



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 17608/2015

|                    |                                 |
|--------------------|---------------------------------|
| (1)                | REPORTABLE: NO                  |
| (2)                | OF INTEREST TO OTHER JUDGES: NO |
| (3)                | REVISED.                        |
| <b>09 MAY 2023</b> |                                 |
| <b>DATE</b>        | <b>EJ FRANCIS</b>               |

In the matter between:

3030 MOTORBIKE SCHOOL CC

Plaintiff

and

GAUTENG DEPARTMENT OF COMMUNITY SAFETY

First Defendant

THE GAUTENG MEC FOR COMMUNITY SAFETY

Second Defendant

**Neutral Citation:** *3030 Motorbike School CC v Gauteng Department of Community Safety & Another* (Case no 17608/2015) [2023] ZAGPJHC437 (9 May 2023)

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JUDGMENT

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FRANCIS J

*Introduction*

1. The plaintiff instituted an action for damages against the defendants for outstanding fees for motorbike driving lessons and training courses it gave to police officers of the first defendant in terms of a written agreement

alternatively written and/or partly oral agreement which training had been extended.

2. The action was defended by the defendants who denied that the plaintiff had trained 30 police officers and pleaded that only 14 officers were trained. They instituted a counterclaim for the sum of R160 293.12 against the plaintiff for the overpayment but during closing arguments this court was notified by their counsel that they were abandoning their counterclaim. The defendants denied that any oral agreement was entered between the parties.
  
3. Both parties called three witnesses each in support of their case. It is not in dispute that the parties had entered into a written agreement for the provision of the training of motorbike lessons for 30 police officers at an agreed purchase price of R300 549.60. The plaintiff was paid R300 549.60 for the training of police officers. 21 police officers had attended the training and only 14 police officers obtained their licences. What is in dispute is whether the agreement was partly oral.

*The evidence led*

4. The plaintiff's first witness was Chris Ndimande its managing director. He testified that he had received a call from the Gauteng Department of Community Development which is the first defendant to provide motorbike training lessons for 30 officers. He then visited the department and met with director Mateise Matee (Matee). She had asked him to help with the training of 30 officers on motorbikes and told him how the training would unfold and

that the duration of the training would be for 5 days and would not be continuous. There would be a break and they would return to complete the training quotation at page 013-9 on Caselines is dated 1 November 2012 and the full package is for a quantity of 30 at a unit price of R3 500.00 and the total price is R300 549.60. The training started on 19 November 2012 and ended on 18 January 2013. It was initially for 30 police officers. Annexure MS4 has the list of people who had attended the training. Page 013-16 to 013-21 on Caselines contains the names of the people who had attended the training. The register indicates that they attended the training from 19 November to 18 January 2013. The terms were that they would attend the training for 5 days and there would be a break in between. Motorbike training is a one-day course. To the department they made it for 3 days and they made them comfortable. The plaintiff had motorbikes and they rode their own motorbikes and came back and did the K53 and a test was done. During the training they indicated a break and they rode their own motorbikes and told them not to do that since they cannot ride their own motorbikes and they needed a full licence. The training was scheduled for 5 days i.e. 3 days for beginners course and they should be ready to ride their own or company motorbikes. They rode their own motorbikes for 3 to 6 months and came back and were now riding to do the K53 and they had grown ready to do the test. Annexure MS2 or page 013-11 to 013-12 on Caselines is a purchase order and is dated 27 November 2012 which he had received on 27 November 2012 after the training had started. The purchase order had not been presented or explained to him when he had entered the contract nor was the procedure explained to him. He was told that the purchase order would be prepared.

Matee had asked him to start the training before the purchase order. Page 013-12 has a vendor list. It states 30 X MRC2 compliant on road riding and K53 grounds. It has a tracking item and training external to spec 30. There is an advance course after a month of training and has 30 learners issuing fees and 30 drivers licence issue fee.

