

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2023-117558

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

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Name: REDMAN AJ

Date: 14 December 2023

In the matter between:

**RAUBEX CONSTRUCTION (PTY) LIMITED**

Applicant

and

**PASSENGER RAIL AGENCY OF SOUTH AFRICA (SOC)**

First Respondent

**RE A LETAMISA TRADING & PROJECTS CC**

Second Respondent

*This judgment was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded onto CaseLines. The date and time for hand-down is deemed to be \*\*\* on \*\*\* December 2023.*

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**JUDGMENT**

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**REDMAN AJ:**

**INTRODUCTION**

[1] The applicant approaches this Court on an urgent basis seeking an interim interdict to prevent the respondents from implementing a tender for the

demolition, detailed design and construction of the associated perway of Boksburg Hospital Road rail over-road bridge between Boksburg and Boksburg East Station for a period of 10 months, under Tender number 01/05/2023/GAU-(PER) (“**the Tender**”).

- [2] The Tender arose pursuant to a tragic accident which occurred on 24 December 2022 when a gas tanker crashed into the Boksburg Hospital rail over-road bridge and exploded resulting in multiple fatalities to onlookers as well as Boksburg Hospital staff and patients.
- [3] As a result of the accident, the railway over-road bridge and four railway lines which form part of the Germiston, Daveyton, Dunswart and Springs corridor were severely damaged and required urgent and immediate repairs.
- [4] A Request For Proposal (“**the RFP**”) was published during May 2023 with a closing date of 14 June 2023. The RFP required tenderers to acquaint themselves with the RFP and to submit all responses in two sealed envelopes, the first envelope having the technical compliance response and the second envelope having the financial response and specific goals response.
- [5] In the RFP it was recorded that the first respondent was required to publish the tender prices and preferences claimed of the successful and unsuccessful respondents *inter alia*, on the National Treasury e-Tender publication portal ([www.etenders.gov.za](http://www.etenders.gov.za)).
- [6] The applicant submitted a tender before the closing date.
- [7] On 6 October 2023, the applicant obtained a copy of a letter dated 31 August 2023 addressed by the first respondent to the second respondent informing the second respondent that its tender in the amount of R79 764

000,00 was successful. The letter recorded that the second respondent would be required to sign a contract with the first respondent to outline the detail of the deliverables and services to be rendered. The applicant does not indicate whether it accessed the e-tender portal prior to 6 October 2023. The applicant was aware of the nature of the Works to be carried out as well the urgency in the finalisation thereof.

- [8] On discovering that the tender had been awarded to the second respondent, on 6 October 2023 the applicant addressed a letter to the first respondent seeking copies of documents relating to the tender award as well the reasons for the first respondent's decision. The letter afforded the first respondent until 11 October 2023 to provide the record and reasons. At that juncture the applicant would have known that implementation of the tender was likely to have commenced or would immediately commence.
- [9] On 13 October 2023 the applicant requested that the documents and information be furnished by Monday 16 October 2023. The applicant thereafter launched an urgent application seeking to compel the first respondent to provide the reasons for the rejection of the applicant's bid. Despite being aware of the award, however, the applicant chose not to seek interdictory relief at that stage.
- [10] On 2 November 2023 the applicant received the reasons for the first respondent's decision. On receipt of the reasons the applicant took 8 days before launching the current "urgent application" on 10 November 2023.
- [11] The application was only served on 14 November 2023 and set down for hearing on 28 November 2023.

- [12] It transpires that the design works under the Tender had already commenced on 4 October 2023 and the design works had already been submitted on 17 November 2023.
- [13] By the time the application came before the urgent court, approximately 2,5 months of the 10 months envisaged for the completion of the Works had already lapsed. The instructions to commence the Works had already been given by the first respondent to the second respondent and the Works had commenced under the Tender.
- [14] Having ascertained as early as 6 October 2023 that the Tender had been awarded to the second respondent on 31 August 2023, one would have expected the applicant to have acted expeditiously in seeking to interdict the implementation of that Award.
- [15] Before an urgent court makes a finding on the merits of an application it must be satisfied that it should be dealt with on the Court's urgent roll and that the applicant will not be afforded substantial redress at a hearing in due course.<sup>1</sup> Although a delay in instituting proceedings will not necessarily preclude a party seeking urgent relief, it is indicative of the applicant's attitude towards the matter and whether it believes it requires the Court's urgent attention.
- [16] In this matter the applicant does not explain its delay in initiating the urgent application. The effect of the delay has resulted in the relief being sought by it being rendered nugatory. By the time the matter reached Court, the

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<sup>1</sup> *SARS v Hawker Air Services* 2006 (4) SA 292 (SCA). See also *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 (23 September 2011).

instructions had already been given to the second respondent and the Tender had been implemented. Indeed, the Works had commenced.

[17] The Tender envisaged a turnkey project. It is unclear whether construction work has commenced and to what extent. The commencement of the Works under the contract effectively extinguished any urgency the applicant may have had.

[18] In the light of the aforesaid, I am not satisfied that the applicant has established that this matter should be dealt with as one of urgency and accordingly the application is struck from the urgent roll with costs.

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N REDMAN  
Acting Judge of the High Court  
Gauteng Division, Johannesburg

Heard: 29 November 2023  
Judgment: 14 December 2023

Appearances:

For Applicant: J Buys  
Instructed by: York Attorneys

For 1<sup>st</sup> Respondent: M N Ndlovu  
Instructed by: MacRobert Attorneys