



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

CASE NO: 2024-022778

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

25 March 2024

DATE

SIGNATURE

In the matter between:

SKA ELECTRIC (Pty) Ltd

Applicant

and

ABB SOUTH AFRICA (Pty) Ltd

Respondent

JUDGMENT

COWEN J

1. In this matter, which came before me on the urgent roll on 20 March 2024, the applicant seeks an order compelling immediate performance of obligations under an agreement it alleges it concluded with the respondent. The applicant is Ska Electric (Pty) Ltd (Ska Electric) and the respondent is Abb South Africa (Abb SA).

2. Ska Electric has contracted to provide the City of Umhlathuze Municipality (the municipality) with a Control Centre Network Automation System, 132/11kV Cygnus Substation Local SCADA and Modernisation of 11kv Cygnus Substation (the system).
3. The application was opposed both on grounds of lack of urgency and on the merits.
4. The application was instituted on 29 February 2024 and served by e-mail shortly before noon. Abb SA was required to deliver its notice of intention to oppose on Friday 1 March 2024 and its answering affidavit, if any, on 4 March 2024, to be enrolled on 8 March 2024 and heard on 12 March 2024. The period for response was thus extremely truncated. In the final result, the respondent did not deliver its answering affidavit on 4 March 2024 but on 7 March 2024 and when it did so, it complained bitterly about the time frames imposed. On 12 March 2024, the matter was ultimately struck from the roll for non- appearance.
5. The applicant justifies the critical urgency on grounds of commercial harm and on public interest grounds. Both are scantily motivated. The public interest grounds have some traction in that the system is said to be integral to managing load shedding throughout the entire municipal district, specifically to ensure staggered load shedding of up to four hours as opposed to prolonged periods of load shedding. Ska Electric says that it has delivered the hardware system to the municipality but it is not functioning due to an unwillingness on the part of Abb SA

to perform under the agreement. Public funds are being utilized for purposes of delivering the solution and manage load shedding. The only impediment to realizing this, the applicant says, is non-performance on the part of Abb SA.

6. Abb SA disputes any non-performance but on urgency contends that these allegations are far too broadly stated, and insufficiently substantiated to warrant a conclusion of critical urgency. Importantly, no detail is provided about the terms of the contract with the municipality and when performance by Ska Electric is due. Abb SA also says that any urgency was self-created as it has been aware of the alleged delay in performance since December 2023. Furthermore, the deadlines for response, in these circumstances, were oppressive and unnecessary and only a limited answer has been given.
7. I agree with the respondent that the circumstances that gave rise to the alleged urgency in this matter were in material measure known to the applicant since December 2023. I agree too that the deadlines for response were, in these circumstances oppressive and unnecessary. Moreover, the applicant has indeed failed to set out sufficient averments concerning the impact of the alleged non-compliance to justify critical urgency. I accordingly decline to consider the matter on its merits on the urgent roll.
8. While I need not entertain the merits, I have noted that the applicant may face a further difficulty which concerns the respondent's contentions that material facts are disputed.

9. The parties requested me to deal with the costs of 12 March 2024. On that day and according to the order granted by Judge Kubushi, the application was struck off the roll due to there being no appearance. In these circumstances, I am unable to accept the submissions advanced to me that either party should carry the costs of that day due to what ensued before then. No order is made as to those costs.

10. I make the following order:

- 10.1. The application is struck off the urgent roll with costs.
- 10.2. There is no order as to the costs of 12 March 2024.

S J COWEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
PRETORIA

Date of hearing: 20 March 2024

Decision delivered: 25 March 2024

Appearances:

Applicant: Adv J Swanepoel instructed by Stopforth, Swanepoel & Brewis

Respondent: Adv R Ismail instructed by Moody & Robertson