**IN THE HIGH COURT OF SOUTH AFRICA**
**(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

**CASE NO: 2614/2018**
**Date heard: 13 November 2018**
**Date delivered: 20 November 2018**

In the matter between

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| **LIVIERO CIVILS (PTY) LTD**<br>**(Registration number 1984/009243/07)** | **First Applicant** |
| **ROUGH SEAS TRADING 15 (PTY) LIMITED**<br>**(Registration number 2015/311935/07)** | **Second Applicant** |
| **And** | |
| **AMATOLA WATER BOARD** | **Respondent** |

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**JUDGMENT**

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**PICKERING J**:

[1] This is an application for summary judgment. First plaintiff is Liviero Civils (Pty) Ltd (under Business Rescue), a company carrying on business in East London. Second plaintiff is Rough Seas Trading 15 (Pty) Ltd a company carrying on business at Mthatha. Defendant is Amatola Water Board, a National Government Business Enterprise as contemplated in the Public Finance Management Act no 108 of 1997, carrying on business as the supplier of water services at, *inter alia*, East London.

[2] It is common cause that first and second plaintiff formed the "*Liviero/Overland Joint Venture*" (the "*JV*") for purposes of tendering and undertaking civil engineering contracts."

[3] In their particulars of claim the plaintiffs allege that defendant invited tenders from the general public for the tender: "Bid no AWD/005: CONTRACT NUMBER WA-2013/14/36 – KSD PRESIDENTIAL INTERVENTION: PROVISION OF CIVIL ENGINEERING CONSTRUCTION SERVICES: UPGRADE OF THE NGANGELIZWE OUTFALL AND ASSOCIATED GRAVITY SEWERS IN MTHATHA – COMPLETION OF WORKS: COMMENCEMENT OF WORKS (the "Tender").

[4] Plaintiffs aver that in response thereto the JV submitted a written tender offer to defendant in the sum of R40 323 816,89, which offer was accepted by defendant.

[5] Plaintiffs aver further in paragraph 5 and 6 of the particulars of claim that on 20 January 2016, the JV's form of offer and acceptance, LC2, was signed by the representative of the defendant, namely one Zimbili Mqadi, and that an agreement between the JV and the defendant accordingly arose upon the signing of the JV's form of offer and acceptance by the defendant.

[6] Despite what is pleaded in paragraphs 5 and 6 the plaintiffs then proceed to allege further as follows:

> "*9. In terms of the contract data applicable to the Tender, a copy of which is attached marked* 'LC3'*, the General Conditions of Contract for Construction Works (2nd Ed, 2010) ('GCC2010'), a copy of which is attached marked* 'LC4' *was applicable to the agreement*."

[7] LC3 and LC4, which also relate to Bid no AWD/005 referred to in LC2 and to the identical construction work referred to therein were signed on behalf of defendant on 22 March 2016 by defendant's Chief Executive Officer. It is important to note that the "*Form of* Acceptance" signed by the then CEO on 22 March 2016 specifically states as follows:

> "*By signing this part of the Form of Offer and Acceptance, the Employer identified below accepts the Tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due in accordance with the Conditions of Contract identified in the Contract Data. Acceptance of the Tenderer's Offer shall form an agreement between the Employer and Tenderer upon the terms and conditions contained in the agreement and in the Contract that is the subject of this Agreement.*"

[8] No reference is made in this document to annexure LC2. On the face of LC3 and LC4 the plaintiff's offer was only accepted on 22 March 2016, contrary to what is alleged in paragraphs 5 and 6 of the particulars of claim.

[9] Plaintiffs allege further that in terms of LC3 and LC4 the duly appointed Engineer, namely UWP Consulting (Pty) Ltd, whose function it was to administer the contract as agent of the defendant in accordance with the provisions of the contract, issued various payment certificates in terms of clause 6.10.1 of the agreement, which clause reads as follows:

> "*With regard to all amounts that become due to the Contractor in respect of the matter set out in clauses 6.10.1.1, 6.10.1.2, 6.10.1.3, 6.10.1.4, and 6.10.1.5 below, he shall deliver to the Engineer a monthly statement for payment of all amounts he considers to be due to him (in such form and on such date as may be agreed between the Contractor and the Engineer, or failing agreement as the Engineer may require) and the Engineer shall, by signed payment certificates issue to the Employer and the Contractor, certify the amount he considers to be due to the Contractor…"*

