

IN THE HIGH COURT OF SOUTH AFRICA  
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: 100/2009

DATE: 11 FEBRUARY 2009

5 In the matter between:

MOHAMMED ZUNADE LOGHDEY APPLICANT

and

CITY OF CAPE TOWN 1<sup>st</sup> RESPONDENT

ADVANCED PARKING SOLUTIONS 2<sup>nd</sup> RESPONDENT

10 NUMQUE 20 CC 3<sup>rd</sup> RESPONDENT

AND IN THE COUNTER APPLICATION OF:

ADVANCED PARKING SOLUTIONS CC 1<sup>st</sup> APPLICANT

15 NUMQUE 20 CC 2<sup>nd</sup> APPLICANT

and

CITY OF CAPE TOWN 1<sup>st</sup> RESPONDENT

CHAIRPERSON SUPPLY CHAIN

MANAGEMENT BID ADJUDICATION

20 COMMITTEE OF THE CITY OF  
CAPE TOWN 3<sup>rd</sup> RESPONDENT

MOHAMMED ZUNADE LOGHDEY 4<sup>th</sup> RESPONDENT

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JUDGMENT

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MAQUBELA, A J:

The matter was postponed *sine die* because I wanted to consider my decision and read more on the papers and understand the issues better, so that whatever decision I came to at least I would have been confident of that.

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In essence what this Court has to decide is whether the implementation of the contract between Loghdey and the City Council must be interdicted pending the review of the tender on which it is based.

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These are notes on my decision, but if it becomes necessary for reasons to be given later, then that is what will happen, but these are just notes in preparation of the order that the Court will be giving later.

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The long history of this saga need not be repeated here, except that reference to that history will be made when it is necessary to clarify certain issues which may be of assistance in the final determination of the matter.

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The brief background is, however, that Loghdey, who is the applicant in the main application, approached this Court for an order of specific performance against the Cape Town City Council for the implementation of the contract they had entered into, based on a tender awarded to Loghdey earlier.

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In his application, Loghdey cited APS CC and Numque 20 CC as second and third respondents respectively. During this time APS CC and Numque 20 CC had lodged an internal appeal against the award to Loghdey of the tender on the basis of which the contract between Loghdey and the City Council stood. Along the way, the City Council and Loghdey agreed that the contract would be implemented as from 1 March 2009. This is the milestone which prompted Loghdey and the City Council to agree further that the action for specific performance could then be settled and be withdrawn from court.

The internal appeal of APS CC and Numque 20 CC was also thrown out of court as the incorrect procedure to follow in the matter. APS and Numque then launched what they call a counter application to the one launched earlier by Loghdey, asking this Court for an order as prayed for in the draft order filed accordingly.

In the main, their counter claim prays that the main application and the review application be postponed for hearing in the Fourth Division on the semi-urgent roll on 28 October 2009.

Now, most importantly they claim that, this is now the counter applicants, pending the determination of the main application

and the counter application, the City Council is interdicted and restrained from implementing the decision to award the tender for the provision of the curbside parking management system, BID No 311, and from implementing the contract entered into  
5 between Loghdey and the City Council.

I am therefore going to confine myself to the essence of this conglomeration of actions, which is the interdict against the implementation of the decision to award the tender to Loghdey.  
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Counsel for Loghdey has vigorously fought against the whole approach of the two counter claimants or counter applicants. He has taken, firstly points *in limine*, which he argues are so strong and legally valid, such that I should not even hear the  
15 counter application.

Furthermore, with regards to the merits, counsel has argued vehemently that none of the necessary or essential requirements for an interdict has been established and  
20 therefore the application should be dismissed with costs.

Suffice merely for me to say that the submissions which were made by counsel for the counter applicants satisfied me that in fact the points *in limine* had no merit and therefore the trial in  
25 the main should proceed and therefore we should hear and

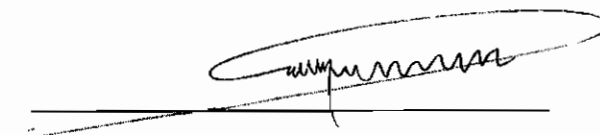
test the merits of the interdict as well.

Now, counsel for Loghdey, as I have already indicated, vigorously and strenuously argued here that this should be  
5 thrown out of court.

Again counsel for the counter applicants made certain submissions which again satisfied the Court that a *prima facie* case had been made by the counter applicants for an interim  
10 order prayed for. The considerations and reasons which have inclined the Court in this direction revolve around the imperatives of justice and the interests of public policy. These will be outlined if and when it becomes necessary.

15 The Court, therefore, is satisfied, as indicated earlier, that the counter application should be GRANTED, an order should be granted in their favour, as prayed for in the draft.

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A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above the printed name.

MAQUBELA, A J