REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 92483/19

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

Date: 23 October 2023

In the matter between:

JR 209 INVESTMENTS (PTY) LTD Applicant

and

SOUTH AFRICAN WEATHER SERVICES First Respondent

SKG AFRICA (PTY) LTD Second Respondent

ISHAAM ABADER Third Respondent

EMPOWERED PROPERTY SOLUTION Fourth Respondent

JUDGMENT

[1] DE VOS AJ

[1] The South African Weather Services provides us with severe weather-related warnings.[1] The Weather Service's objective is to maintain, extend and improve the quality of meteorological services to the benefit of all South Africans. To do this work, it requires offices, 23 satellite offices and one headquarters. Due to the nature of the work it does, it has specific requirements for the housing of its headquarters. For example, its headquarters has to be able to house a 10 m mast for its automatic weather station.

[2] This case is about the Weather Services selection of its headquarters. It used to be housed in one of the applicant's buildings, but subsequent to a tender process in which the applicant and second respondent provided bids, the second respondent's offices were selected for the Weather Service's headquarters.

[3] The applicant challenges the award of the tender to the second respondent. It has done so in a Part A and Part B challenge. In Part B, it seeks to set aside the award of the tender to the second respondent. However, in the meantime, in Part A, the applicant seeks an urgent interim interdict prohibiting the Weather Services and the second respondent from implementing the award.

[4] The applicant tells this Court that if it does not halt the implementation of the award now, then the pragmatic considerations might mean that even if it is successful with Part B, it will not obtain any real relief. Its concern is that a court hearing Part B may well say that the contract is implemented to such an extent that it would not be pragmatic to undo the award at that late stage – even if the award is set aside and reviewed.

[5] The applicant's concerns are fortified by specific decisions of the Supreme Court of Appeal, where the review of an unlawful tender was upheld, but the Court then, due to an effluxion of time, permitted the award to be seen through to the end. Examples of such cases are *Chairperson Standing Tender Committee and Others v JFE Sapela Electronics (Pty) Ltd and Another*[2] and *Millenium Waste Management (Pty)*

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[1] The Weather Services is a section 3(a) public entity as envisaged by the Public Finance Management Act and falls under the Department of Forestry, Fisheries and the Environment.

[2] 2008 (2) SA 638 (SCA) para 29

Ltd v Chairperson Tender Board[3] where invalid tenders were permitted to stand due to the effluxion of time.

[6] The respondents contend that the Court must not grant the interim interdict as the horse has already bolted. The respondents have been busy with tenant installations to be ready for the beneficial occupation date of 1 October 2023. It is the advanced stage of the implementation of the award, which the respondents rely on to defeat the applicant's claim.

[7] The applicant's elegant answer is if the advanced implementation of the award is of concern at this stage, that concern will strengthen over time. If the stage of implementation is an issue at this stage, that issue will only compound the longer the Weather Services is in the new building. The "horse has bolted argument" of the respondents will attract more force at the time Part B is heard, and there is no interim interdict to prevent the implementation of the award.

[8] The case has the bizarre feature that the core set of facts relied on by the respondents as to why the relief ought not to be granted is the same set of facts the applicant relies on for its conclusion that its relief should be granted.

[9] The parties needed immediate clarity. When the matter was heard on Thursday, 28 September 2023, the Weather Services was still housed in the applicant's building, but its move to the new headquarters of the second respondent was imminent. The Weather Services was to take beneficial occupation on 1 October 2023, one court day after the hearing of this matter. To provide this clarity, the Court granted an order on 1 October 2023 with reasons to follow. The order granted was a dismissal of the application with costs reserved. I set out in this judgment the reasons for the order. I commence with the reasons I found the matter to be urgent.

Urgency

[10] Everyone agreed that – bar the relief sought - by 1 October 2023, the Weather Service would be moving into the new premises. The respondents contended that this matter was not urgent as the applicant could obtain substantial redress in due course and that the applicant had not acted with maximum expedition. I considered the case on urgency.

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[3] 2008 (2) SA 481 (SCA)

[11] The applicant set out the circumstances which it contended rendered the matter urgent and why it will not be able to obtain substantial redress in due course. The relief it sought was to halt the move on 1 October 2023. Naturally, it could only obtain that relief prior to 1 October 2023. An approach to the review court subject to the normal court rules may and would be an exercise in academics, as the Weather Service would by then already be in occupation. After 1 October 2023, the applicant cannot interdict the Weather Services from moving – as the move would have already occurred.