5. Ndimande testified further that he had issued the first invoice to the service provider in December 2012 which is invoice at page 049-9 for R300 549.60 and the training was still on. The training ended in January 2019 and he had wanted to issue an invoice and Thami Mayisea the director of the first defendant said that another purchase order would come and he should wait and should put it into the next purchase order to invoice his shortfall. He went to their offices to enquire about the next purchase order and was told to wait since they were still organising it. There were various telephone calls and he was told that it was coming but nothing came. He then invoiced his shortfall and tried to communicate and Matee said that it was above R500 000.00 and she could not help them. Director Hercule wanted to help and wanted to do a motivation and was told to wait. Ndimande said that he was not aware of the threshold of R500 000.00. It was the first time that he was dealing with the government. No one had explained the purchase order to him. The shortfall was going to be R1 867 320.00 as seen on page 013-36.
6. During cross examination Ndimande said that it was the first agreement he had with the government and the repercussions of the purchase order was not explained to him and there was no purchase order. It was put to him that a

quotation had been submitted and if they look at the purchase order at page 013-11, the quotation states that the full packaging is the description and has the unit and quantity. He agreed. He agreed that the number of people are 30 and the unit price is R3 500.00. It was put to him that if he looked at his quotation which is page 013-9 it states that the duration is 5 days which ties in with page four of the purchase order. He said that he did not see that and no duration is stated there. It was not the first time that he had dealt with them. They were on par with the quotation and the quotation states 1 day and the MRC2 (motor cycle riders course) is 2 days. The total value was R300 549.60 which was the full package. He said that he could not have unlimited training and it was a limited one and structured. They were in agreement with them. He went to the office and set with Mayisela and they had looked at it. It was put to him that the training was meant for 5 days and the invoice of 31 March became an expensive exercise and the training took longer than it should have taken. He said that it was incorrect. He gave them one quotation and there was no additional quotation. He had given them an invoice for the additional training that he had given them. He initially dealt with Matee. She left and he went to see Mayisela twice. Matee had left no invoices with the department and Mayisela then took over and had asked for an extension. He was asked on what basis he had issued the invoices and waited for the purchase order to come for 2014. He said that he had invoiced the invoice for 2014 because the purchase order did not come. He had discussed it with Mayisela to have another purchase order issued. He would include the shortfall there and the purchase order never came and he then sent an invoice for the shortfall. He had brought 7 motor bikes to train the 30 employees and that was sufficient.

They took into account the learners who never road motor bikes and he expected them to ride a motorbike and there was no issue with the balance. They had used the first defendant's pound and later moved to Centurion which was their own place. There were licences for 17 learners one of whom had failed and 2 did not attend it and 14 received their licences. It was put to him that the training had not been completed and he said that the department had breached the agreement and had said that there would be 30 officers. They did not return 30 officers and their resources had been reserved for 30 officers.

7. During re-examination Ndimande said that it was the first time that they had dealt with the first defendant. They did the training with the purchase order based on an oral agreement with the director. It was extended with another oral agreement and they did it without the purchase order. They were Mayisela and with his assistant Stephen Malherbe.
  
8. The plaintiff's second witness was Tshepiso Manyaka. He testified that he joined the department in 2009 as a training officer. When he joined the department he had never ridden a motor cycle and only had training in 2012. In 2012 they communicated that the department was looking for volunteers for riding motor cycles and he gave his name as a volunteer for it. There was going to be special training by the department whether they had or did not have licences. In 2012 he was at the head office when he received a call from the test handler chief programme inspector Malherbe and he was working on the N3 at the control centre and that his name was on the list. He was told in November 2012 to go to the Germiston pound. His name and signature

appears on 013-16 and this was on 19, 20, 22, 26, 29 November 2012 and on 5, 10, 12, 13, 14 and 15 December 2012 and also on 17 and 18 January 2013. He had attended every day of the training based on the instructions from Malherbe who was the person responsible and directly in charge of the officers. The chief officer did not tell him when the training would start and end. He referred to the temporary licences that were issued including his. He had obtained his driver's licence on 14 January 2013 and continued with the training. He was told that there would be further more advance training and the motorbike capacities were not the same. They would be given defensive riding and they would use state motorbikes. They were first given training on the plaintiff's motorbikes and further training on the state motorbikes.

