



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Not Reportable

Case no: 1293/2021

In the matter between:

**SOUTH AFRICAN FORESTRY COMPANY
SOC LTD**

APPELLANT

and

**COLLINS SEBOLA FINANCIAL
SERVICES (PTY) LTD**

FIRST RESPONDENT

**TSEPO MONAHENG
RESPONDENT**

SECOND

**CLEMENT NHUVUNGA
RESPONDENT**

THIRD

**CHAIRPERSON OF THE BID SPECIFICATION
COMMITTEE OF THE APPELLANT
RESPONDENT**

FOURTH

**CHAIRPERSON OF THE BID EVALUATION
COMMITTEE OF THE APPELLANT
RESPONDENT**

FIFTH

CHAIRPERSON OF THE BID ADJUDICATION

**COMMITTEE OF THE APPELLANT
RESPONDENT** **SIXTH**

**PHEPHA MV SECURITY SERVICE
RESPONDENT** **SEVENTH**

**CHAIRPERSON OF THE AUDIT
COMMITTEE OF THE APPELLANT
RESPONDENT** **EIGHTH**

**CHAIRPERSON OF THE FINANCIAL
COMMITTEE OF THE APPELLANT
RESPONDENT** **NINTH**

**PHUTHADICHABA TRADING ENTERPRISE CC
RESPONDENT** **TENTH**

Neutral citation: *South African Forestry Company SOC Ltd v Collins Sebola
Financial Services (Pty) Ltd and Others* (Case no 1293/2021)
[2023] ZASCA 18 (24 February 2023)

Coram: PONNAN ADP, GORVEN, MOTHLE, WEINER and GOOSEN JJA

Heard: 20 February 2023

Delivered: 24 February 2023

Summary: Section 16(1)(a)(i) of the Superior Courts Act 10 of 2013 – contracts pursuant to award of tenders to expire before an order on appeal can be enforced – no practical effect of decision – appeal dismissed.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Basson J), sitting as court of first instance:

The appeal is dismissed with costs.

JUDGMENT

Gorven JA (Ponnan ADP, Mothe, Weiner and Goosen JJA concurring)

[1] This appeal arose from the award of a tender put out by the South African Forestry Company SOC Ltd (SAFCOL), the appellant. It is a State Owned Company and the third largest forestry company in South Africa. The appeal was opposed by only Collins Sebola Financial Services (Pty) Ltd (Collins Sebola), the first respondent. The tender, RFB 011/2019, was for security services, including forest guards, required in the regions in which SAFCOL conducts its forestry operations and for its business units. Each region comprises a number of plantations.

[2] Three bids were regarded as compliant, that of Collins Sebola, that of Phepha MV Security Services (Phepha), the seventh respondent, and that of Puthadichaba Trading Enterprise CC, the tenth respondent. The outcome was that, instead of awarding a contract for all of the required security services to a single

service provider, two contracts were awarded. The bid of Collins Sebola succeeded for certain plantations, forest guards and business units, while the bid of Phepha succeeded for the balance of the services required. Pursuant to this, contracts were concluded with both Collins Sebola and Phepha for provision of the services for which their bids succeeded. That of Collins Sebola was worth R18 285 386.27 and that of Phepha R62 193 884.32. Those contracts, for a three year period, were put into effect and remain extant. The contract periods will expire by effluxion of time on 31 March 2023.

[3] Aggrieved at the failure of SAFCOL to award it the entire tender, Collins Sebola approached the Gauteng Division of the High Court, Pretoria (the high court), to review and set aside the award to Phepha. Collins Sebola also sought an order awarding to it those parts of the tender awarded to Phepha.

[4] The high court, per Basson J, granted the relief sought by Collins Sebola and refused an application by SAFCOL for leave to appeal. The appeal came before us with the leave of this Court.

[5] When the matter was called, enquiries were made of each counsel as to whether the provisions of s 16(2)(a)(i) of the Superior Courts Act 10 of 2013 applied to the appeal in view of the contracts expiring on 31 March 2023. Section 16(1)(a)(i) provides:

‘When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.’

Both counsel candidly conceded that the appeal fell squarely within the provisions of s 16(2)(a)(i). If the appeal succeeded, the status quo concerning the continued implementation of the contracts would obtain. On the other hand, if the appeal was

dismissed, it would not be feasible for Collins Sebola to take over and render the services currently rendered by Phepha within the contract period. Not only that, but Collins Sebola undertook not to attempt to do so.

[6] In those circumstances, and on that basis, both counsel acknowledged that the appeal should be dismissed. Costs must follow the result and SAFCOL did not contend otherwise.

[7] In the result, the appeal is dismissed with costs.

T R GORVEN
JUDGE OF APPEAL

Appearances

For appellant: V Maleka SC

Instructed by: AT Mpungose & Dlamini Incorporated, Pietermaritzburg
Matsepes Incorporated, Bloemfontein

For respondent: Q Pelser SC

Instructed by: Tambani Matumba Attorneys, Makhanda
Hendre Conradie Incorporated, Bloemfontein