

**REPUBLIC OF SOUTH AFRICA**



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

**CASE NUMBER: 2024-002676**

- (1) REPORTABLE:
- (2) OF INTEREST TO OTHER JUDGES:
- (3) REVISED: YES

**1 February 2024**

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In the matter between:

**VENUS SECURITY INTERNATIONAL (PTY) LTD**

Applicant

**Registration no: 2014/196529/07**

And

**EAGLE EYE SECURITY (PTY) LTD**

First Respondent

**SECURITAS SPECIALISED SERVICES (PTY) LTD**

Second  
Respondent

**AVIATION CO-ORDINATION SERVICES (PTY)**

**LTD Registration no: 1999/020896/07**

Third Respondent

**AIRPORTS COMPANY SOUTH AFRICA SOC LTD**

**Registration no: 1993/004149/06**

Fourth Respondent

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**JUDGEMENT**

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[1] On 6 December 2023, Epstein AJ, granted the applicant, Venus Security International (Pty) Ltd an order in the following terms:

- “1. That ACSA is directed to suspend any implementation of any acts taken under or in terms of the procurement process relating to the Tender, including but not limited to the suspension of any rights acquired by the New Panel (the nine successful tenderers).
2. The licenses awarded to the Tenderers on the New Panel are suspended.
3. Any allocations made to members of the new panel by ACSA pursuant to the procurement process relating to the Tender or in relation to the newly awarded licenses, are suspended.
4. The new panel members are interdicted from concluding contracts with ACSA and/or ACSA's stakeholders pursuant

to the procurement process relating to the tender or in relation to the newly awarded ACSA licenses.

5. It is declared that insofar as any of the applicant's licenses expire by virtue only of the decision not to appoint the applicant to the new panel in terms of the first phase of the tender procedure, such licenses remain extant.

["the Epstein Judgement"]

[2] The applicant approaches this court on an urgent basis and claims the following relief:

- 2.1. That the first and second respondents are held to be in contempt of court of the Epstein Judgement.
- 2.2. That the third respondent be ordered to extend its existing contract with the applicant to provide security services for the third respondent until the outcome of the review application and any appeal thereof, which review application is included in the Epstein Judgement.

In the alternative

- 2.3. In the event that this honourable court is not amenable to grant the relief as aforesaid, the applicant seeks an order in the following terms:
  - 2.3.1 that the third respondent be ordered to retain the status quo and extend the applicant's current

contract to provide security services for the third respondent, pending a new panel being appointed by the fourth respondent.

[3] The application is opposed by the first, second and third respondents. The fourth respondent did not participate in the application.

[4] The facts relied upon by the applicant are:

4.1. The first respondent concluded a contract with the third respondent on 19 October 2023, before the Epstein Judgement, which contract was due to commence on 1 November 2023, but due to operational reasons, ACS postponed the implementation thereof until 1 February 2024.

4.2. The applicant's contract was about to lapse on 31 October 2023, and as a result of Venus not being appointed to the new panel, the applicant could not conclude a new contract with the third respondent.

4.3. The third respondent extended the applicant's contract to 31 January 2024 due to operational reasons, amongst which reasons was that the third respondent did not want any disruptions during the busiest months.

4.4. The third respondent concluded a contract with the second respondent, on the basis that the second respondent was appointed to the new panel) on 8 November 2023 to commence on 1 February 2024 and completion date being 31 October 2026.

- 4.5. On 6 December 2023, the applicant corresponded with the third respondent and informed it of them of the court order, requesting that the applicant's contract with the third respondent be extended on the basis that its license was extended by the order until the outcome of the review application.
- 4.6. The third respondent responded that the contracts with the first and second respondents were already concluded in October 2023 and they will be proceeding with those contracts.
- 4.7. The applicant's attorney of record sent a courtesy letter to the third respondent informing it that they could not proceed with any contracts concluded with the new panel and requesting that the applicant's contract be extended, at least until the fourth respondent appointed a new panel.
- 4.8. On 14 December 2023 the applicant's attorney of record received a letter from the third respondent's attorneys' of record requesting clarity on several issues, one of which was confirmation that the applicant's license was extended in order for their client to consider their position and respond meaningfully. The clarification sought was provided on 15 December 2023.
- 4.9. On the same day, the applicant forwarded correspondence to the first respondent demanding confirmation that any contracts concluded with stakeholders in terms of the new panel will not be pursued with.

- 4.10. The first respondent replied on the same day confirming that it is not intending to pursue any contracts concluded in terms of the new panel.
- 4.11. Bu 1 January 2024 the applicant had not received any response from the third respondent and contacted the Chief Executive Officer of the third respondent directly, [insert]. Mr [insert] responded by stating that the third respondent intended to proceed with the October 2023 contracts with both the first and second respondents.

