

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2021/47032

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

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N. REDMAN

2023

In the matter between:

**MBALI INDUSTRIAL SOLUTIONS CC**

Applicant

and

**ESKOM HOLDINGS SOC**

First Respondent

**THENGA HOLDINGS (PTY) LIMITED**

Second Respondent

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**JUDGMENT**

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REDMAN AJ

[1] On 10 July 2020 the first respondent ("**Eskom**") issued an invitation to tender for pipeline maintenance (slurry and ash plant) at the Matla Power Station for a period of 36 months under tender MPGXC006248.

[2] The approved value of the tender was R96 million. The closing date for submission of tenders was 10 September 2020. The tender validity period was 18 weeks.

[3] An eight-step evaluation set out in the Invitation to Tender ("**the ITT**") was as follows –

*"2. Evaluation process and criteria*

*2.1 Basic compliance*

*2.2 Mandatory tender returnable*

*2.3 Pre-qualification criteria*

*2.4 Local content and production (applicable where designated materials are included)*

*2.5 Functionality*

*2.6 Financial Evaluation*

*2.7 Price and Preference scoring*

*2.8 Objective criteria"*

[4] Clause 1.2 of the ITT indicated that several clauses in the Tender Data made reference to the Eskom Standard Conditions of Tender which could be downloaded from the Eskom website.

[5] The basic compliance criteria for the ITT were the following –

- *"Meet the eligibility criteria for a tenderer;*
- *Submit one (1) hard copy of the original tender to Eskom;*
- *Submit a complete original tender with commercial, financial and technical information;*
- *Submission of the mandatory commercial tender returnables as at stipulated deadlines*
- *Central Supplier Database (CSD) number (MAA ...)".*

[6] The pre-qualification criteria stipulated in the ITT included the following –

***"Pre-qualification No 1: Subcontracting***

***A tenderer shall subcontracting (sic) a minimum of 30% of the contract value to one or more of the following designated groups:***

- I. an EME or QSE which is at least 51% owned by black people;*
- II. an EME or QSE which is at least 51% owned by black people who are youth;*
- III. an EME or QSE which is at least 51% owned by black people who are women*

- IV. *an EME or QSE which is at least 51% owned by black people who are people with disabilities;*
- V. *an EME or QSE which is at least 51% owned by black people living in rural or underdeveloped area or townships;*
- VI. *a cooperative which is at least 51% owned by black people;*
- VII. *an EME or QSE which is at least 51% owned by black people who are military veterans.*

[7] Tenderers were required to submit the following mandatory returnables –

- 7.1. a valid and certified copy of a BB-BEE certificate issued by a SANAS accredited verification agency; or
- 7.2. a valid and certified copy of a fully completed BB-BEE sworn affidavit for EMEs of QSEs; or
- 7.3. a valid and certified copy of a BB-BEE issued by the CIPC for EMEs.

[8] Failure to submit the mandatory documents or information by the prescribed deadline would render a bid non-responsive.

[9] It was recorded that failure to meet the pre-qualification criteria would result in immediate disqualification; that is elimination from further evaluation.

[10] Tenderers were required to have a minimum CIDB grading of level 8ME and have ISO 3834 certification. Absent same, the tender would not meet the technical valuation (functionality) criteria and would not be evaluated further.

[11] Step 6 of the evaluation as described in the ITT entailed a financial evaluation of the tenderer's financial status. This is described in the ITT as follows:

*"An analysis of the tenderers financial statements will be conducted for purpose of establishing the tenderers financial viability and ability*

*to meet all its contractual obligations for the duration of the contract, should the tenderer be awarded the contract.*

**NB:** *The supplier to submit the audited Financial Statements to be used to perform financial viability."*

- [12] Twelve bids, including that of the applicant, were received in response to the ITT. Four of the bids were disqualified for want of compliance with the pre-qualification criteria. The remaining eight bids, including that of the applicant, were technically evaluated. After the technical evaluation and applying the 90/10 tender principle (90% for price and 10% for empowerment status), the applicant was ranked as the preferred supplier having scored 100 points. Based on the estimated contract value of R93 156 637,83, including VAT, the four qualified bidders were ranked as follows:

Bidder	Price	Points for price	BBB EE level	Points for BB-BEE	Total points scored	Ranking
Mbali Industrial Solutions	R81 007 511,16	90.00	1	10	100.00	1
Thenga Holdings (Pty) Ltd	R82 572 422,40	88.26	1	10	98.26	2
Maziya General Services	R95 004 763,08	74.45	1	10	84.45	3
Mzikampumi Eduardo Projects (Pty) Ltd	R445 753 565,85	-315.24	2	10	-304.24	4

- [13] Subsequent to the technical evaluation, on 1 April 2021, the Procurement and Supply Chain Management of Eskom submitted a document headed "Mandate to Negotiate – Post Tender" to the Chairman of Eskom's Sourcing division ("**Mandate to Negotiate**"). The document described the process which had been followed by Eskom in the evaluation of the tenders. The Mandate to Negotiate reveals that after the technical evaluation of the bids, the applicant was ranked as the highest scoring bidder. The technical evaluation report was finalised on 12 December 2020.

[14] After the finalisation of the technical evaluation, the applicant's financial statements were sent to the Group Finance Department of Eskom for analysis in order to assess the capability of the applicant to carry out the project. The Mandate to Negotiate records that according to the "Evaluator" (whose identity is not disclosed), the applicant was not sound enough financially to be awarded a contract to the value of R96 million excluding VAT. It is suggested in the Mandate to Negotiate that based on the strength of the applicant's financial statements it could be considered for a contract not exceeding R20 656 937 (excluding VAT) for pipeline maintenance (slurry and ash plant) for a period of three years. The document further records that the financial statements of, the second respondent Thenga Holdings (Pty) Ltd ("**Thenga**") had been submitted to the Corporate Finance division of Eskom (presumably the same division as the Group Finance department) and that the findings in regard to Thenga would be submitted with the feedback report.

[15] The Mandate to Negotiate under the heading "Risk Mitigation" records the following –

*"The nature of the contract is a maintenance contract with 95% of the contract requiring the work to be done before the payment is made to the Contractor. The other 5% is based on the consumable and PPE which should be the day-to-day of the company expenses. Based on the company profile evaluated the recommended company is executing similar work in the process industries including other site in Eskom successfully. We therefore do not seek financial risk."*

[16] It appears that on 1 April 2021, Eskom's Procurement Tender Committee ("**PTC**") authorised certain representatives of Eskom to negotiate but not conclude a contract for pipeline maintenance (slurry

and ash plant) for period of 36 months with both the applicant and Thenga. Pursuant thereto, during the course of April 2021 there were negotiations between the applicant and the two identified tenderers (the applicant and Thenga).

[17] On 22 April 2021, a feedback report detailing the progress of the negotiations was submitted to the Chairman of the Generation Division of Matla Power Station. The feedback report requested the Tender Committee to approve the negotiation outcome and recommended that a contract be awarded to the applicant at a contract value of R71 259 212,54 (being the discounted price agreed to by the applicant).

[18] On 23 April 2021, an internal e-mail was addressed by Lehlohnolo Senosi to Phuti Semenya at Eskom's department of Finance requesting an advice and opinion on the risk of awarding multiple contracts to the applicant. The e-mail reads as follows:

*"May I kindly request your advice and opinion on the matter relating to whether there is risk in awarding Mballi Solutions multiple contracts wherein they were evaluated and found to be Technically suitable and their offers lower compared to other bidders which resulted in them being highest ranked after evaluations on all the bids. Their bank guarantee letter states that they are guaranteed R120 Million, however, with the accumulative value of the contracts being recommended; the guarantee value will be exceeded. In addition to this, the finance analysis states, for example on the Pipeline Maintenance they should be considered for an award of +R20 Million instead of the recommended contract value. There is a risk mitigation letter which is provided which states that the risk is minimal due to the supplier only being liable for payment once services have been rendered.*

*The Committee is of the view that it may not be equitable for Eskom to award multiple contracts, siting (sic) the risk of possible compromise in quality of the work and financial overburden to the supplier.*

*The procurement procedure does not enlist any restrictions to awarding a supplier multiple contracts; however, this being said; I would appreciate your views on this."*