9. During cross examination Manyaka confirmed that he had completed the training course and got a learner's and driver's licence. There were between 4 to 6 motorbikes at the pound but he could not remember the exact number. He was asked if there were 30 learners. He said that when they started people had drivers' licences. He was not sure if those whose drivers' licences were part of the 30. They were later removed as and when training was launched for motorbikes in March. When he got to the pound he was not riding a motorbike. He was asked if he had seen Malherbe at the pound and whether he was assisting him. He said no there was a meeting at the pound and Malherbe was there with others and the plaintiff. The first person that he had met was Tshepo with whom he had a conversation and training with and Malherbe came and then introduced himself and handed it to the plaintiff. Whilst they were being trained there were individuals and high ranking

persons and he reported to them. He was asked how the department had assisted with the motorbikes. He said that they rode the plaintiff's motorbikes and the department's bigger motorbikes. After they had obtained their licences they rode the motorbikes for 2 days and the training after 18 January stopped and they returned to their normal work stations. He is no longer employed by the department and he had reported directly to Godfrey Sekonyane who is a director when he joined the unit. He was not personally involved in the training. He left the pound after obtaining his driver's licence and never proceeded with the training and they were told that the plaintiff will take them through with the department's motorbikes. That never happened. They only drove around the pound but not on the public road.

10. The plaintiff's third witness was Thabo William Masoka. He testified that he joined the department in 2005 and left it at the end of August 2022. He was with the department in 2012. From 2005 to 2012 he had received motorbike training lessons. He did not know how to ride a motorbike. Their directors/senior managers had asked for volunteers, as they had a motorbike unit and he gave his name and was called to the Germiston pound. Mayisela and Malherbe and their seniors introduced them to Ndimande on training. The department was looking for 30 riders and he was part of the first group. He does not remember the name of the director and Mayisela was an advocate of the department and later became a director and Malherbe was the Chief Provincial Inspector. When asked if he was told how long the training would be, he referred to MS4 where his name and signature appears for training that took place on 19, 20, 22, 26, 27, 29 and 30 November 2012 and on 5, 10, 11,

12, 13, 14, 18, 19, 20, and 21 December 2012 and from 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 18 January 2013. He had attended all the training due to the insistence of his supervisors. His temporary driver's licence appears at MS5 and was issued on 11 January 2013. He received training after he had obtained his licence but was not allowed to ride the department's motorbikes since he was told that he was not experienced enough. He got experience from 12 January 2013 to 18 January 2013 and was riding the department's motorbikes on the road.

11. During cross examination Masoka was asked if they were told about the beginners and advance training course and he said that it was not broken down but they were told that they would get training and get driver's licences to handle the department's motorbikes. He was asked if he continued to be trained after he had received his driver's licence. He said that they were not trained or evaluated on the bigger motorbikes. They were given advance training by Ndimande. Mandla Sekonyane was in charge of the motorbike unit but did not train them. They would report to him as the unit commander of the motorbike unit and he was in control. When asked if he had trained them he said that he was in control of the unit and all the officers using motorbikes reported to him and he the witness was an official. He reported to him after he had obtained his licence and was appointed in the motorbike unit. They had looked for volunteers. It stopped and they were called to pick up office motorbikes. He used to be at the Pretoria regional office and then came to Johannesburg to work under Sekonyane. When he received the training, he was based in Pretoria. Sekonyane was allocated the motorbikes as the unit

head. He gave him a motorbike after obtaining his driver's licence and advance training. Sekonyane was not trained. After he had been trained, he the witness was moved to a different department headed by Sekonyane.

12. The defendant's first witness was Thami Mayisela. He testified that in 2012 he was the director of Public Transport and Inspectorate. He managed transport regionally. The National Road Safety and Education Programme took place and he had to manage it regionally. He was responsible for the Central Gauteng Province. As a director he was responsible for the budget of public transport. The motorbike unit was a new unit and had started in 2012. The reason for its establishment was that as more vehicles developed there was more congestions on the free roads and provincial roads so there was a need to establish this new unit. It involved escorting VIPs for major events like cricket, soccer and to funerals. It was also for derbies and also to ensure that they dealt with violations and the use of cell phones and people travelling on barrier lines. They also escort politicians like the president and his deputy. They did not at the time have the capacity to train their own bikers. They had a few and had to outsource it. With a quotation, Supply Chain will do a request for a proposal and invite service providers for a quotation for work that they needed to be done. They worked on the basis of three quotations. For any amount below R500 000.00 they worked on the basis of a quotation. They would invite the service providers for a quotation and the lowest one would get it. There is a CFD Data base of service providers that are registered with the Provincial Treasurer. Supply Chain would take it from it or call them to provide a quotation. Annexure MS1 is a quotation. The total price is

