



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

Case Number: **46817/2015**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
DATE: 17 August 2022
SIGNATURE: *JANSE VAN NIEUWENHUIZEN J*

In the matter between:

GCWABE CONSULTING (PTY) LTD

Plaintiff

and

SOUTH AFRICAN POICE SERVICE

Defendant

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

- [1] In the judgment handed down on 10 August 2022, the court declared the contract between the parties invalid.

- [2] The only outstanding issue is the appropriate remedy consequent upon the aforesaid finding. Section 172(1)(b) of the Constitution enjoins the court to make any order that is just and equitable.

Just and equitable remedy

- [3] The contract between the parties was concluded on 18 March 2013. Subsequent to the conclusion of the contract the plaintiff performed work in terms of the contract.
- [4] In a letter dated 14 August 2013, the defendant informed the plaintiff that it was in breach of the contract in several respects and afforded the plaintiff 14 days to rectify the breach.
- [5] The plaintiff did not, according to the defendant, rectify the breach and the contract was cancelled by the defendant on 4 November 2013.
- [6] It is common cause between the parties that the plaintiff was duly paid for all the work it performed in terms of the contract.
- [7] In *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 CC, the Constitutional court considered a just and equitable remedy in circumstances where a contractor has performed in terms of a contract that was declared invalid.
- [8] Having considered the facts of the matter the court held as follows at para [105]:

“..I therefore make an order declaring the Reeston contract invalid, but not setting it aside so as to preserve the rights to that the respondent might have

been entitled. It should be noted that such an award preserves rights which have already accrued but does not permit a party to obtain further rights under the invalid contract."

- [9] The facts in *casu* differ somewhat from the facts in *Buffalo City*. The plaintiff claims damages in the amount of R 50 858 579, 43 due to the defendant's breach *alternatively* repudiation of the contract. The amount represents the plaintiff's loss of income for the remaining period of the contract.
- [10] Should the contract not be set aside, the plaintiff's claim will remain intact and will result in an undue benefit derived from a contract that has been declared invalid.
- [11] In the result, I am of the view that a just and equitable remedy in the circumstances will be to set the contract aside.

COSTS

- [12] Mr Mureriwa, counsel for the plaintiff, submitted that the plaintiff should not be mulcted with costs in circumstances where it is the innocent party. Mr Mureriwa contended that it is the officials in the employ of the defendant that failed to follow the prescribed procurement process and that the plaintiff acted in good faith in entering into the contract.
- [13] The submission would have been convincing, if the plaintiff did not, notwithstanding the plea of invalidity, pursue the matter. The defendant was successful in its counterclaim and there is no reason why costs should not follow the cause.

ORDER

In the premises, I issue the following order:

1. The contract between the parties is set aside.
2. The plaintiff is ordered to pay the costs, which costs includes the costs of two counsel and the costs reserved on 10 August 2022.



N. JANSE VAN NIEUWENHUIZEN

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DATE HEARD PER COVID19 DIRECTIVES:

10 and 11 August 2022

DATE DELIVERED PER COVID19 DIRECTIVES:

17 August 2022

APPEARANCES

For the Plaintiff : Advocate I Mureriwa

Instructed by : Baloyi Masango Incorporated

For the Defendant : Adv JL Van der Merwe SC

Adv J Janse van Rensburg

Instructed by : Soutie van Rensburg Attorneys