#### **THE APPLICANT'S CASE**

[5] The applicant contends that:

- 5.1. Any contracts concluded before 6 December 2023 were concluded and entered into in terms of the new panel appointments, which were invalid and had to be terminated once the judgment once the Epstein Judgement was handed down, alternatively, was suspended by the Epstein Judgement.
- 5.2. The first and second respondents have ignored the order wilfully and proceeded with contracts which were concluded prior to the order and which contracts are interdicted under the court order.
- 5.3. The first and second respondents are in contempt of court, knowing about the order and contrary to its terms, are in the process of having their contracts implemented.

- 5.4. In order to avoid any disruptions at a National Key Point, their contract should be extended until the outcome of the review application, alternatively until the fourth respondent appoints an emergency panel.

[6] The applicant concludes that:

- 6.1. The first and second respondents were served with the Epstein Judgement on 6 December 2023. Equally, the applicant delivered a copy of the said judgement to the third respondent on the same day. As a consequence, the first, second and third respondents having been made aware of the Epstein Judgement, failed to act in good faith by not having terminated the contracts which were concluded prior to the Epstein Judgement.
- 6.2. The first applicant concluded the contract with the third respondent knowing that there was pending litigation.
- 6.3. The second respondent concluded the contract with the third respondent knowing that there was pending litigation and after being instructed by the fourth respondent on 25 October 2023 that "... any further contracting processes will be suspended pending judgement...".
- 6.4. The first and second respondents have not acted in good faith and cannot be allowed to continue to being in contempt of the Epstein Judgement.

- 6.5. There will be prejudice for the third respondent should the order be granted as the applicant is already familiar with the sites and procedures and is the incumbent service provider.

## **THE ISSUES**

[7] The issues for consideration are:

- 7.1. Whether the relief claimed in respect of the contempt order and the alternative relief is urgent.
- 7.2. If so, whether the applicant has satisfied the requirements in order to hold the first and second respondents in contempt of the Epstein Judgement. The third respondent was not a party in the proceedings before Epstein AJ and as such there can be no question that the third respondent cannot be held in contempt of the Epstein Judgement.
- 7.3. Whether it is competent for this court to direct the third respondent to extend the applicant's contract as prayed for.

## **THE LEGAL FRAMEWORK**

### **[i] In General Terms**

[8] Security services are a vital for the continued operations at airports; the fourth respondent and the stakeholders cannot dispense with security services. The fourth respondent constitutes a panel of security service providers every five years or so and grants licenses to security companies on the panel to provide security services at all of the fourth



respondent's airports. A valid license is a pre-condition to any contract for security services

[9] The security companies on the panel are however not guaranteed work from the fourth respondent and its stakeholders. All that they are guaranteed is an ACSA license to be eligible for appointment by the fourth respondent or its stakeholders should the fourth respondent and its stakeholders wish to appoint them, in their sole and absolute discretion.

[10] Pursuant to a public process decided in 2017, the fourth respondent constituted a panel of service providers licensed to provide security services to the fourth respondent and the stakeholders, the old licenses and the old panel. The applicant as well as the first and second respondents were appointed to old panel and were contracted to the fourth respondent and the third respondent for the intended purposes.

[11] A similar tender process resulted in the constitution of the new panel, however in this instance, the applicant was not retained on the new panel whereas the first and second respondents were retained. The constitution of the new panel resulted in the applicant initiating review proceedings and in respect of which the Epstein Judgements was obtained.

**[ii] The Interpretation of Court Orders**

[12] In *Eke v Parsons* 2016 (3) SA 37 (CC) para 29, relying on *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others* 2013 (2) SA 204 (SCA) para 13; and *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A), the Constitutional Court held the test on the interpretation of court orders as follows:

“The starting point is to determine the manifest purpose of the order. In interpreting a judgement or order, the court’s intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court’s reasons for giving it must be read as a whole in order to ascertain its intention.”

- [13] The rule relating to the interpretation of documents is that “[i]nterpretation is to be approached holistically: simultaneously considering the text, context and purpose”. See: *Fujitsu Services Core (Pty) Ltd v Schenker South Africa (Pty) Ltd* 2023 (6) SA 327 (CC) para 52; *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investment 194 (Pty) Ltd and Others* 2022 2012 (4) SA 593 (SCA) para 18. In this regard it was held in *Capitec supra* para 25:

“The much-cited passages from *Natal Joint Municipal Pension Fund v Endumeni Municipality (Endumeni)* offer guidance as to how to approach the interpretation of the words used in a document. It is the language used, understood in the context in which it is used, and having regard to the purpose of the provision that constitutes the unitary exercise of interpretation. I would only add that the triad of text, context and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitute the enterprise by recourse to which a coherent and salient interpretation is determined.”