R300 549.60 which is less than R500 000.00. Full package means the training of officers from learners to drivers' licence. The purchase order is at page 033-12 by the Gauteng Provincial Government. This means that the purchase order is the contract and there is no other contract unless they have another purchase order. The quotation is part of the agreement with the purchase order. The purchase order is from page 033-13 to 033-14. On page 15 it is signed by S Podile on 1 November 2012 and by Mangesi Tshongwe the head of department on 8 November 2012.

13. Mayisela testified further that he was a director. The chief director is responsible for the entire programme as the programme manager. He was the director responsible for such a programme and all of it fell under one programme. He is now the chief director and his signature is not on that page. There were 3 quotations and the plaintiff's quotation. Supply Chain accepted the plaintiff's quotation and gave it to them because it was the lowest. He interacted with Ndimande and gave him a full briefing at the meeting and was told what was expected. It was him, his colleague Violet Mathege - the director for administration and Ndimande was alone from the plaintiff's side. The briefing session is for a tender less than R500 000.00. If the amount is above R500 000.00 they would invite for a tender and have a briefing session for everyone. They do not do it with three quotations and they accept the lowest one. At the meeting they met and greeted Ndimande and gave him the scope and rational of works and what had to be done. Ndimande knew what service he had to provide since he was fully briefed. It was put to him that Ndimande said that they had entered into an oral agreement. He replied that

they could not enter into an oral agreement for any amount of money. The basis of the agreement was the purchase order. The purchase order was created on acceptance of the quotation which quotation was submitted by the service provider. The invoice which is annexure MS6 and is dated 31 March 2014 was addressed to him. He does not know what he had to do with it. It was an invoice long after the training was done. Once the training is done the service provider is paid. It was put to him that Ndimande had said that at times the officers told them to extend it. He said that he did not enter into an oral agreement with him. The total amount according to the invoice was R2 167 869.60. This is a tender amount since it exceeds R500 000.00 and they cannot give this without a tender and three quotations would not work. The original quotation was R300 000.00 and now it was R2 000 000.00 and they would not have accepted it. It does not make sense. The basis of the acceptance was that it was the lowest and they flouted the Provincial process. Ndimande had said that he had spoken with Matee. The conversation with him from time to time in the meeting was the milestone and it was brief for example that they had learner licences and that the training was proceeding very well and they were being trained. The briefing was on the programme that was taking place. For any other purchase order to be developed there must be a quotation which is accepted which was the normal process. As bidders they cannot do the work and add on to it. There cannot be a purchase order without a quotation. There was no authority for it. The normal process order would be a tender. He would risk his job and exceed the provincial orders. An order was issued and not communicated with him unless Ndimande had spoken with Matee but he was not privy to it. There is an

email dated 2 June 2019 from the plaintiff to Matee and she responded on the same day and had pointed out to Ndimande that since the amount exceeded R500 000.00 in terms of the PFMA it should have gone for tender. It is the defendants case that it exceeds R500 000 and should have gone out on tender. There was no talk of extending the training and the duration was in a number of days. They would get them licences and they did not agree on the duration. It was drawn on the basis of work that was done and not on an issue of time. There were new officers who never rode motorbikes. This was discussed with the plaintiff and they did not agree on the time. The quotation was the lowest and they said that they could do the work. It was put to him that Ndimande had said that they would be trained until they got their licences. He said that no duration was mentioned and the emphasis was the end product namely licences. It was put to him that he had said that the shortfall exceeded the amount. He replied that he accepted an amount of R300 000.00 and invoice MS6 exceeds it. Supply Chain creates a packing order and it must be authorised by the programme manager who is the chief director. He had no authority to attend to the invoice of Ndimande. He the witness said that he reported to Podile who was the chief director and the chief director reported to Tshongwe.