[12] The applicant had, therefore, shown that the circumstances of this matter were urgent and that it would not be able to obtain substantial redress in due course. This was a clear case of if not now, then never.

[13] In *SMEC South Africa (Pty) Ltd v South African National Road Agency SOC*, the Court held that the urgency of the matter arose as "there is no other way to stop possible unlawful conduct than with interim relief."[4] In *Groep and Others v Naledi Local Municipality and Others*[5] , the Court permitted a matter to be heard on an urgent basis lest "a court of law allows the perceived illegality to continue." The same considerations apply in this case.[6]

[14] Counsel for the Weather Services opposed urgency with reference to four cases. The Weather Services submitted that the Court was bound by these decisions and could only deviate if proper reasons were given. The Court, therefore, carefully considered the case law, persuasive or binding, in order to provide a reasoned approach to the finding on urgency. I will, therefore, with care and dedicated time, consider the case law referred to by the first respondent.

[15] First, the Weather Services referred the Court to the authority of *Mogalakwena Local Municipality v Provincial Executive Council, Limpopo and Others ("Mogalakwena")*[7] for authority that the Court ought not to hear this matter urgently. *Mogalakwena*

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[4] SMEC South Africa (Pty) Ltd v South African National Road Agency SOC Ltd (075024/2023) [2023] ZAGPPHC 1108 (29 August 2023) para 14

[5] Unreported case No: UM253/2020, North West Division, Mahikeng

[6] Other cases in which urgency was granted on this ground are Munsoft (Pty) Ltd v Musina Local Municipality and Others (5922/2023) [2023] ZALMPPHC 58 (31 July 2023) and Unyazi Rail (Pty) Ltd v Passenger Rail Agency Of South Africa and Others (60552/2022) [2023] ZAGPJHC 217 (14 March 2023)

[7] 2016 (4) SA 99 (GP)

involved provincial intervention in a local municipality. The Court held that the matter was urgent as the applicant's case if proven, would show a serious breach of the rule of law. The case, if anything, is support for the contention that matters involving legality – which a tender review frequently does – is urgent. The reasoning applied to the facts in this matter would support the applicant's case that the matter is urgent. In fact, *Mogalakwena* has been relied on by our Courts in similar circumstances to find that a matter is urgent.[8] *Mogalakwena,* therefore, provides a basis to conclude that this matter is urgent.

[16] Second, the Weather Services referred the Court to the judgment of *Mantladi Technologies (Pty) Ltd v The National Treasury and Others("Mantladi")*[9] in the context of its opposition to urgency. The finding on urgency by the Court in *Mantladi* is:

"The Respondents are opposing the urgency of the application. The Supreme Court of Appeal in *Millenium Waste Management*, at para 34 of the judgment, remarked that -

> In conclusion, there is one further matter that needs to be mentioned. It appears that in some cases, applicants for review approach the High Court promptly for relief, but their cases are not expeditiously heard, and as a result, by the time the matter is finally determined, practical problems militating against the setting aside of the challenged decision would have arisen. Consequently, the scope of granting an effective relief to vindicate the infringed rights becomes drastically reduced. It may help if the High Court, to the extent possible, gives priority to these matters." (my emphasis).

Therefore, relying on this judgment, it is this Court's view that this matter is inherently urgent."[10]

[17] The case quoted by the Weather Services concludes that this type of matter is "inherently urgent". The circumstances that render this urgent, according to the applicant, are exactly the basis on which the Court in *Mantladi* concluded the matter is urgent. *Mantladi* is, in fact, authority for the applicant's case that the matter is urgent.