**[iii] Contempt of Court**

[14] In *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others 2021 (5) SA 327 (CC)* at para 37, the Constitutional Court restated the test for contempt of court as follows:

“ “[I]t is trite that an applicant who alleges contempt of court must establish that (a) an order was granted against the alleged contemnor; (b) the alleged contemnor was served with the order or had or had knowledge of it; and (c) the alleged contemnor failed to comply with the order. Once these elements are established, wilfulness and mala fides are presumed and the respondent bears an evidentiary burden to establish a reasonable doubt. Should the respondent fail to discharge this burden, contempt will have been established.”

## **ANALYSIS OF THE MATTER**

### **[i] Urgency**

[15] The first, second and third respondents, argues that the application is not urgent, alternatively that any urgency that may exist, is self-created and as such that the application should be struck from the urgent roll.

[16] There appears to be merit to the objection on urgency as far as the alternative relief, the extension of the applicant’s contract is concerned. The objection is however unfounded in the issue of contempt relief and as a result a find that the matter is urgent.

[17] In any event the parties addressed me on both the question of urgency as well as the merits of the matter and I intend to deal with the substantive issues raised.

**[ii] Contempt of Court**

[18] Undoubtedly, the starting point of the entire matter, is the Epstein Judgement.

[19] The applicant's understanding of the Epstein Judgement is that the Epstein Judgment had the effect that the status quo was to remain pending the conclusion of the review process alternatively the re-constitution of the new panel. The status quo as understood by the applicant, was that the stakeholders' licenses issued to it by the fourth respondent as members of the old panel would remain valid for the duration of the conclusion of the aforesaid process. It is common cause that the agreements in terms of which the stakeholders provided their respective service were coming to an end; in the instance of the applicant, on 31 January 2024. And finally, the agreements concluded by the first and second respondents which is to commence on 1 February 2024, were invalidated by the Epstein Judgement.

[20] Probably the unintended result of the applicant's interpretation of the Epstein Judgement, is that the intended new panel of nine service providers, was reduced to three service providers, at least until the new panel has been re-constituted. An issue of monopoly which the procurement process sought to address with the constitution of a panel of 9 stakeholders.

[21] The applicant finally contends that the conclusion of the agreement by the first and second respondents are in conflict with the Epstein Judgements and as a consequence, the first and second respondents, are in contempt of court. I have already stated that by virtue of the third respondent not having been a party to proceedings before Epstein AJ, the third respondent cannot be in contempt of his judgment.

[22] For present purposes, the end result of the procurement process was that the applicant, previously a member of the old panel, had been excluded from the new panel. The decision to exclude the applicant from the new panel was challenged by way of a review and pending the finalisation of the review process, the status quo, was to be preserved.

[23] The status quo as at 6 December 2023, was as follows:

23.1. the applicant, the first and the third respondents held valid licenses issued by the fourth respondent;

23.2. these licenses had expiry dates to it however, the fourth respondent did, as it was entitled to, extend the expiry dates of these licenses; this was necessary as no stakeholder is entitled to render any of the services with a validly issued license;

23.3. the applicant, the first and third respondents, by virtue of having been issued with valid licenses by the fourth respondent were, to the extent that they did not already had contracts with either the fourth respondent and/or the third respondent capable of concluding valid and binding contracts – this much is conceded by the applicant in reply although it is suggested that the contracts so concluded had to be on a month to month basis;

23.4. the contracts held by the applicant was to expiry through effluxion of time on 31 January 2024.

[24] The Epstein Judgement was confined to the procurement process and its results. It is for this reason that he suspended the new licenses issued by the fourth respondent to the nine successful bidders. Nothing was said in relation to the old licenses held by the members of the old

panel. It did not seek to regulate the affairs of the fourth respondent and it most certainly did not seek to create or establish rights for the parties.

[25] The applicant's application hinges on the following passages of the Epstein Judgement:

“The New Panel member are interdicted from concluding contracts with ACSA and/or ACSA's stakeholders pursuant to the procurement process relating to the tender or in relation to the newly awarded ACSA licenses.”

[26] The applicant's case is that the agreements concluded by the first and second respondents were concluded by the respective parties in their capacities as members of the new panel and as such that they are in violation of the Epstein Judgement. In support of this argument the applicant alleges that the first, second and third respondents' versions of events are contradictory in that:

26.1. The first respondent contends that they had entered into a contract with ACS on 19 October 2023 but when the order was handed down, they considered the impact of the court order on the contract, the contract was never put into operation, and that they entered into a “fresh agreement” with the third respondent on 8 December 2023 on a month to month basis.

26.2. The third respondent on the other hand contends that the 19 October 2023 contract is valid and that a further contract was entered into with the first respondent on 8 December 2023 for additional services.