[10] Plaintiffs allege that the JV has complied with its obligations and rendered its services in terms of the agreement and that the defendant has not given notice of any dissatisfaction with the payment certificates issued by the Engineer from time to time. Plaintiffs allege that the most recent issued payment certificate is payment certificate number 15 in the amount of R1 540 617,97 (Annexure LC5). From certain annexures to the particulars of claim the contents and correctness of which are not denied by defendant in its opposing affidavit, it appears that prior to the issue of certificate 15 the plaintiffs rendered services to the defendant in respect of which the defendant through the duly appointed Engineer, caused certificates to be issued for an amount of R46 608 979,03 and that defendant without protest, effected payment of an amount of R45 269 311,23 to plaintiffs. Payment certificate number 15 remains unpaid, despite demand and plaintiffs accordingly allege that such amount is due and payable by defendant to the JV.

[11] Action was instituted against the defendant on 4 September 2018. It was served on defendant on 7 September 2018 and, in compliance with section 47 of the Water Services Act no 108 of 1997, it was served on the Minister of the National Department of Water and Sanitation on the same day. After defendant had given notice of its intention to defend the matter the present application for summary judgment was launched and served on defendant on 12 October 2018. On 26 October defendant gave notice of its intention to oppose the application for summary judgment which had been set down for hearing on 30 October. On 29 October, however, defendant served a Rule 30 notice on plaintiffs and, on the morning of the hearing the following day, filed its opposing affidavit. This necessitated the postponement of the matter to 13 November when it was argued before me.

[12] Defendant has raised three points *in limine*. Mr. Ntlokwana, who appeared for defendant, submitted firstly that the application was fatally defective for want of service of the summary judgment application on the Minister in terms of s 47 of Act 108 of 1997. That section provides as follows:

> "*No Court may grant an order or judgment against a Water Board unless the papers on which that order or judgment is sought, have also been served on the Minister*."

[13] In the well-known matter of Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) the following was stated at paragraph [18] with regard to the interpretation of words used in legislation, or contract:

> "*Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. … The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."*

[14] Section 47 must be read in the context of the Water Services Act. It is clear from the various sections contained in Chapter VI of the Act, which Chapter is concerned with Water Boards and, inter alia their establishment, powers, governance, policies and activities, that the Minister performs certain functions and plays an important oversight role with regard to the functioning and administration of Water Boards. It is in this context, in my view, that any process instituting action against a Water Board must be served on the Minister so as to apprise the Minister immediately of the pending litigation and to place the Minister in a position to assess what action, if any may be required with regard to the litigation. Once the decision has been made by the Minister to oppose the litigation and once attorneys have been appointed to act on behalf of the defendant it would make no sense, in my

view, if the section were to be interpreted so as to require the papers in each and every interlocutory application in which an order was sought in the course of the ensuing litigation, such as an application to compel discovery or indeed, an application for summary judgment, to be served on the Minister. Such an interpretation would, in my view, be neither sensible nor businesslike.

[15] In my view therefore there is no merit in this point *in limine*.

[16] Mr. Ntlokwana next relied on the provisions of section 3(1) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002. That section provides as follows:

> "3.*1* *No legal proceedings for the recovery of a debt may be instituted against an organ of state unless –*
>
> *(a) The creditor has given the organ of state in question notice in writing of his or her or its intention to institute the legal proceedings in question; or*
>
> *(b) The organ of state in question has consented in writing to the institution of the legal proceedings –*
>
> *(i) without such notice; or*
>
> *(ii) upon receipt of a notice which does not comply with all the requirements set out in subsection (2)."*

[17] "*Debt*" is defined in section 1(1)(iii) as follows:

> "*1(1)* *In this Act, unless the context indicates otherwise –*
>
> *(i)* *…*
>
> *(ii)* *….*
>
> *(iii)* *"debt" means any debt arising from any cause of action –*
>
> *(a) which arises from delictual, contractual or any other liability, including a cause of action which relates to arises from any –*
>
> *(i) act performed under or in terms of any law; or*
>
> *(ii) omission to do anything which should have been done under or in terms of any law; <u>and</u>* (My emphasis)
>
> (iii) *for which an organ of state is liable for payment of <u>damages</u>, whether such debt became due before or after the fixed date*." (My emphasis)

[18] It is clear from the definition of a debt that the section includes only causes of action in relation to which an organ of state is liable to pay damages. As plaintiffs' claim is not one for damages but for payment premised on a payment certificate the plaintiffs claim is not subject to the provisions of section 3(1) and this point *in limine* can also not succeed.

