenda, Report and Minutes;

53.4. The Bid Adjudication Committee Appointment letter, Meeting Auditor General's Report and Minutes; and

53.5. The Municipality's written reasons for its decision to appoint the service provider;

53.6. The services providers bid and/or quotation; and

53.7. The record of the decision and the municipality's written reasons for the decision ("The Written Reasons")."

[5] The dispute between the parties arose following an invitation to bid for a tender issued on 1 April 2021 by the municipality. In the bid, the municipality advertised a Request for Proposal for the Supply, Delivery, Support, and maintenance of an Integrated financial system that complies with the municipal standard chart of accounts (MSCOA) for thirty-six months. The bid expired on 5 August 2021, the municipality having not identified a successful bidder. It then extended the bid to 3 November 2021.

[6] It is common cause, or at least not disputed, that the applicant submitted its bid to the respondent on 7 May 2021, running into eight hundred pages. The applicant is apparently one of the thirteen bidders that responded to the bid.

[7] Following the expiry of the second bid's validity period, the applicant addressed a letter to the municipality demanding that a notice of cancellation of the bid be issued. A further letter was addressed to the municipality on 16 May 2022, in which the applicant stated that it had come to its attention that the municipality had posted on its website that it was in the process of "migrating to the new financial management system." This made the applicant suspicious that there may be some irregularity concerning the tender. More importantly, the letter called on the municipality to indicate why the other bidders were not informed of a successful bidder.

[8] The applicant addressed another letter to the municipality on 19 May 2022, demanding copies of the bid adjudication committee report and the reasons for the awarding of the tender to one of the bidders. The applicant also filed a notice for the request for information in terms of the PAJA. In addition, the applicant requested the municipality to agree to the reduced time frames stated in section 5 of PAJA from ninety to three days. The request was that the municipality should, within that period, provide the applicant with written reasons. The municipality did not comply with the time frame but requested an extension of the time. After that, the applicant contacted the municipality telephonically on 26 May 2022, during which conversation the municipality informed the applicant that it was not aware of the awarding of the tender.

[9] The municipality opposed the application based on lack of urgency and contended in particular that the consequences of granting the interdict would be prejudicial to it for the following reasons:

(a) The municipality would have to cancel its appointment of the service provider and prevent it from rendering the service.

(b) There would consequently be no collection of and payment of rates and taxes.

(c) The municipality would suffer prejudice which outweighs that which the applicant will suffer, namely impairment of its constitutional right to fair administrative procedure.

(d) The impugned decision will not cause the applicant damages.

(e) The municipality faces the risk of legal action by SOLVEM.

[10] The municipality's answering affidavit is deposed by the municipal manager, Mr Mkhosana Msezana (the municipal manager). The averments he makes at the beginning of his affidavit are quoted to some fullest extent for the reason that appears later in the judgement. In this respect, the municipal manager makes the following averments:

"5.1 The official who dealt with the tender and the appointment of a service provider was the first respondent's Acting Accounting Officer at the time, Ms Dorothy Diale.

5.2 Ms Diale was put on special leave with immediate effect by a resolution of the first respondent's council at a special meeting held on 18 May 2022. The Executive Manager, Corporate Support Services, Mr Ratha Ramatlhape was simultaneously put on special leave.

5.3 Ms Binang Monkwe was appointed as Acting Chief Financial Officer. I was appointed as Municipal Manager on 9 May 2022.

5.4 Upon receipt of correspondence from the applicant's attorneys the first respondent made every effort to obtain documents pertaining to the tender and appointment of a

service provider which were under the control and in possession of Ms Diale before she was put on special leave.

5.5 Ms Eunice Segatlhe-Lesejane searched for the documents in Ms Diale's office and all cabinets and places where they might have been, but the search was in vain. She telephoned Ms Diale on several occasions and she simply insisted that the documents were in her office.