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[8] Munsoft (Pty) Ltd v Musina Local Municipality and Others (5922/2023) [2023] ZALMPPHC 58 (31 July 2023) para 17

[9] (36978/2022) [2022] ZAGPPHC 625 (24 August 2022)

[10] Mantladi paras 8 and 9

[18] Third, the Weather Services relied on *TMT Services v MEC: Department of Transport, Province of KwaZulu-Natal and Others ("TMT").*[11] The submission made in relation to *TMT* is that the matter is not urgent, as the applicant will be able to obtain substantial redress in due course in terms of section 8(1) of PAJA. The first respondent contended that "the applicant can even be compensated for financial loss [and] substantial redress in due course is abundant."[12] The authority cited by the first respondent in support of the contention that substantial redress for an unsuccessful tenderer who succeeds on review is abundant is paragraph 11 of *TMT.*[13] The paragraph quoted by the first respondent quotes section 8(1) of PAJA, which provides that relief must be granted when the standard of exceptional circumstances has been met.

[19] *TMT* does no more than identify the statutory standard of exceptional circumstances required for relief under section 8(1). Exceptional means out of the ordinary and not the norm. It is on the opposite end of the spectrum from abundant. The submission presented to the Court is not borne out by the authority relied on.

[20] I also carefully considered the contention by the Weather Services' counsel that *Mantladi* is authority for the proposition that such relief is abundant or that the applicant's submission that the relief sought may not be practically given effect to is incorrect. I do not find support for this submission in the authority of *Mantladi*.

[21] In any event, relief for an unsuccessful tenderer who is successful in its tender review is not abundant; it is, to the contrary, available solely in exceptional circumstances – for sound policy reasons. The existing authorities of *Steenkamp*[14] and *Pipeline,*[15] considered together indicate the limited scope for a successful tendered to obtain monetary relief in the normal course. Roughly, the impact of these cases is that an unsuccessful bidder has no claim in delict for pure economic loss, limited room to claim damages, and potentially can only claim compensatory relief in exceptional circumstances.

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[11] 2022 (4) SA 583 (SCA) at para 11

[12] First respondent's heads of argument at para 15

[13] 2022 (4) SA 583 (SCA) at para 11

[14] Steenkamp N.O. v Provincial Tender Board of the Eastern Cape [2005] ZASCA 120 at para 33

[15] Esorfranki Pipelines (Pty) Ltd v Mopani District Municipality (CCT 222/21) [2022] ZACC 41; 2023 (2) BCLR 149 (CC); 2023 (2) SA 31 (CC)

[22] Counsel for the Weather Services submitted that I am bound by the reasoning in *Mantladi*. Assuming, without finding that this is correct, the difficulty is that the authority the Weather Services seeks to rely on is not borne out by *Mantladi*. In any event, *Mantladi* did not have before it the impact of the decisions in *Steemkamp* and *Pipeline*, both Constitutional Court decisions. The applicant has squarely put the impact of these Constitutional Court judgments before this Court, and this Court is bound to follow the approaches in *Steenkamp* and *Pipeline*.

[23] Fourth, the Weather Services relies on *Special Investigating Unit v Phomella Property Investments (Pty) Ltd and Another ("Phomella")*[16] for the submission that the applicant's case that "once a lease has been implemented it cannot be set aside has no factual or legal basis".[17] This is a mischaracterisation of the applicant's case. The applicant's case is not that it cannot be set aside, but rather that it will face concerns regarding the practicality of implementing effective relief if successful in Part B. The limited scope for the applicant to obtain substantial redress at a hearing in due course was precisely what the Supreme Court of Appeal addressed in *Millenium Waste Management (Pty) Ltd v Chairperson Tender Board*[18] where Jafta JA (before becoming a Justice of the Constitutional Court) held that to the extent possible, matters such as these must be given priority even in instances where the applicants approach the High Court promptly for relief. The reason for this, as explained by Jaftha AJ, is that if their cases are not expeditiously heard and, as a result, by the time the matter is finally determined, practical problems militate against the setting aside of the challenged decision.

[24] The Court, however, considered the remainder of the Weather Services' submissions in relation to *Phomella*. The Weather Services argues, premised on *Phomella*, that it is possible to set aside a lease agreement once it has been implemented. The *Phomella* matter relied on by the first respondent, in fact, proves the applicant's claim in this regard. In *Phomella*, the DOJ leased the SALU building in Pretoria. The SIU sought initial relief that the lease be reviewed and set aside as void *ab initio*. However, by the time the matter came before the High Court, the lease had run its course. As a result, the SIU did not persist in that relief. It simply

[16] (1329/2021) [2023] ZASCA 45; 2023 (5) SA 601 (SCA) (3 April 2023)

[17] HOA para 19

[18] 2008 (2) SA 481 (SCA).

sought an order declaring the lease agreement to be unlawful. In addition, the SIU sought an order that Phomella should jointly and severally pay the Minister of Public Works the amount of R103 880 357.65. This was said to represent wasteful expenditure incurred during the lease. The High Court did not grant the payment, and the Supreme Court of Appeal upheld this finding.