[19] On 29 April 2021, Semenya responded to the e-mail. In the e-mail Semenya, *inter alia*, agreed that the Committee's concern was valid and indicated that the financial analysis report was done on affordability of a R96 million contract with no other commitment to Eskom at the time. It was also indicated that subsequent to the financial analysis report having been issued, the applicant had been awarded another contract by Eskom thus "*depleting the supplier's affordability muscle to handle contracts with more value, with neither parent company guarantee nor performance bond*". Semenya also noted that a financial analysis formed part of the contractual obligation in the tender which was mandatory for the award of the contract. Semenya opined that in a case where a supplier failed to meet contractual obligations it would be disqualified as non-responsive and the second ranked supplier would be considered for the award provided that second supplier could offer market-related prices. Semenya recommended that the contract be awarded to the second ranked supplier provided it could meet the contractual obligations and offer market-related price.

[20] On 22 April 2021, a further feedback report was submitted to the Chairman of the Generation Division of the Matla Power Station. This report records that the negotiation team had renegotiated the price of Thenga to match the price offered by Mbali. This was not factually correct as Thenga's price appears to have remained the same. The feedback report records that the Matla Power Station's Procurement Tender Committee ("**PTC**") had indicated that they had reviewed the financial evaluation report and taken note of the price

margin between the applicant and Thenga and concluded that Thenga's negotiated offer was financially acceptable. The negotiation team was requested to renegotiate with Thenga to match the price offered by the applicant. It was also recommended that the negotiation team negotiate and conclude an agreement with Thenga. The final approval of an award to Thenga for a contract value of R74 483 297, 94 (excluding VAT) was recommended.

- [21] On 3 June 2021, the PTC of the Matla Power Station resolved to award the tender to Thenga for a contract value of R74 480 297,94 (excluding VAT).
- [22] The draft minutes of the meeting of the PTC of 3 June 2021 records that a financial analysis for Thenga was only requested "*post the approval for a mandate being approved on 10 May 2021*". It was indicated that a financial analysis had been requested and feedback would be provided to the PTC.
- [23] On 11 June 2021, a draft NEC TSC3 contract was forwarded to Thenga for completion.
- [24] On 30 June 2021, a letter to extend the tender validity period to 31 July 2021 was addressed to all tenderers. In this letter it was indicated that the evaluation process was taking longer than originally envisaged.
- [25] On 14 September 2021, the applicant was notified that its tender was unsuccessful and was informed by Eskom that the successful supplier was Thenga.
- [26] In response to a request, on 22 October 2021, the applicant was provided with the reason as to why its bid had been unsuccessful. In



this response, Eskom concluded that the third applicant was not sound enough financially to be awarded a contract to the value of R96 million.

[27] In its founding affidavit, the primary motivation for the relief sought was premised on the applicant's contention that the award of the tender to Thenga was not made within the tender validity period and accordingly the tender process was irregular and fatally flawed.

[28] After receiving a copy of the record the applicant delivered a supplementary affidavit, substantially varying its grounds of review.

[29] The grounds of review upon which the applicant now relies can conveniently be divided under two heads, namely –

29.1. the unequal treatment of the applicant; and

29.2. the second respondent's failure to comply with the peremptory requirements of the tender.

#### **Unequal treatment**

[30] From the record provided by Eskom under Rule 53 and the answering affidavits delivered on its behalf, it transpires that, notwithstanding the applicant's tender having been rejected following from a financial analysis conducted by Eskom, Thenga was appointed without any similar analysis of its records.

[31] In its answering affidavit, Eskom concedes that the decision to conclude a contract with Thenga and the award of the tender to that entity was made without any financial analysis in respect of Thenga having been conducted. According to Eskom, the financial analysis report in respect of Thenga was only completed on 7 July 2021, after the award of the tender. Eskom suggests that the PTC was under

severe pressure to appoint a service provider and that this was the reason why the applicant and Thenga's tenders were treated differently.