- 26.3. The second respondent submits that the contract concluded on 8 December 2023 was due to the fact that they were on the old and new panel and the contract was concluded before the order and is therefore not interdicted, which is in complete conflict of the first respondent's understanding of the Epstein Judgement.
- 26.4. The third respondent agrees with the second respondent in that any contract concluded before the order remains valid and only contract concluded after the order are interdicted, although on their own admission they concluded a further contract with the first respondent on 8 December 2023.
- 26.5. The first respondent further contends that they are entitled to contract on a month to month basis on the strength of the old panel license, however, the 8 December 2023 contract with the third respondent attached to their answering affidavit, reflects a commencement date of 9 December 2023 and a completion date of 1 February 2025.
- 26.6. The second respondent's contract concluded on 8 November 2023 has a commencement date of 1 November 2023 (postponed to 1 February 2024) and the completion date of 31 October 2026, which means that it must have been concluded in terms of the new panel license as on 8 November 2023 the old panel licenses were only extended to date of judgement.
- 26.7. The applicant concludes that the first, second and third respondents are making a mockery of the Epstein Judgement by entering into long term contracts, which the said judgement seeks to prevent pending the adjudication of the various review applications. The effect of the interim interdict is cunningly circumvented under the ruse of contracting with old panellists

for extended periods, when in fact these contracts were entered into when the first respondent and the second respondents were approved and appointed as new panellists.

[27] I agree with the applicant that the various explanations advanced by the respondents implicated, are indeed unsatisfactory. That being said, can it be said that the applicant has established a prima facie case, that even to be open to some doubt, that it is entitled to the relief claimed? For the following reasons, I am of the view not:

27.1. The Epstein Judgement limited the first and second respondent's contracting capacities only as new panel members. It did not do so in respect of them having been old panel members. This was true as far as the applicant was concerned in that the applicant's contract was extended until 31 January 2024. The applicant was not a member of the new panel, but was a member of the old panel. As such its contract could only have been extended on the grounds that it was a member of the old panel.

27.2. The undisputed fact is that at the time when each of the contracts under consideration were concluded, the parties thereto, were entitled to contract by virtue of the fact that they had been issued with valid licences. Both the first and second respondents were members of the old panel and as such held licenses issued by the fourth respondent – the old licenses.

27.3. The applicant argues that on the probabilities the contracts under consideration must have been concluded pursuant to and in terms of the new licenses issued. This is of no moment, even if accepted to be correct. The Epstein Judgement limited the first and second respondent's capacity to contract in their



respective capacities as new panel members. It did not do so as far as and in relation to their membership of the old panel.

27.4. When Epstein AJ invalidated the new panel on 6 December 2023 and any allocations pursuant thereto, such invalidation was retrospective and by necessary implication must have had the effect of restoring the status quo immediately prior to the constitution of the new panel. At that stage the applicant and the first and second respondents had valid licenses as well as contracts that would expire on the agreed dates, open to further extensions.

27.5. The reasons advanced subsequently and which appears on the face of it to have certain inherent contradictions, do not take away from the aforesaid realities.

27.6. Consequently, it does not follow that the contracts under consideration were concluded pursuant to the constitution of the new panel. In any event, the applicable test to be applied in the present instance is not one of probabilities. Instead, the purported disputes of fact are to be considered on terms of the Plascon-Evans principle, i.e on the version presented by the respondents unless their versions are so far-fetched that I should reject their versions. I am unable to reach such a conclusion.

[28] In the result, I find that there is no merit to the interpretation placed upon the Epstein Judgement by the applicant and as a consequence, the complaint that the first and second respondents are in contempt of the said judgment must be rejected.

**[iii] The Request to Extend the Applicant's Contract**

[29] Having found that the first and second respondents are not in contempt of the Epstein Judgement it is unnecessary for me to make any determination in relation to the last issue, save for the following remarks:

29.1. Being in possession of a valid license does not per se entitled the applicant or any other stakeholder for that matter to be awarded a contract.

29.2. Furthermore, it is trite that no court can compel parties to contract and the reliance on section 172(1)(b) of the Constitution as well as Head of Department: Mpumalanga Department of Education v Hoërskool Ermelo [2009] ZACC 32; 2010 (2) SA 415 CC does not alter the trite principal. In any event, even if I am wrong on this score, the current stage of the process where the matter is currently at does not allow me to award the applicant an extension of the applicant's contract.

**ORDER**

[30] In the result I make the following order:

30.1. The application is dismissed with costs, such costs to include the costs of two counsel where so employed.

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**S AUCAMP**

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

*This judgment was handed down electronically by circulation to the parties' and/or the parties' representatives by email and by being uploaded to Caselines. The date and time for hand-down is deemed to be 1 February 2024.*

**COUNSEL**

**for the applicant:**

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**For the First Respondent:**

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**For the Third Respondent:**

N Cassim SC

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