[25] *Phomella* shows not only the difficulty in implementing, pragmatically, relief consequent on a finding that a lease agreement was illegitimate but shows that even a claim for the wasted expenditure is not abundantly available. *Phomella*, again, supports the applicant's claim that the matter is urgent.

[26] The Weather Services has not provided the Court with an example of an instance where such compensation was granted in due course, which would counter the applicant's claim that it will not be able to obtain substantial redress in due course.

[27] The second respondent provides a different basis on which it opposes urgency. The second respondent contends that the applicant did not act with maximum expedition. The second respondent referred the Court to multiple instances where the applicant ought to have acted sooner.

[28] The applicant, however, explains that it could not institute these proceedings until it had ascertained which building had been successful. The applicant had asked the Weather Services for information regarding which building had been awarded the tender. It received no response to its multiple requests in this regard. This delayed the launching of these proceedings. In any event, as it did not receive a response, it drew a conclusion and laboured under the misapprehension that another building had been successful in the tender. Only when it realised which building was being used did it launch its first urgent application. The applicant withdrew the first urgent application, and based on information that only came to light during the first urgent, was it then able to launch these proceedings.

[29] Much of the period for which the second respondent criticises the applicant for not acting with maximum expedition is a period where the applicant was seeking to obtain information. Possibly, the applicant ought to have directed those attempts elsewhere - but they were nonetheless made. The applicant cannot be faulted for

requesting information and attempting to avoid litigation.[19] In addition, where a litigant – such as the applicant - explained the steps it took prior to litigation to obtain information and avoid litigation, our courts have been slow to conclude that they have not acted with maximum expedition. In *South African Informal Traders Forum and Other*[20] urgency was opposed on the basis that it was self-created as the applicants had attempted to obtain information and sought to negotiate before coming to Court. The Constitutional Court held that such steps were "only prudent and salutary that the applicants first sought to engage the City before they rushed off to Court."[21]

[30] The second respondent cannot be faulted in relation to its legal approach. However, the Court concludes, based on the facts of this case, that the applicant has satisfied the Court that it did act with maximum expediency.

[31] The Court concluded that the matter was urgent.

Prima facie right

[32] The applicant's entitlement to interim relief accordingly boils down to whether it has a prima facie right to set the tender process aside and the strength of that right evaluated in light of the balance of convenience.[22] It has long been accepted that the stronger a prima facie right, the less the balance of convenience is required to favour the grant of interim relief. Conversely, the weaker the prima facie right, the greater the weight of any inconvenience that will be suffered by the party potentially subject to the interim interdict sought.[23]

[33] The test requires that I have to consider the existence and strength of the applicant's prima facie right. The applicant challenges the award on two grounds: the second respondent was not the owner of the building, and the building was not

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[19] Marce Projects (Pty) Ltd v City of Johannesburg Metropolitan Municipality [2020[2 All SA 157 (GJ)

[20] South African Informal Traders Forum and Others v City of Johannesburg and Others; South African National Traders Retail Association v City of Johannesburg and Others (CCT 173/13; CCT 174/14) [2014) ZACC 8; 2014 (6) BCLR 726 (CC); 2014 (4) SA 371 (CC) (4 April 2014)

[21] Id para 37

[22] Unyazi Rail (Pty) Ltd v Passenger Rail Agency Of South Africa and Others (60552/2022) [2023] ZAGPJHC 217 (14 March 2023) para 12

[23] Eriksen Motors (Welkom) Ltd v Protea Motors Warrenton 1973 (3) SA 685 (A) at 691E-G).

an A-grade building – which was a mandatory requirement in the bid document. I consider both of these.

[34] The bid required that the building has to be an A-grade building. The applicant has presented the Court with two expert reports stating that the building is not an A-grade building. However, the second respondent has presented the Court with its architect's report and the A-grade certificate.