14. During cross examination Mayisela said that he started working for the department in 1996 and was aware and acquainted with the process in the department. 1996 to 2012 is more than 10 years and he was aware of the bidding and threshold in the tender process. It was put to him that there was an initial briefing meeting with Ndimande and he said that he cannot

remember the date but it was after the quotation was given. At the time of the training, he was he was in charge of the training. During the briefing he had discussed with Ndimande the scope of the training. The training started on 19 November 2012 and the quotation was given on 1 November 2012 by Ndimande. He was asked if the discussion took place on 19 November 2012. He said no and that his discussion with Ndimande had taken place after Supply Chain told him that he was a supplier. He had not met him before. The initial meeting was when he was appointed. He does not remember when he had met Ndimande but it was before the training had started. This was what was expected. He had met him after he had provided the quotation which had been accepted. The department would call service providers to hand in quotations. There was a request for a quotation. When asked if it would be in writing he said that he was not in Supply Chain and somebody from Supply Chain could provide an answer. He knew that no one in the department had motorbike experience. He was aware of the scope of training to be provided for the training. Some had no experience at all. To get a licence would not need extensive training. He knew how much money the department had and it should not exceed R500 000.00. He did not know that Ndimande had not worked with the department and he did not acquaint him of the process of payment. It was put to him that Ndimande gave the quotation on 1 November 2012 and started the training on 19 November 2012 and he was given the purchase order on 27 November 2012. He said that he does not know if it is the Supply Chain process. He said that he accepted that MS2 is dated 27 November 2012 and that the purchase order was generated after the training had started. He was asked whether he would accept that Ndimande would not

have agreed to the training and to run it to infinity to get licences if there was no limitation and if he knew about the terms of the purchase order. He said that he did not agree. He was asked whether Ndimande if he knew about the threshold and that they had no riding experience at all and that the end result was to get a training licence a reasonable business man would have run it to infinity until they got the licence based on a quotation. He said that he does not know. It was put to him that on 1 November 2012 there was no purchase order and he replied that he did not know what he was doing. He agreed that he gave the quotation on 1 November 2012 and the purchase order was generated on 27 November 2012. It was put to him that he was acquainted with the department's purchase order on 27 November 2012 and he said that he does not know. He was referred to page 033-8 and agreed that it has a department stamp and supply signature and is dated 13 December 2012. Page 033-9 has a department stamp at the bottom with a signature and page 033-8 to 033-14 is the Invoice, Purchase Order, Purchase Request form that was signed by Podile and Tshongwe. The supply signature at 033-8 was on 13 December 2012. It was put to him that the plaintiff contends that he was only provided with the full purchase order on 13 December 2012 when he signed it. He replied that from what is written he can see that but he was not in Supply Chain. He agreed that he was with the department since 1996 and was aware of the procurement process. He was not aware of the purchase order and the terms and conditions. He was asked how the department would do check and balances and know of the process for suppliers and he said that he is not aware of it. It was put to him that the department knew what was expected of Ndimande and did not inform him of the process until he had started with the

training and he had entered into a contract that was binding without knowing the process. He said that he does not know and does not know what was discussed with Supply Chain and he is the end user and was not in Supply Chain. He had met Ndimande before the training had started. He as a manager knew the scope of training and what the department wanted. He knew as a manager prior to the training that there was a certain threshold and that there was a law to it. He was asked if he did not feel the need to discuss with Ndimande what was expected and not say that he was expected to train and get licences and if they did not get a licence they would not foot the bill. He said he did not. He took the quotation and understood what was expected of the department and he proceeded with the training at the department's request. It was put to him that the department knew what it did when they had asked for his quotation without discussing the scope. He said yes it did not. It was put to him that it knew that they had no riding experience at all and would provide training up to getting a driver's licence and there was no need to explain the process of the department. He said that he was not sure if Supply Chain discussed it but he did not. He agreed that he as a manager knew the rational and scope of the work. It was put to him that he knew that he could not enter into an oral agreement if it surpassed R500 000.00. He replied that it had been asked many times. It was put to him that he had said that Ndimande briefed him if the milestone was reached and was referred to page 013-22 and that the outcome for training was to obtain drivers licence and he said that it was correct. Annexure MS4 confirms the date when they were trained. Annexure MS5 indicates that one MD Arendse was issued with a licence on 11 January 2013. All the dates when the licences were issued was before