- [32] Despite Eskom's assurance that a financial analysis report in respect of Thenga was completed on 7 July 2021, it transpires that the financial analysis of Thenga was incomplete and of little assistance. The alleged financial analysis report of Thenga (obtained in terms of Rule 35(12)) reveals that Thenga did not provide sufficient documentation and information to enable Eskom's finance department to perform a financial analysis. The financial analysis report concludes as follows:

*"Based on the issue(s) raised above, we were unable to perform a financial analysis on **THENGA HOLDINGS (PROPRIETARY) LIMITED** and are therefore unable to express an opinion on whether or not the company is sound enough financially to be awarded a contract to the value of R85 572 422 (excl VAT) for the Pipe line Maintenance (slurry and ash plant) for a period of 36 months as per reference number MPGXC006162.*

*However, subject to the satisfactory resolution of the recommendations provided in the report, a financial analysis will be performed."*

- [33] Being an organ of state, Eskom is required to procure goods and services in accordance with the provisions of section 217 of the Constitution, 1996. Procurement is required to be done in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
- [34] With the view of ensuring compliance with the relevant legal prescripts set out in section 271 of the Constitution, the Promotion of Administrative Justice Act, 3 of 2000 ("**PAJA**") and the Preferential Procurement Policy Framework Act, 5 of 2000 ("**the PPPFA**"),

Eskom has adopted a procurement and supply chain management procedure ("**Procurement Policy**"). The recorded intention of the Procurement Policy is to enable Eskom to achieve a procurement solution or outcome which is commercially, financially and technically sound, and does not contravene the procurement principles of fairness, equitability, transparency, competitiveness and cost-effectiveness.

[35] Section 2 of the PPPFA requires an organ of state to determine its preferential procurement policy within the framework of that Act. Section 2(1)(f) of the Act provides that a contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in paragraphs 2(1)(d) and 2(1)(e) of the PPPFA justify the award to another tenderer.

[36] In argument, Eskom contended that the conducting of a due diligence and the scrutiny of the successful tenderer's financial statements constitutes a contractual requirement which forms part of the objective criteria prescribed in the ITT. The provision of financial statements are referenced under "objective criteria" defined in the ITT as well as under the contractual requirements. In the ITT it is noted that Eskom reserved the right to award the tender to a supplier who may not be the highest scorer or highest ranked tenderer in line with section 2(1)(f) of the PPPFA subject to the right to negotiate on the objective criteria with the three highest-ranked tenderers respectively before the award is made.

[37] Clause 14.7.9.13 of Eskom's Procurement Policy provides that contractual requirements may include, but are not limited to, inter

alia, a due diligence on the tenderer and financial statements. The relevant provision provides as follows:

*"Contractual requirements may include but are not limited to a due diligence on the tenderer, financial statements and meeting of SHEQ requirements. The feasibility of including SHEQ and financial analysis as contractual requirements must be determined during the strategy stage and only included if feasible and really applicable to the type of transaction.*

*Due diligence may be done through a review of financial viability and risk mitigation steps by the Centre of Excellence in Finance. The latest and approved financial statement not older than eighteen months after year end, as per requirements of company law, must be submitted if applicable. Risk mitigating factors may include obtaining a performance bond, parent company guarantee, any other financial assistance or procuring items from another supplier at the expense of the contracted supplier. If the risks cannot be mitigated to ensure performance against the contract, the contract may be awarded to another supplier, which may not be the highest ranked supplier if offering market related prices."*

[38] Clause 14.7.9.13 of the Procurement Policy, provides that in tenders above a certain level, the financial viability assessment of the suppliers to execute a contract would be done by Financial and Management Reporting (within Group Finance) which maintains a database with supplier analysis reports from which information may be extracted if need be.

[39] Clause 14.7.9.13 of the Procurement Policy also provides that where a supplier has been awarded multiple contracts with Eskom, the financial analysis from the financial management reporting (within Group Finance) must include the cumulative effect of all contractual commitments with Eskom in order to determine Eskom's risks and to determine whether the supplier has the financial viability to take on further contractual commitments with Eskom.

[40] During the course of argument it became common cause that the conducting of a due diligence and consequently the carrying out of a

financial analysis of a proposed bidder formed part of the contractual requirements prescribed in the Invitation to Tender. The applicant's primary complaint was directed not at the financial analysis conducted in respect of the applicant (although it did question certain aspects thereof) but rather at the failure to conduct a financial analysis in respect of Thenga.