[35] The right to relief based on this claim is not clear at this stage due to the contradictory positions adopted by the two parties' experts. Without determining the ultimate merits, this Court cannot conclude that this ground of review meets – for purposes of an interim interdict – the requirement of a prima facie right.

[36] In relation to the ownership issue, the facts are not only clearer but, in fact, common cause. The second respondent became the owner on 19 December 2022. The bid closed on 15 November 2022. It is a common cause, on the facts, that the second respondent was not the owner of the building at the time the bid closed.

[37] The Weather Services submitted that as the transfer was taking place, the second respondent was the owner at the time the bid closed. This is not our law. Ownership transfers at registration.

[38] The applicant contends that this is fatal to the second respondent's defence as ownership of the building is an inherent requirement as a person cannot tender a building if they are not the owner or if they do not have a mandate from the owner to submit the building on their behalf. The second respondent had to have been the owner at the time of the bid. Such a failure cannot be retrospectively rectified or condoned.

[39] The respondents have no factual defence to the ownership point. They argued, rather before the Court, that ownership was not a mandatory requirement and that this ground was not properly raised by the applicant on its papers. As for the submission that it was not properly raised in the papers, this is demonstrably not borne out by the pleadings. In fact, not only was it raised on three separate occasions in the founding affidavit by the applicant, but the Weather Services pleaded that this was a new ground being raised. The Weather Services' pleaded case, as appears from its answering affidavit, is -

“the only new ground advanced in the presented application is that the second respondent was not the registered owner of the property which it tendered at the time of the submission of its bid and therefore its bid should have been disqualified.”

[40] The first respondent's submission is at odds with its pleaded case. The applicant raised the issue squarely.

[41] The applicant has to satisfy the Court to the degree of proof of an established right, even if it is open to some doubt. The argument, premised on common cause facts, that a budling can only be tendered if the second respondent had a right to do so, meets this standard of proof.

Balance of convenience

[42] The applicant has approached the Court on the premise that beneficial occupation commences on 1 October 2023. The bid documents require that the building "must be ready for beneficial occupation by the Weather Services on 1 October 2023". The respondents contend that the building must be ready for beneficial occupation on 1 October 2023, which requires certain installations – termed tenant installations – which must be ready by 1 October 2023. Tenant installation, says the respondents, has commenced – which includes spending millions of rands to prepare the building. The respondents contend, essentially, that the applicant's calculation of the balance of convenience does not reckon with the costs and works done in terms of the tenant installation.

[43] The respondent has presented the Court with an affidavit by Mr Shaun Smith, the lead project manager overseeing the tenant installation. Mr Smith tells the Court that the project was commenced on 5 May 2023 with a meeting. Immediately after this meeting, "preparation of the building for the installation of the tenant specific designs commenced”. This preparation consisted of uninstalling the existing floors and ceilings as a clean slate was more cost-effective. After this building preparation, the signed-off layout plans permitted Mr Smith to commence construction of tenant-specific layouts. Mr Smith says that -

"construction has since progressed extremely well, and we are at an advanced stage of the installation. Considering that the required occupation date is 1 October 2023, the project progress was kept to the schedule to ensure that w allow a smooth and efficient occupation".

[44] The applicant is not in a position to dispute these allegations.

[45] In addition, the second respondent submits that the major works to be done under tenant installation – preceding beneficial occupation – is a matter known by the applicant's deponent. Prior to this matter, Mr Dlamini – the applicant's deponent - deposed to an affidavit (dealing with the same dispute) – in which he stated that –

> "It is standard convention in the commercial lease industry for the Lessor to commence with the tenant installation as soon as the award is made in preparation for the Lessee's occupation of the premises. This implies that tenant installation would be even sooner than the beneficial occupation date of 1 October 2023 or commence on the same date".

[46] The second respondent uses the applicant's own knowledge of the industry to contend that much inconvenience will be suffered by the respondents – even before the move on the beneficial occupation date – as tenant installation precedes beneficial occupation.

[47] The Weather Services says that tenant installation is underway and will be finalised during the week the urgent application was heard. It pleads that "approximately R 14 million being tenant installation costs would have been spent to make the leased premises ready for occupation." Service providers have been appointed to dismantle equipment, securely store it and later move it to the new premises.