[19] The third point *in limine* raised by defendant related to the attestation of the supporting affidavit to the notice of application for summary judgment which was deposed to by one Martjin Groot, it being submitted that the affidavit did not comply with the provisions of regulation 4(2) of the Regulations Governing the Administration of an Oath or Affirmation made in terms of section 10 of the Justices of the Peace and Commissioners of Oaths Act 16 of 1963. Regulation 4(2) thereof reads as follows:

> "*The Commissioner of Oaths shall –*
>
> *(a) Sign the declaration and print his full name and business address below his signature; and*
>
> (b) *State his designation and the area for which he holds his appointment or the office held by him if he holds his appointment* ex officio."

[20] The full names of the Commissioner of Oaths who completed the attestation clause in the present matter were not printed and his signature is illegible. His designation is also not stated. There is, however, a South African Police Services stamp affixed below his signature from which it appears that the affidavit was commissioned at the "*Client Service Centre, Midrand*." The Commissioner has also appended above his signature what is clearly his force number.

[21] Mr. Ntlokwana submitted that in view of the requirement that the Commissioner "*shall*" print his full name and business address and state his designation the provisions of regulation 4(2) were peremptory and that in consequence thereof the application for summary judgment fell to be dismissed because there was in effect no affidavit before the Court.

[22] Mr. Ntlokwana's submission to the effect that the provisions of regulation 4(2) were peremptory is without merit. There is a wealth of authority to the effect that the provisions of regulation 4 are directory and not peremptory.

[23] The facts in the matter of Adriaan Jurgens Basson and Another v On-Point Engineers (Pty) Ltd and Others, unreported North Gauteng High Court, Pretoria case

number 64107/2011 dated 7 November 2012, to which I was referred by Mr. De Vos, who appeared for the applicants, were similar to the present matter in that the full names of the commissioner were not printed, his designation was not stated, a business address was not provided, and the area for which the Commissioner held office was not indicated. At paragraph 4.3 of the Basson judgment Potterill J stated as follows:

> "*The Full Bench of this Division in S v Msibi 1974 (4) SA 821 (T) found that the compliance with regulation 4 is directory and a court can exercise its discretion in admitting such affidavit if there is substantial compliance with the regulation. The Commissioner did not provide a business address and the area the Commissioner held office and his/her designation. This is in fact a requirement of Regulation 4(2) and not 4(1) as complained of. The stamp of the Commissioner clearly indicated that the Commissioner was in the South African Police Services at the Management Information Centre, Rosebank. I can not express myself better than in the words of Page AJ in the Dawood matter* supra *[1979 (2) SA361 (D and CLD)] at 367 C-E:*
>
> > *"*In deciding whether the non-compliance is of such a nature that the Court should refuse to entertain the affidavit it is clearly relevant to have regard to the nature and purpose of the requirement with which there has been failure to comply. In the present case it seems to me that the reason for the requirement that the commissioner should furnish his business address is to facilitate the task of anyone who might thereafter wish to locate him for any purpose connected with the affidavit and its execution. In the present case the information supplied is sufficient to enable anyone of ordinary intelligence to deduce that the business address of the commissioner of oaths is…"
>
> *at the office of the SAPS Rosebank Management Information Centre. The commissioner is thus at minimum designated for the area of Rosebank ex officio. On this paltry defect I cannot refuse to accept the affidavit into evidence. The replying affidavit was commissioned at the SAPS Client Service Centre, Rosebank. The full names of the Commissioner on both the applicants' affidavit are not printed. On the replying affidavit the force number of the Commissioner is printed and the Commissioner can be easily traced from this. The purpose of the requirement of the full names of the*

*Commissioner can once again only be to identify the Commissioner for any enquiry pertaining to the attestation. I am certain that with little trouble the Commissioner of the founding affidavit will be located through visiting the Rosebank Management Information Centre of the SAPS and enquiring whose signature is on the document.*"

[24] Similarly, in the present case, the Commissioner of the affidavit would be easily located through visiting the Client Service Centre of the SAPS, Midrand and enquiring whose signature was on the document.