[41] It does not appear to be disputed that Eskom has the right, if not the obligation, to assess Eskom's financial risk exposure in order to determine the viability of concluding an agreement with an identified tenderer. Clause 3.14 of Eskom's Conditions of Tender require Eskom to determine the risk of doing business with a supplier who may pose a financial risk to Eskom in the execution of the contract. It is recorded that during the evaluation of the financial statements Eskom will try to identify mitigating factors / requirements for the tenderer to meet, if applicable and if there are insufficient suitable mitigating factors or of the risk is deemed to be too high, Eskom may disqualify the tender.

[42] I am satisfied that the financial ability or capacity of a tenderer to deliver under the contract may well constitute an objective criteria as envisaged by the provisions of section 2(1)(f) of the Procurement Act. (See *Rainbow Civils CC v Minister of Transport and Public Works Western Cape and Others* [2013] ZAWCHC (3) (6 February 2013) at paras 109-110).

[43] It, however, goes without saying that the objective criteria will be equally applicable to all tenderers. In the instant matter, Eskom was selective in its treatment of the applicant and Thenga's tenders. The

application of different criteria for different tenderers is inequitable, irrational and unfair. It is apposite to reiterate the words of caution provided by the Constitutional Court in *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of South African Social Security Agency and Others*; 2014 (4) SA 604 (CC) at paragraph [27] where the following was stated:

*"[27] There is a further consideration. As Corruption Watch explained, with reference to international authority and experience, deviations from fair process may themselves all too often be symptoms of corruption or malfeasance in the process. In other words, an unfair process may betoken a deliberately skewed process. Hence insistence on compliance with process formalities has a three-fold purpose: (a) it ensures fairness to participants in the bid process; (b) it enhances the likelihood of efficiency and optimality in the outcome; and (c) it serves as a guardian against a process skewed by corrupt influences."*

[44] Having elected not to award the tender to the applicant as a result of the financial analysis, the failure to conduct a financial analysis in respect of Thenga is inexplicable and disconcerting.

[45] Absent the application of objective criteria the applicant was entitled to be awarded the tender. It does not appear that the applicant was afforded the opportunity to deal with the recommendations arising out of the financial analysis nor was it given an opportunity to address any risk-mitigating factors. It is unclear whether any of the risk-mitigating factors set out in Eskom's Procurement Policy were ever considered. One would have expected Eskom in these circumstances to have afforded the applicant an opportunity to address its concerns. Clause 14.7.9.13 of Eskom's Procurement Policy only envisages the awarding of the contract to another supplier in circumstances where the risk could not be mitigated.

[46] The process and award of the tender to Thenga falls foul of a number of provisions of PAJA, more particularly sections 6(2)(c), (h) and (i).

[47] I am accordingly satisfied that the award of the tender to the second respondent in these circumstances was irregular and constitutionally invalid.

**Second respondent's bid invalid**

[48] One of the pre-qualification criteria of the tender was that a tenderer shall subcontract a minimum of 30% of the contract value to one of the group's designated in the ITT.

[49] In its tender, Thenga indicated that it intended to use AWS Pipelines as a subcontractor and that AWS Pipelines had a BBBEE level of 02. Thenga, however, did not indicate as to which group the subcontractor belonged. A copy of the subcontract agreement between Thenga and AWS Pipelines was not included in the Rule 53 record. It was subsequently attached to Eskom's answering affidavit. From Thenga's tender document it is impossible to determine any details relating to the ownership of AWS Pipelines.

[50] In Eskom's answering affidavit it conceded that the non-compliance with the pre-qualification criteria relating to the identity of the designated group of the subcontractor, was significant. Eskom contended that where bidders had included a subcontractor agreement it was assumed that same was compliant with the requirements.

[51] It is immediately apparent that neither Thenga's tender document itself nor the subcontract agreement between it and AWS Pipelines establishes compliance with the pre-qualification criteria. It is notable

that Eskom itself made no attempt to establish whether the pre-qualification criteria had been met.