[48] The process of tenant installation includes the work necessary to ensure office-space partitioning installation of IT equipment and satellite dishes required to enable the SAWS to fulfil its statutory mandate. Procurement processes have also started, including –

a) Issuing a tender for moving the equipment of the Weather Services to the second respondent's building, which tender closes on 14 September 2023.

b) The cleaning services and security services tenders have also been issued with the closing dates between 10 – 14 September 2023.

[49] These processes will be completed by 26 September 2023 to be ready for beneficial occupation on 1 October 2023. The point is that the beneficial occupation is 1 October 2023, and tenant installation is already well under way.

[50] The Weather Services also states that

> "with regards to the Satellite dishes, Masts, and the Data Centre, if their move is stopped at this stage, it will affect the services that SAWS performs and there will be serious cost implications for the Weather Services. Any attempt to stop the

planned move to the new building at this stage will interrupt the Weather Services plans and operations at a time when the country is moving into the spring season where weather patterns will change, ad some parts of the country will start experiencing rainy and sometimes sever weather conditions. The Weather Service is expected as part of its statutory mandate, to be operationally ready to deal with any scenario that may arise. The Weather Services' inability to do so may lead to a loss of life and loss of property".

[51] In addition, the respondents contend that if the interim relief is granted, it will be obliged to keep the accommodation tendered available for the entirety of the time it takes to review the decision and will have to keep the tenant installation already commenced in abeyance.

[52] On the facts, it appears that the parties are not using the same set of inconveniences in the balancing of inconvenience exercise. The respondent has set out a host of inconveniences it will suffer if the move is halted at this stage – after tenant installation is essentially completed. On the facts, the applicant has not proven the balance of convenience favours it.

[53] In addition, the case law on this point weighs with the Court. The Constitutional Court in *National Treasury v Opposition to Urban Tolling Alliance* ("*National Treasury*") has cautioned against the granting of interim orders against state institutions except in very clear cases. Ordinarily critical to the assessment of the balance of convenience is any "separation of powers harm" the Weather Service would suffer if the interim relief were granted.[24] Weighing this harm involves recognising the need to allow the state to continue to exercise its powers and functions unless "the clearest of cases" has been made out that they are based on an illegality.[25]

[54] *National Treasury* was concerned with the appropriateness of interim relief being granted against organs of state "exercising statutory powers flowing from legislation whose constitutional validity is not challenged".[26] In that context, a court must "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 state against which

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[24] Unyazi above para 27

[25] National Treasury v Opposition to Urban Tolling Alliance 2012 (6) SA 223 (CC) ("National Treasury") at paragraph 47

[26] (National Treasury, paragraph 27)

the interim order is sought".[27] The 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".[28] The import of *the National Treasury* is that interim relief restraining an organ of state from exercising valid statutory powers pending review may only be granted in the clearest of cases. The *National Treasury* test clearly applies.

[55] As the Court in *National Treasury* itself implicitly accepts, the "clearest of cases" includes cases where the statute underlying the power sought to be restrained is itself constitutionally suspect or where the statute, though valid on its face, is deployed in a manner injurious to constitutional rights. In those sorts of cases, interim relief will fairly readily be granted. This is not the case before this Court.

[56] In addition to a factual basis which indicates the balance of convenience does not favour the applicant, the Court also must apply the standard identified in *National Treasury*. For all these reasons, I granted an order in favour of the respondents.

[57] As to costs, the parties have a part B that stands to be determined. I reserved the costs as the applicant was entitled to launch these proceedings on an urgent basis, and the Court dealing with Part B will be able to better determine the issue of costs. It also weighed with me that the applicant was asserting a fundamental right and absent allegations of vexatious litigation -which there were none – it ought not to be burdened with paying the respondents' costs.

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I do Vos
Acting Judge of the High Court

[27] (paragraph 46)

[28] National Treasury para 27

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the applicant:	**MC Erasmus SC** **DJ van Heerden** **B Mkhize**
Instructed by:	
Counsel for the first respondent	, S Khumalo SC I Kealotswe-Matlou
Instructed by:	Rampsay Webber
Counsel for the second respondent	JF Pretorius Lebo Mokwena
Date of the hearing:	7 August 2023
Date of judgment:	23 October 2023