[25] It is clear therefore in my view that there was substantial compliance with the provisions of regulation 4(2).

[26] I alluded above to the fact that an application in terms of Rule 30 of the Rules of Court was filed in which an order was sought setting aside the affidavit of Groot as an irregular step. I have considerable doubt as to whether the provisions of Rule 30 find application in relation to summary judgment proceedings, despite what was stated in the matter of Absa Bank Ltd v Botha N.O. and Others 2013 (5) SA 563 (GNP) but it is not necessary for me to express any further view thereon in view of the fact that Mr. Ntlokwana conceded that respondent was, by virtue of its non-compliance with Rule 30(2)(a) and (b), in any event not entitled to make application to set aside the alleged irregular step and in view of the fact that defendant had also filed an answering affidavit dealing both with its points in limine and the merits and had accordingly suffered no prejudice. He did not therefore persist with the application.

[27] I turn then to deal with the merits of the application.

[28] The respondent's opposing affidavit was attested to by Ms. Vuyo Zitumane, the Chief Executive of defendant. In her affidavit Ms. Zitumane denies that the JV's tender offer was accepted as alleged by it. She states that she has made certain internal investigations and has discovered that JV's offer was one of three bids that were received during the tender process, all of which were rejected by the technical bid evaluation committee as their prices were considered to be unrealistically high and their risk profiles considered to be unacceptable. She states that none of the bids reached the bid adjudication committee which was the next stage in the procurement process preceding the letter of award. With regard to the allegations in paragraph 5, 6 and 7 of the particulars of Claim to the effect that the form of offer

and acceptance was signed by a representative of the respondent on 20 January 2016 she states that in view of the fact that the closing date of the tender was 29 January 2016, acceptance and signature of the form of offer and acceptance on 20 January 2016 was simply not possible. She denies further that the said Zimbile Mqadi represented the defendant in concluding the agreement and states that he is unknown to defendant and was never even in the employ of defendant. In the light of this she denies that annexure LC3 and LC4 formed part of any agreement between the parties. She states further that as Chief Executive of the respondent and more particularly in terms of the Public Finance Management Act 108 of 1997 she has a duty to prevent irregular and/or unauthorized and/or fruitless and wasteful expenditure. As a result of this defendant has instituted "*several internal investigations into irregular procurement processes, including fraud and corruption, and disciplinary proceedings have been instituted against some of the defendant's officials that were involved in the handling of the matter. All the officials that were involved are either suspended, dismissed and, in the case of one of them, his contract expired and was not renewed*." She states further that it is envisaged that once the investigations have been concluded and an independent forensic audit has been done, legal action may be instituted for the recovery of any irregular and/or unauthorized payments, including the filing of a counter-claim in this action. She concludes therefore that respondent has a valid and bona fide defence to the claim and that the application for summary judgment should be dismissed with costs.

[29] In Maharaj v Barclays National Bank Ltd 1976 (1) 418 (AD) Corbett JA dealt with the requirement in Rule 32(3)(b) that a defendant satisfy the court by affidavit that he has a bona fide defence to the action and that such affidavit shall disclose fully the nature and grounds of the defence and the material facts relied upon therefor. At 426B – E he stated as follows:

> "*All that the Court enquires into is: (a) whether the defendant has* 'fully' *disclosed the nature and grounds of his defence and the material facts upon which it is founded, and (b) whether on the facts so disclosed the defendant appears to have, as to either the whole or part of the claim, a defence which is both* bona fide *and good in law. If satisfied on these matters the Court must refuse summary judgment, either wholly or in part, as the case may be. The word* 'fully'*, as used in the context of the Rule (and its predecessors), has been the cause of some Judicial controversy in the past. It connotes, in my*

*view, that, while the defendant need not deal exhaustively with the facts and the evidence relied upon to substantiate them, he must at least disclose his defence and the material facts upon which it is based with sufficient particularity and completeness to enable the Court to decide whether the affidavit discloses a* bona fide *defence. At the same time the defendant is not expected to formulate his opposition to the claim with the precision that would be required of a plea; nor does the Court examine it by the standards of pleading.*"