January 2013. He was assessed for training them. He does not know why they were trained after they had received their licences. It was put to him that they had reached the milestone and was asked why he did not ask when and why they were getting training. He said that he did not know and he is not the operations supervisor and have to enquire where they were. He had received a briefing from Ndimande. He was asked if he was not briefed and no one had said that they were not at work and where they were and he said no. It was put to him that a witness said that he got training and was not briefed after he got the licence and he continued to receive training to be given a certificate. He said that he does not know that and he did not go to that session. It was put to him that the plaintiff had said that on the day of the training they were at the premises. He said that the briefing was at their premises and he cannot speak for the others but he did not go there. It was put to him that the motorbike that was used for training was different to that of the department. He said that Ndimande told him that at one of the briefing sessions. It was put to him that it was a different motorbike and that at some point he was informed and knew that the department's motorbike was different to those allocated to the department and the department requested Ndimande the training officer to train them to get their licences. He said that he does not know and it was not brought to his attention and if they did that, the process was not followed and it was unlawful. He does not know what happened after they had received their licences. He had testified that the director of administration Matee was aware of the training and had met Ndimande and does not know if she was briefed on the milestone.

15. Mayisela was referred to the email sent on 2 June 2014 at page 049-3 by Matee to Ndimande and his response to her in an email of the same date. In paragraph 3 reference was made to the provisions of the PFMA. He was asked whether he agreed that he had alleged in correspondence from Matee that he was not mentioned in the email. He said yes and that it was verbal correspondence. He was in court due to the verbal correspondence between the two of them. It was put to him that his client was aware of the problem due to the verbal communications and he had asked that his statement confirmed that he was not involved in it and what Matee had mentioned was not from him. He said no he never did that. It was put to him that it was a pattern and things were discussed orally back and forth and at no point from any of the department was it put to her. He said none was done. It was put to him that none was done because in his testimony he said that he had approved that orally and he was jeopardising his work. He said yes. He said that he was never asked to put anything in writing. He was not aware. He was asked that when Ndimande said in his feedback to confirm his involvement what he Ndimande was talking about. He said that it was not true. It was put to him that he was referring to a verbal agreement with the two of them which was denied and he wanted it in writing. He said that there was no verbal agreement between him and Ndimande to do the work despite that it exceeded R500 000.00. He did not reach an agreement and no recording was present. He is seeing this for the first time. She had asked him if they owed Ndimande and he had said no. It was made on 2 June 2014 and he was not asked if they owed Ndimande. He was asked if he was denying that Matee prior to her writing the said email had discussed the shortfall with him. He said that he

was denying that she spoke about the shortfall and had asked if it was oral and he said no and he said that he does not agree. There was no oral agreement. It was put to him that the document does not state that they did not discuss the extension but not monetary. There was no discussion to extend it after the licence and he said he disagrees with it. They had a licence to operate due to the training of the plaintiff and they had licences.

16. During re-examination Mayisela was referred to annexure MS1 which is the plaintiff's quotation which states that the full package is 30. He said 30 officers had to be trained but 17 officers were trained. The department had paid him for 30 officers which was the entire amount. He does not remember what they did with the balance and Matee dealt with it since not all 30 officers were trained but 17 were trained. He was asked why he was referred to the rules of procurement and he said that they did not enter into an oral agreement and there would have been serious repercussions had they done so. The manager starts as the chief provincial assistant. He is the assistant director. There is a junior, middle and then a senior. He delegates his functions and there are people who are operational and are responsible for it. Ndimande's invoice of M6 is dated 31 March 2014 and he did training of 17 officers and had invoiced for it. In MS1 the duration is not spelt out and in MS6 the days are not spelt out. The plaintiff did not explain to him what MRC2 entailed on annexure MS1. MRC is day 3. He does not know that there was a break after a month. The unit price for MRC2 is R1 200 and for MRC3 is R1200.00.