5.6 On 24 May 2022 I addressed a letter to Ms Diale a copy of which I attach as annexure "AF1". I received a response which I attach as annexure "AF2". Ms Diale's aggression and unwillingness to cooperate is palpable.

5.7 On 1 June 2022 the respondent's attorneys also addressed a letter to Ms Diale, a copy of which is attached as annexure "FA3". The proof of sending by email is attached as annexure "FA4". No response was received.

5.8 The attorneys also alerted Ms Diale by WhatsApp on 2 June 2022 that a letter was sent to her. A screenshot thereof is attached as annexure "FA5". Still no response to the letter was received."

[11] In paragraph 24 of the answering affidavit the municipal manager avers that:

"Unfortunately, due to the lack of documents at my disposal I cannot fully answer seriatim. … once I am in possession of the documents which were under the control and in possession of Mrs Diale I shall be in a position to answer fully."

[12] In disputing that the municipality has awarded the tender in question to any person and contending that for this reason prayer 2.1.1 of the notice of motion is unsustainable, the municipal manager states the following:

"26 I was informed that the tender was indeed cancelled but I cannot comment on the exact manner in which it was done.

27. The first respondent, (the municipality) represented by its Acting Accounting Officer at the time Ms Diale has already on 29 April 2022 appointed as service provider for the municipality Standard Chart of Accounts."

[13] The relevant portions of the letter of appointment of SOLVEM, which is attached to the answering affidavit reads as follows:

"We have the pleasure to inform you that your proposal for the supply, delivery and maintenance of the Electronic Financial Management System for Mogale City Local Municipality has been approved, and we hereby confirm your appointment as the Service Provider to implement the project on behalf of the Municipality (Client), subject to the following terms and conditions:-

1. The appointment is based on your proposal for an amount of R37 600 000 excluding VAT for the first (01) year and R 14 825 000 excluding VAT for year two (02) and R 15 927 500 for year three (03) for a period of three (3) years commencing from the date of acceptance of appointment.
2. This appointment is subject to your written acceptance to be submitted to the municipality no later than three working days from the date of receipt of this letter and subsequent conclusion of a Service level agreement within a period of a month."

Locus standi

[14] The respondent did not, correctly so, pursue the issue of *locus standi* of the applicant in the argument. The point is in any case unsustainable because there is no

dispute that the applicant was one of the parties that participated in both bidding processes.

Urgency

[15] As indicated earlier, the municipality opposed the applicant's application on the grounds that it did not satisfy the requirements of urgency, more particularly the requirement of the non-availability of substantive relief in due course.

[16] The procedure for an urgent application is governed by the provisions of rule 6(12) of the Rules of the High Court (the Rules). In *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others*,[1] Notshe AJ explained the procedure as envisaged in this rule in the following terms:

"[6] The import thereof is that the procedure set out in rule 6(12) is not there for the taking. An Applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state why he claims he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules, it will not obtain substantial redress.".

[17] The court in that case further stated that:

[1]2011] ZAGPJHC 196 in paragraph 6.

"The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. If he cannot be afforded substantial redress at a hearing in due course, then the matter qualifies to be enrolled and heard as an urgent application. If however, despite the anxiety of an Applicant, he can be afforded a substantial redress in an application in due course, the application does not qualify to be enrolled and heard as an urgent application."

[18] In *Apleni v President of the Republic of South Africa*,[2] Fabricius J, in dealing with the issue of urgency in a matter involving the issue of legality and the rule of law held that:

". . . Where allegations are made relating to abuse of power by a Minister or other public officials, which may impact upon the Rule of Law, and may have a detrimental impact upon the public purse, the relevant relief sought ought normally to be urgently considered."

[19] It is however, not enough to base urgency on a simple allegation that constitutional rights are infringed or the principle of legality has been undermined. The applicant has to explicitly explain why he or she cannot be afforded substantial redress in due course. It is now well established that failure to satisfy this requirement would warrant striking the matter of the roll.