[30] See too: Joob Joob Investments (Pty) Ltd v Stocks Mavundla ZEK Joint Venture 2009 (5) SA 1 (SCA) at [32] and paragraph [33] where Navsa JA stated:

*"[33] Having regard to its purpose and its proper application, summary judgment proceedings only hold terrors and are 'drastic' for a defendant who has no defence. Perhaps the time has come to discard these labels and to concentrate rather on the proper application of the rule, as set out with customary clarity and elegance by Corbett JA in the Maharaj case at 425G-426E.*"

[31] It is immediately apparent from the affidavit of Ms. Zitumane that she deals only with the alleged agreement signed on 20 January referred to in paragraphs 5 and 6 of the particulars of claim and alleges that because the closing date of the tender was 29 January 2016 acceptance and signature of the said form on 20 January 2016 was simply not possible. Because of this she avers that annexures LC3 and LC4 did not form part of any purported agreement between plaintiff and defendant. It is so that the allegations in paragraphs 5 and 6 are *prima facie* contradictory to the allegations in paragraph 9 and there is no doubt that the particulars of claim are ineptly drawn. That, however, in my view, is not the end of the matter. As was submitted by Mr. De Vos, with reference to Davenport Corner Tea Room (Pty) Ltd v Joubert 1962 (2) SA 709 (T) the court may have regard to plaintiff's particulars of claim as a whole, including all the relevant extraneous facts contained in the annexures thereto.

[32] No explanation is proffered by Ms. Zitumane as to how LC3 and LC4 came to be signed by defendant's own Chief Executive Officer on 22 March 2016 thereby giving rise on that date to what is, on the face of it, a valid agreement between

plaintiffs and defendant. In my view an explanation was clearly called for in this regard and it was not sufficient for Ms. Zitumane simply to ignore LC3 and LC4 because of the averments in the particulars of claim concerning LC2 and to make vague averments of fraud.

[33] Furthermore, in terms of the General Conditions of Contract for Construction Works, UWP Consulting (Pty) Ltd was appointed as Engineer with its function being to administer the contract as an agent of the defendant. It is not disputed by Ms. Zitumane that the Engineer did in fact so administer the contract, nor could it be disputed in the light of the various annexures to the particulars of claim. It is not disputed, as appears from those annexures, that plaintiffs rendered services to defendant over an extended period of time. It is not disputed that from time to time defendant received value for work done by plaintiffs in an amount of R45 165 862,98. It is furthermore not disputed that defendant, through the Engineer as its agent, caused payment certificates in the sum of R46 608 979,03 to be issued to the plaintiffs and that defendant accordingly received value in that amount. It is also not disputed that throughout this extended period from May 2016 to October 2017 defendant paid to plaintiffs an amount of R45 269 311,23 without any protest whatsoever.

[34] Finally, Ms. Zitumane does not even touch upon the fact that the Engineer, defendant's own agent, issued the certificate on which plaintiffs' cause of action is premised, namely certificate 15 in the amount of R1 540 617,97.

[35] In the circumstances defendant has, in my view, failed to disclose the material facts upon which its defence is based with the requisite particularity so as to enable me to decide whether the affidavit discloses a *bona fide* defence.

[36] Furthermore it is clear, in my view, given the nature of a payment certificate, that whatever inconsistencies there may be between paragraphs 5 and 6 and paragraph 9 of the particulars of claim such are irrelevant in circumstances where plaintiffs' cause of action is based on what is a liquid document.

[37] In this regard what was stated in Joob Joob Investments *supra* at [27] is relevant:

> "*[27] Gorven AJ pointed out, with reference to Randcon (Natal) (Pty) Ltd v Florida Twin Estates Ltd 1973 (4) SA 181 (D & CLD) at 183H-184H, that a final payment certificate is treated as a liquid document since it is issued by the employer's agent, with the consequence that the employer is in the same*

*position it would have been in if it had itself signed an acknowledgment of debt in favour of the contractor. Relying further on the Randcon case (at 186G-188G), the learned judge held that similar reasoning applied to interim certificates. The certificate thus embodies an obligation on the part of the employer to pay the amount contained therein and gives rise to a new cause of action subject to the terms of the contract. It is regarded as the equivalent of cash. The certificates in question all fall within this ambit.*

[38] In Martin Harris & Seuns OVS (Edms) Bpk v Qwa Qwa Regeringsdiens 2000 (3) SA 339 (SCA) the English headnote at 342 B – C correctly reflects what was stated in the Afrikaans judgment at [36]:

"*If a certificate was issued, the appellant's claim would rest upon the certificate itself, as a separate and self-supporting cause of action which could only be challenged on limited grounds, such as when the employer, after delivery of the certificate but before payment thereof, cancelled the contract on the grounds of the contractor's breach of contract.*"

[39] Defendant has not in any way challenged the validity of certificate 15 nor the fact that it thus embodies an obligation on the part of defendant to pay the amount stated therein. It's existence has simply been ignored in defendant's affidavit.