- [52] In terms of the technical evaluation criteria (functionality) requirements of the tender, tenderers were required to have a CIDB level 8 ME (Construction Industry Development Board) certification and were required to be compliant with ISO 3834. Valid proof of the tenderer's CIDB grading level 8 ME and ISO 3834 were mandatory requirements to perform welding on the Eskom plant.
- [53] The ITT recorded that only tenderers who were registered with the CIDB, or who were capable of being so registered within 21 working days from the closing date from submission of tenders, would be eligible to submit tenders.
- [54] It is common cause that Thenga did not submit proof of its ISO 3834 certification. It was Thenga's intention to sub-contract all welding-related work to AWS Pipelines. From the documentation attached to Thenga's answering affidavit, it appears that AWS Pipelines ISO 3834 certification had been renewed until 2023.
- [55] From the affidavits and Rule 53 record it is difficult to determine what documents were submitted by Thenga to Eskom in this regard. In its answering affidavit Eskom suggests that the required ISO certificate had been submitted to it but could not be located. This, however, was untrue. No ISO certificate had been issued to Thenga in 2020.
- [56] It also transpired that the CIDB registration certificate of AWS Pipelines had expired in 2013.



- [57] The failure on the part of Thenga to submit the mandatory returnables in terms of para 3.12 of the ITT should have disqualified it and eliminated it from further evaluation.
- [58] Non-compliance with the peremptory requirements of the tender cannot be condoned. (See *Dr J S Moroka Municipality and Others v Bertram (Pty) Ltd and Another* 2014 (1) All SA 545 (SCA) and *Minister of Environmental Affairs and Tourism and Others v Pepper Bay Fishing* 2004 (1) SA 308 (SCA)).
- [59] The conduct of awarding the tender to Thenga in the absence of it having complied with the pre-qualification criteria renders the award reviewable under section 6(2)(b), (c) and (i) of PAJA.

### **Remedy**

- [60] Section 8 of PAJA vests a court with a wide equitable discretion in proceedings for judicial review. Orders which may be granted include –
- "(c) *setting aside the administrative action; and –*
1. *remitting the matter for reconsideration by the Administrator with or without directions.*"
- [61] In *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency and Others* 2014 (1) SA 604 (CC) at paragraph [56] the Court described the approach to remedy as follows:

*"Once a finding of invalidity under PAJA review grounds is made, the affected decision or conduct must be declared unlawful and a just and equitable order must be made. It is at that stage that the possible inevitability of a similar outcome, if the decision is retaken, may be one of the factors that will have to be considered. Any contract that flows from the constitutional and statutory procurement framework is concluded not on the state entity's behalf, but on the public's behalf. The interests of those [the public] most closely*

*associated with the benefits of that contract must be given due weight."*

[62] There are no exceptional circumstances warranting a substitution or variation of the tender award by this Court. I am satisfied that the appropriate relief would be to set aside the administrative action and remit the matter back to Eskom for reconsideration as envisaged by section 8(1)(c)(ii) of PAJA.

[63] The respondent has a record of all tenders and is in a position to reconsider its award having regard to the documentation provided to it. I am satisfied that a period of three months would suffice for it to complete this process. The declaration of invalidity should be suspended pending the finalisation of the process.

[64] I accordingly make an order in the following terms:

1. That the decision by the first respondent to award tender MPGXC 006248 [the tender] to the second respondent be reviewed and set aside in terms of the Promotion of Administrative Justice Act, 3 of 2000 [PAJA] and declaring invalid any contract concluded pursuant thereto.
2. The question of who of the qualifying bidders should be awarded the tender is remitted to Eskom's Procurement Authority [Eskom] for reconsideration as envisaged in section 8(1)(c)(ii) of PAJA on the papers filed of record in this review with the directions that -
  - (a) the final award be made within three months from the date of this Order;

(b) the order in paragraph 1 above is suspended for three months from the date of this Order.

3. The respondents are ordered, jointly and severally, to pay the costs of this application for review, the one paying the other to that extent to be absolved, including the costs of senior counsel.

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N REDMAN  
Acting Judge of the High Court

Heard: 24 November 2022  
Judgment delivered: \_\_\_ February 2023

Appearances:

For Applicant: Adv CJH Badenhorst SC  
Attorneys: Dirk Kotze Attorneys

For 1<sup>st</sup> Respondent: Adv N Mayet  
Attorneys: Ncube Inc.

For 2<sup>nd</sup> Respondent: Adv T Govender  
Attorneys: Victor Nkhwasha Attorneys