



**IN THE HIGH COURT OF SOUTH AFRICA,  
GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: 2023 - 77864**

(1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO

DATE  
SIGNATURE

In the application by

**ALLMED HEALTHCARE PROFESSIONALS (PTY) LTD**

Applicant

**AND**

**GAUTENG DEPARTMENT OF HEALTH**  
(PROVINCIAL DEPARTMENT WITHIN THE GOVERNMENT  
OF THE REPUBLIC OF SOUTH AFRICA)

First Respondent

**NOMANTU NKOMO-RALEHOKO N.O.**  
(THE HONOURABLE MEMBER OF THE EXECUTIVE  
COUNCIL, GAUTENG DEPARTMENT OF HEALTH)

Second Respondent

**NATIONAL TREASURY**

Third Respondent

**ENOCH GODONGWANA N.O.**  
(THE HONOURABLE MINISTER OF FINANCE)

Fourth Respondent

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**JUDGMENT**

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**MOORCROFT AJ:**

Summary

*Payment of common cause debt – urgency – commercial urgency*

Order

[1] In this matter I made the following order on 1 September 2023 after hearing argument on 31 August 2023:

1. *The first respondent is directed and ordered to make payment to the applicant in the amount of R51,415,098.98 (fifty-one million four-hundred and fifteen-thousand and ninety-eight Rand and ninety-eight cents), together with interest thereon at the rate of 10.5% per annum a tempore morae calculated from 27 January 2023 to date of payment;*
  
2. *The first respondent is ordered to pay the costs of the application.*

[2] The reasons for the order follow below.

Introduction

[3] The applicant brought an urgent application seeking payment of R53 928,552.85 due to it by the first respondent in terms of a service level agreement entered into on 8 March 2021 for the appointment and provision of the supply of nursing personnel at a number of provincial hospitals. The applicant recruited nurses from its own database and also recruited additional nurses in order to perform its obligations in terms of the agreement. Services were provided during the period June 2021 to 18 December 2022.

[4] The applicant was obliged to pay the salaries of these nurses irrespective of whether payment was received from the client as the nurses were in a contractual

relationship with the applicant and not with the client. The number of nurses required increased over time and more than a thousand professional nurses, enrolled nurses, and enrolled nursing assistants were required to fulfill the obligations under the agreement.

[5] Invoices and supporting documentation were provided. On 23 June 2023 the first respondent advised that the Department was still busy with internal processes to finalize the payment but payment was not made. A letter of demand in terms of the Institution of Legal Proceedings against Certain Organs of State Act, 40 of 2002 was delivered on 3 July 2023. .

[6] The respondents have been aware of the applicant's claim at all relevant times and have never disputed liability. Since at least February 2023 continuous attempts have been made to obtain payment, and while various undertakings were made to pay the debt, payment was not forthcoming.

#### Urgency

[7] The application was served on 10 August 2023. Commercial urgency arises from the fact that the debt attracts interest of more than R800,000 per month and the applicant already had to retrench nursing staff because it was not being paid – the cash flow difficulties caused by such a large unpaid debt needs no elaboration.

[8] With the benefit of hindsight it is perhaps possible to argue that the applicant need not have waited until August 2023 and that the application for relief could have been launched in February 2023 when it became apparent that the first respondent was not paying the overdue invoices.

An applicant can however not be faulted for making every attempt to avoid costly litigation by entering into discussions with a debtor and this is especially so when it was always apparent that the indebtedness was not disputed. Creditors of large corporations and state entities also know that the administrative process may take time and that rushing to court at the first possible opportunity which in this case would have

in February 2023 might lead to unnecessary litigation that is not in the interest of a creditor, and in circumstances where the debtor is the State in its broad definition also not in the interest of the public.<sup>1</sup>

[9] In the answering papers reference is made to the fact that the documentation in substantiation of the claim are voluminous. These documents have however been in the possession of the first respondent for a long time and is not a ground for the argument that the Urgent Court is not an appropriate forum.

#### The disputed settlement

[10] On 24 August 2023 the applicant and the first respondent entered into a written settlement agreement in terms of which the first respondent acknowledged liability in the amount of R53,936,104.80 and expressly renounced the benefits of *non causa debiti, errore calculi*, revision of accounts, and no value received. The matter then seemed ready for a settlement agreement to be made an order of court.

[11] On 30 August 2023 the first and second respondents filed an answering affidavit deposed to by the acting head of the Gauteng Provincial Department of Health. The deponent stated that the application was not urgent and that he was not in agreement with the settlement agreement because the amount was wrong. He stated that the correct amount was in fact R51,415,098.98 and that there was now an application by the Member of the Executive Committee (the MEC) for an order that the settlement agreement be declared invalid, a nullity, and unenforceable, and that it be set aside on the basis that the MEC had not been informed of the settlement by the staff of the Department.

The applicant is of course not privy to the internal mechanisms of the respondent and relied on the settlement agreement signed by a Head of Department, a senior official in the administration.

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<sup>1</sup> See *Nelson Mandela Metropolitan Municipality and Others v Greyvenouw CC and Others* 2004 (2) SA 81 (SE), *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* 2011 JDR 1832 (GSJ), and *South African Informal Traders Forum and Others v City of Johannesburg and Others* 2014 (4) SA 371 (CC).

The claim

[12] There are no disputes of fact and the amount of the claim as set out in the draft order handed up by the applicant is common cause. In the answering affidavit no grounds for the failure to pay the debt are set out. The first respondent's counsel filed extensive heads of argument dealing with the question of urgency, the approach of the court to disputes of fact on affidavit, and the raising of new matter in reply.

The proposition raised during argument that an applicant that claims payment of R53,000,000 can not at the hearing seek judgment for a smaller amount and must stand or fall with the initial claim for R53,000,000 is devoid of any merit and not supported by any authority.

[13] In the replying affidavit the applicant conceded that a payment had been made and that the amount outstanding was R51,415,098.98. This is in turn the amount conceded in the answering affidavit as the amount due to the applicant. The amount is common cause on the papers.

There are therefore no disputes of fact on the papers as they stand. The new material in reply referred to by the first respondent relates to the settlement agreement entered into after the application was served and I need not have regard to any dispute arising out of the settlement agreement as the amount of the indebtedness is common cause.

[14] I find that -

14.1 The application is urgent;

14.2 The indebtedness of the first respondent in the amount of R51,415,098.98 is not disputed;

14.3 The indebtedness arises out of contract;

14.4 Payment is overdue;

14.5 The applicant is entitled to payment immediately;

14.6 The applicant is entitled to its costs.

[15] I am of the view that the appropriate cost order would be on the party and party scale, and not on the attorney and client scale. Costs will be paid out of public funds and under these circumstances a punitive cost order is not justified on the facts of the case.

[16] For the reasons set out above I make the order in paragraph 1.

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**J MOORCROFT**  
**ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA**  
**GAUTENG DIVISION**  
**JOHANNESBURG**

*Electronically submitted*

Delivered: This judgement was prepared and authored by the Acting Judge whose name is reflected and is handed down electronically by circulation to the Parties / their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date of the judgment is deemed to be **8 SEPTEMBER 2023**.

COUNSEL FOR THE APPLICANTS:	C GIBSON
INSTRUCTED BY:	HUNTS ATTORNEYS
COUNSEL FOR THE FIRST RESPONDENT:	M TSHIVHASE
INSTRUCTED BY:	STATE ATTORNEY
DATE OF ARGUMENT:	31 AUGUST 2023
DATE OF ORDER:	1 SEPTEMBER 2023

DATE OF JUDGMENT:

8 SEPTEMBER 2023