[20] In *Moyane v Ramaphosa and Other*,[3] the employee contended that his matter deserved the urgent attention of the court based on the ground that his suspension and

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[2](65757/2017) [2017] ZAGPPHC 656; [2018] 1 All SA 728 (GP) (25 October 2017).

[3][2019] 1 All SA 718 (GP) (11 December 2018).

subsequent dismissal undermined the rule of law and were unconstitutional. The court, in that case held that a mere allegation that constitutional rights are infringed does not render the matter urgent.

[21] In the present matter, the applicant explicitly explains from paragraphs 30 to 47 of the founding affidavit why the matter should be treated as urgent and why if it is not granted the relief it is seeking at this stage it will suffer prejudice.

[22] The factual matrix canvased earlier evidences very clearly that the municipality has, in the manner, it dealt with this matter, undermined not only its own procurement policies but also the principle of legality, including the Constitution. In the circumstances, the municipality breached the applicant's right to a Constitutional fair administrative right. The matter is compounded further by a lack of prompt response and corporation with the applicant when it raised the issues and requested disclosure of information in that regard.

[23] The allegation that the tender was not awarded does not assist the case of the municipality because there is no evidence to back it. It should be remembered in this regard that the municipal manager states in his affidavit that he is still to obtain information relating to this matter. He in fact he states that he was told about the cancelation of the tender but does not disclose the name of the person who informed him about the cancellation. The information on his version is with Ms Diale, who is refusing to corporate even though she is still an employee of the municipality. Except for

letters sent to her while on suspension, there is no evidence that any action has been taken against her for not cooperating in relation to this matter.

[24] The other issue that, in my view, warrants the urgent attention of this court is the fact that the illegality complained of by the applicant continues beyond the issuing of the tender. In this respect, the municipality has not provided evidence that a proper contract has been concluded between it and SOLVEM. However, despite this, the municipality has invited SOLVEM to commence with its duties in terms of an unsigned contract. This is contrary to the uncontroverted facts by the applicant that there is no contractual relationship between the municipality and SOLVEM.

[25] In my view, the contention of the municipality that the applicant has a relief in due course in the form of a claim for damages is unsustainable. The damages claim would probably avail if there was a contractual relationship between the municipality and the applicant. This issue is dealt with in more detail below.

[26] About the contention that the applicant has a relief in due course in the form of a review, it is correct that the review of the decision and conduct of the municipality may be addressed in the review. It is also trite that upon review, the court has, in terms of section 172 (2) of the Constitution, the discretion to grant an equitable remedy if the review is successful. However, in the present matter, this provides no comfort for the applicant because of the nature of the municipality's conduct. The review will not substantially, in the circumstances of this case, address the infringement of the applicant's right to a fair administrative right.

[27] The other point made by the municipality suggested that there was no urgency because the applicant delayed from the time it came to know about the issue on 16 May 2022 to when it instituted these proceedings. This point is unsustainable when regard is had to how the municipality frustrated the applicant's efforts to obtain information from it regarding the appointment or cancellation of the tender. It is clear from the facts that, if there was any delay that would have been occasioned by the applicant seeking to resolve the matter without having to rush to court.

[28] For the above reasons, I am of the view that the applicant has made out a case that warrants the urgent attention of this court.

The requirements for interim interdictory relief.

[29] The requirements to apply when considering an application for an interim interdict are trite and well known in our law. They have been consistently applied since the handing down of Setlogelo v Setlogel in 1914.[4] The requirements are the following:

(a) The applicant must show a clear, alternatively a *prima facie* right.

(b) A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted.

(c) That the balance of convenience favours the granting of an interim interdict.

(d) That the applicant has no other satisfactory alternative legal remedy.

[4] 1914 AD 221 at 227. See also *Gool v Minister of Justice 1955 (2) SA 682* (C).

