

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

In the matter between :-


Case No. 37511/13

BLUE ANVIL TRADING (PTY) LIMITED

APPLICANT

and

19/5/2014

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	<input checked="" type="radio"/> NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO	<input checked="" type="radio"/> NO
(3) REVISED.	
19/5/2014	
DATE	SIGNATURE

THE CITY OF TSHWANE METROPOLITAN

FIRST RESPONDENT

MUNICIPALITY

THE MUNICIPALITY MANAGER OF THE CITY OF SECOND RESPONDENT

TSWANE METROPOLITAN MUNICIPALITY

FAITH MABINDISA

THIRD RESPONDENT

SIDNEY M RAMOVHA

FOURTH RESPONDENT

JUDGMENT

DE VRIES AJ

When this matter was called it contained the following prayers in the Notice of Motion prayed for by the Applicant:-

1. That the First and Second Respondents be held in contempt of Court Order of the aforementioned Honourable Court dated the 9th of October 2012 issued by the Honourable, Mr. Justice Hiemstra;
2. That the Third Respondent be committed to imprisonment for a period of sixty (60) days, which committal order be suspended in its entirety on condition that the First and Third Respondents comply with the abovementioned Court Order within seven (7) days of granting of this Order;
3. That the First Respondent be ordered to pay the Applicant's costs on a scale between Attorney and own Client;
4. Further and/or alternative relief.
5. It was pointed out to the parties by the Court that according to the Founding papers of the Applicant that the dispute between the parties under the contract giving rise to this dispute commenced in February 2011 and that the duration thereof was for three (3) year period which would have ended the contract by fluction of time in February 2014.

6. Consequently in order in terms of the prayer would not be capable of fulfilment by the Respondent as there were no more obligation in existence for the First Respondent to comply with were an Order be granted in May of 2014.
7. The matter stood down and the Court was informed that the concerns raised were shared by both Applicant and Respondents' Counsel,(both who have overlooked this point) and that the Applicant's Application could clearly not proceed.
8. The only question to be decided is that of costs against the back ground of the history of the matter. In order to exercise the Court's discretion in the award of costs ,are set out in a very brief synopsis of the history of the dispute between the parties.
9. Shortly after the agreement between the Applicant and the Respondent had been concluded in February 2011, a second tender was put out by the First Respondent, under tender number CB 82 2011, the Applicant also tendered in respect thereof and was successful.

10. The two tenders differed in the following respects with regard to the vehicles used for refuge removal services in the sense that the first tender the Applicant was obliged to supply the First Respondent with suitable vehicles and a driver. In respect of the second tender, suitable vehicles together with a driver and labours were to be furnished. In those respects the two tenders differed.
11. The second tender also contained a provision that same would be implemented only in the event of stockages occurring due to unforeseen circumstances.
12. Applicant became aggrieved at the alleged unlawful use of the First Respondent of the second tender to allegedly circumvent its obligations to the Applicant in respect of the first tender.
13. For the reasons as more fully set out hereunder, it is unnecessary for the purposes of a cost argument to go into a detailed analysis of the contentions of the parties at this stage.

14. What is however of importance is that the First Applicant launched an application against the First Respondent and others for an order made by this Court on the 9th of October 2012 under case number 24464/2012. Such Order was made pursuant to a settlement agreement then entered into between the parties.

15. Sadly this was not an end to the dispute between the parties and on the 1st of February 2013, under case number 70882.2002 it was ordered by this Court :-

1. The First Respondent is to be declared in contempt of the Court Order dated the 9th of October 2012, granted by his Lordship, Mr. Justice Hiemstra.

2. That the First Respondent is to comply with the provisions of the aforementioned order within ten (10) days from the date of this Order, that each party pays their own costs. Despite two Court Orders being granted in favour of the Applicant, the difficulties between the parties persisted, leaving to the launch of the instant application.

16. The time frame of this application according to the papers is as follows

The application was launched during June 2013. The same conduct previously alleged by the Applicant was in the main repeated and the Application could not have foreseen in review of this matter that the basis of the application being the alleged unlawful use of the second tender would lead to a new approach by the Respondents in these papers indicated and so it was specifically argued by Counsel on behalf of the Respondents alleged that the issues of the Second Respondent were totally lawful and that the Respondents had incorrectly conceded that it was in contempt, previously leading to the Order holding it to be in contempt. The Respondents' Answering Affidavits was served on the Applicant's Attorneys of Record on the 20th of September 2013 and the Replying Affidavit was served on the 16th of October 2013. A notice of Set Down was served by the Applicant's Attorneys on the 24th of March 2014.

17. Against this background I must decide whether to deviate from the usual practice of an order for costs following the result. The result in this instance is that the Applicant was unable to argue at the date of hearing that it could proceed with its prayers in terms of the Notice of Motion.

18. I was invited by the Applicant to find that the Applicant was entitled to launch its Application by virtue of the previous concessions made by First Respondent and that the Applicant should not be moulded in costs as a result of the fact that the Applicant did not for see that the Application would become opposed and that there was an equal amount of worthiness for this matter to have been before Court at a time when both parties could and should have been aware that the matter could not proceed and that this escaped the notice of the legal representatives.
19. As against this it was on behalf of the Respondents that the application is bad in law *inter alia* the reasons as set out herein before and was doomed to failure from inception.
20. Having considered all these factors, I make the following Order :-
1. Applicant is ordered to pay the Respondents costs up to and including 1st of February 2014;
 2. Each party is ordered to pay its own costs incurred after the date as set out in 1. hereinabove.
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DE VRIES, AJ

JUDGE OF THE HIGH COURT OF SOUTH AFRICA, GAUTENG DIVISION,

PRETORIA