[40] As Mr. De Vos put it, the high water mark of defendant's defence as contained in its opposing affidavit is the fact that, according to Ms. Zitumane, defendant has instituted internal investigations into irregular procurement processes including fraud and corruption which has led to certain officials being suspended or dismissed. She does not state who these officials are or how they were allegedly connected with this matter. The question which begs to be answered is whether defendant's then CEO who signed LC3 and LC4 on 22 March 2016 was also implicated in the alleged fraud. Nothing has been put before me to satisfy me that the contract was indeed tainted by fraud on the part of the plaintiffs. Furthermore Ms. Zitumane does not state that plaintiffs were a party to whatever fraud or corruption was committed by the defendant's officials. If her intention was to imply fraud on the part of plaintiffs she fails to state in what respects plaintiffs acted fraudulently.

[41] In respect of defendant's possible counterclaim to which Ms. Zitumane alludes and in respect of which no details whatsoever are given, Mr. De Vos points out

correctly, that defendant's decision to contract with plaintiffs was an administrative decision which has effect for as long as its validity is not successfully challenged on review. Unless it is set aside it must be given effect to.

[42] Mr. De Vos has referred me in this regard to the unreported decision of Plasket J in MD Business Solutions (Pty) Ltd v Ikwezi Local Municipality Eastern Cape Case no 3304/16. In that matter certain contracts were entered into between MD Business Solutions and Ikwezi Local Municipality. When MD Business Solutions sought payment Ikwezi raised the invalidity of the decisions to contract, alleging a complete absence of compliance with the law regulating public procurement. As was pointed out by Plasket J, with reference *inter alia* to MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye and Laser Institute 2014 (3) SA 481 (CC); Department of Transport and Others v Tasima (Pty) Ltd 2017 (2) SA 622 (CC); and Merafong City v Anglo Gold Ashanti Ltd 2017 (2) SA 211 (CC) an administrative action stands until it is properly challenged. In paragraph [22] Plasket J stated:

> "*As Ikwezi brought no counter-application to challenge the validity of the administrative decisions taken to contract with MD Business Solutions, that is the end of the matter: there is no properly raised challenge to those decisions that is before me and, that being so, those decisions must be regarded as effective.*"

[43] As was further pointed out by the learned Judge, because of the inordinate delay in raising the issue of the invalidity of the administrative decisions even if there had been a proper counter-application it could not have been entertained on its merits before condonation for undue delay had been granted. See Kirland Investments *supra* at paragraph [11] and Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality [2017] ZASCA 23.

[44] In the circumstances the procurement processes in terms whereof defendant contracted with plaintiffs as well as the consequences thereof, such as the payment certificates issued by the Engineer, are to be regarded as valid and effective. See also: State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd 2018 (2) SA 23 (CC) at paragraph [54].

[45] I am accordingly satisfied in all the circumstances that defendant has disclosed no *bona fide* defence and that plaintiffs are therefore entitled to summary

judgment in the sum of R1 540 617,97 together with taxed party and party costs as sought by them in paragraphs 1 and 2 of the particulars of claim.

[46] The following order will issue:

1. The application for summary judgment succeeds.
2. Defendant is ordered to pay to the plaintiffs the sum of R1 540 617, 97.
3. Defendant is ordered to pay plaintiffs' taxed costs of the action on the scale as between party and party.

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**J.D. PICKERING**
**JUDGE OF THE HIGH COURT**

Appearing on behalf of Plaintiffs: Mr. De Vos
Instructed by: Huxtable Attorneys, Mr. Huxtable

Appearing on behalf of Defendant: Adv. Ntlokwana
Instructed by: Yokwana Attorneys, Mr. Yokwana