[30] In general, the court does not hesitate to grant an interim interdict where an applicant's right is clearly established. In other words, in a case where a clear right and the other requisites are present, no difficulty presents itself in granting an interim interdict. Where the right is not clearly established upon proper reading of the affidavits, the question is stated *in Webster v Mitchel,*[5] *as* being whether the applicant has established a *prima facie* case for an interim interdict.

[31] It is clear from the facts of this case that the applicant has at least established a *prema facie* right by virtue of the procurement framework which imposes on the municipality a binding obligation and enforceable duty to ensure that it acts with transparency and fairness in dealing with the submissions, evaluation, and awarding of tenders.[6]

[32] In brief, the rights of the applicant arise from firstly the Constitutional obligation imposed on the municipality by section 217 of the Constitution, which requires any sphere of government in procuring goods or services to do so in accordance with a system which is fair, equitable, transparent, competitive, and cost-effective. It is further provided in section 33 of the Constitution that persons and entities such as the applicant have a right to administrative action by organs of state that is lawful, reasonable and procedurally fair. They also have a right for written reasons and be afforded an opportunity to exhaust internal remedies in terms of section 5 of PAJA.

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[5] 1948 (1) SA 1186 (W).

[6] *Chief Executive Officer of the South African Social Security Agency NO and Others v Cash Paymaster Services (Pty) Ltd* [2011] ZASCA 13; 2012 (1) SA 216 (SCA) (SASSA v CPS) at para 15.

[33] There can be no doubt that the decision of the municipality in declaring the tender non-responsive and appointing SOLVEM or disqualifying the applicant and others for whatever reason is administrative action in terms of Section 3 of PAJA. This entitles the applicant and other tenderers to a lawful and procedurally fair process.[7]

[34] The municipality's contention that the contract awarded to SOLVEM was not through the tender process but rather through the deviated tender process does not assist its case. The deviated tender process does not exempt the municipality from complying with its statutory duty of ensuring that process of procuring the services of SOLVEM as an administrative action was fair and reasonable in terms of the prescript of the law. In other words, that process is also subject to judicial oversight that is necessary to ensure that the decision taken is lawful, reasonable, rational and procedurally fair.[8] It is not in dispute that the municipality did not publish the deviation tender process which was in itself a contravention of the legislative frame work.[9]

[35] The municipality also failed to publish on the council's website the outcome of the tender, in breach of section 75 (1) of the Municipal Finance of Management Act. It also failed to publish the final award in breach of section 84 (3) Systems Act which requires

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[7]See VDZ Construction (Pty) Ltd v Makana Municipality and Others (1834/ 2011) [2011] ZAECGHC 64 (3 November 2011).

[8]*Logbro Properties CC v Bedderson NO & Another* 2003 (2) SA 460 (SCA) at paragraph 6.

[9]Section 83(1)(c) of the Municipal Systems Act, obliges the municipality to select the service provider through selection processes which minimise the possibility of fraud and corruption; The Municipality's Tender documentation which states that the results of the tender will be published on the council website as prescribed on the MFMA section 75(1)(g) and SCM regulations.

that copies of agreements for service delivery concluded by the municipality must be made available at its offices for inspection by members of the public.

[36] It is clear, in my view, that if it cannot be said that the applicant has satisfied a clear right, it has definitely satisfied the requirement for a *prema facie* right.

The requirements for injury actually committed or reasonably apprehended.

[37] In my view, the factual matrix set out above reveals that the applicant was denied the right to a fair administrative decision whichever way the case is looked at, namely whether the tender was declared non-responsive or that some form of a contract was awarded to SOLVEM. The implication for the applicant is that the outcome of a successful review application would be illusory. Its constitutional rights provided for in the statutory and regulatory framework were undermined by the municipality. If this court allowed the municipality to continue with its unlawful conduct, it would be countenancing illegality and abuse of power by officials. Refusal to grant the interim relief sought by the applicant would result in devastating and irreparable harm to the applicant. This will also affect other public stakeholders such as the Provincial Treasury, National Treasury and Auditor General.

[38] It is important to note that the "deviation contract" granted to SOLVEM was not based on the urgent need for the provision of the service. It was granted in the context of a MSCOA and following what appears to be a non-responsive tender. In this respect

there is no evidence of compliance with the National Treasury directives and the approval by both the Provincial and National Treasury.

Balance of convenience

[39] The correct approach to adopt when evaluating whether the balance of convenience weighs in favours the granting of an interim interdict on matters of this nature is set out in the following terms in *National Treasury v Opposition to Urban Tolling Alliance*:[10]

"46. When a court weighs up where the balance of convenience rests, it may not fail to consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of the state against which the interim order is sought.

47. The balance of convenience enquiry must now carefully probe whether and to which extent the restraining order will probably intrude into the exclusive terrain of another branch of government. The enquiry must, alongside other relevant harm, have proper regard to what may be called separation of powers harm. A court must keep in mind that a temporary restraint against the exercise of statutory power well ahead of the final adjudication of a claimant's case may be granted only in the clearest of cases and after a careful consideration of separation of powers harm."

[40] In the present matter, there was no doubt that the balance of convenience weighed in favour of the granting of the interim interdict to preserve the *status quo ante*. This conclusion was reached considering the following:

[10]2012 (6) SA 223 (CC).

(a) The prospects of success in the final determination of the dispute are very strong,

(b) Public interest in light of the possible abuse of public funds and non-compliance with the statutory and Constitutional provisions for dealing with procurement and securing of services by the municipality.

(c) The version of the municipality supported the above, and in fact, it indicated that it intends to institute self-review.

(d) The applicant would if ultimately successful, suffer irreparable harm.

[41] The conclusion reached, on the other hand, in relation to the balance of convenience on the part of the municipality was that there was no real opposition to the application and no substantial facts as to what prejudice it would suffer if the interdict was granted. It should be noted in this respect that the appointment of SOLVEM was made a few weeks ago, and the process of finalising the contract is yet to be completed.

Alternative remedy

[42] It is common cause that this matter involves the right to administrative action, which the applicant contends was unlawful and unconstitutional. It follows that its remedy, amongst others, would be based on a review to set it aside. It is clear from the papers that the applicant intends to institute a review to challenge the impugned decision on the basis that it infringed its right to an administrative action that is lawful, reasonable and procedurally fair.

[43] In a review under section 8 of PAJA, the court has wide discretion to make any "just and equitable order to remedy the violation of the right to just administrative action.[11]

[44] The court has discretion in reviewing and setting aside a decision that infringes the right to just administrative action in terms of section 8 (1) (c) (ii) (bb) of PAJA to order an administrator or any other person who decided a matter to pay compensation. The order to pay compensation will be made in exceptional circumstances.

[45] The applicant contended in the heads of argument that the damages for the loss it would have suffered as a result of the impugned decision could not constitute an appropriate alternative remedy. I agree with this proposition, particularly having regard to the fact that the municipality had not adduced evidence to counter the applicant's version. It is quite clear in the circumstances of this case that the only remedy available to protect the rights and interests of the applicant is the relief sought in the notice of motion.

Conclusion

[11] See Bengwenyana Minerals (Pty) Ltd and Others v Genora Resources (Pty) Ltd and Others 2011 (4) SA 113 [CC] at pages 81 to 85.

[46] It was for the above reasons that I found, firstly that the applicant had made out a case deserving of urgent attention by the court and secondly the applicant was entitled to the relief he sought.

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E MOLAHLEHI J

Judge of the High Court

Gauteng Local Division, Johannesburg

Representation

Applicant: Adv W. H. POCOCK

Instructed by: Di Siena Attorneys

Respondents: Adv. JJ Botha

And : Adv LA Maisela

Instructed by: Smith Van der Watt Inc.

Order granted: 14 June 2022.

Reasons delivered: 21 June 2022.