17. The defendant's second witness was Jacob Stefaanus Malherbe who testified that he is employed as the chief provincial inspector at Gauteng procurement. In 2012 he was the chief budget and procurement inspector. He recalls MS1 which is the quotation. It was for training they had to supply for services rendered. The role in procurement was that if they needed goods or services they would request a quotation. Under a tender value of R500 000, RSLA1 they do a purchase request form which is not a purchase order. He would complete it or other people would do so. It is for complete services requested and appraisal rand value and the signature is considered. They attach three quotations. They will fill it in when they request service for example motorbike training. They will request a quotation and fill it in and send it to Supply Chain. The quotation is received by his office by email. The head office budget and procurement department under the traffic section/managerial will look at the budget for training, skills training etc and ensure that there is a budget for it. They had received a quotation for it. They would contact different motorbike entities that trains bikers. They had 3 quotations for the request form which they had received by email. His section and the other departments advised them who to phone for training. They must be on the data base for vendors and have a tax clearance. After they got the quotations they compiled RCL1 and sent it for two signatures i.e. the chief director – Stephen Kobbe and approval by advocate Tshongwe. They needed two signatures as delegation for up to a certain amount. For R300 000 they needed approval. They would attach all quotations and send it to the community support management section and the RSI is processed to ensure that everything was in order and approved and it goes through each quotation to

see the vendor number and allocate points to each and they would then get a purchase order. After that they supplied it to the claim managers – RSL1 and it stays with them. After the purchase order is generated it will be sent to him and he would send it to the service providers and tell them that they had been appointed and could proceed. Supply Chain would generate it and send it to him. Clause 9 of the purchase order at page 14 contains a general provision and it states that the CPG does not accept non-deliveries and only pays for goods supplied and/or services rendered according to that purchase order. The CPG is not liable towards the supplier for any amount exceeding the price of the goods or services as specified in the purchase order. He said that was a general provision that was given. They paid the amount on the quotation in terms of the purchase order and that is all that they pay for. There cannot be further expenditure and they pay what is in the purchase order and cannot exceed it. From receipt of the quotation to the generation of the purchase order takes up to 5/7 days and it depends on the work load. Clause 12 states that *“This PO forms the entire agreement between the CPG and the Supplier and any variation to this PO must be done in the form of a Change Purchase Order issued by the CPG”*. He said that no purchase order was made at all. It was a unique number agreement with the department. Without the purchase order they cannot be paid. The invoice must reflect the purchase order. It is a passport to provide services to the department. The training started on 19 November 2012 and the purchase order was created on 27 November 2012 which was 8 days after they had commenced with the training. That is not allowed and they can only do the training after receiving the purchase order. MS6 is the plaintiff's invoice and is dated 31 March 2014 which needs to be

compared with the quotation. The full package is everything that has to do with motorbike training, K53 and until they received their drivers licence. MCR2 is your beginners course and MCR3 is outside the grounds and is the actual course. The quantity is 30 officers to be trained. The unit price on the quotation is for 30 officers to be trained and there is a breakdown of the unit price. MR2 is R1 200 and MR R1 200 gives you a price. The invoice MS6 is a description clause and MR2 is a beginners course. The learner is a full package officer after 3. There is no MRC3 there. Under the full package is K53 is MRC3 and is different to the quotation. All of it comes to R300 549.60. He was referred to MS6 which is the unit price and includes the duration and was asked how they got to R540 000.00. He said that as an original quotation there is no time frame in the quotation and it says what the full package is. On the MS6 it is broken down and is calculated per day and comes to R540 000.00 and is not in the quotation. The variation came after the fact. The quotation was accepted by the service provider and gave an invoice for R300 000 and the variation was not in writing and was not accepted. In addition, service had to be given and a new purchase order and it cannot be without a valid invoice. It was already paid and a new one had to be paid and had to go on. K53 is the number of hours and multiplied. There was no approval for the MS6. The tender amount above R500 000 had to go for the tender process and he could tender for it. If he saw that it was not an easy transaction, he should have requested for the purchase order to be revised and approved and it would have been revised. If it exceeds R500 000 they would cancel it and it will go for a tender which did not happen at all. The tender process should have been followed. It was put to him that he was required to

train 30 officers and only 17 officers were trained and he was asked what he was required to do. He said that he was not involved in training but it can be less than that. If they had and were sent less than 30 they will pay for the actual number and only 17 was sent. He was not aware of the MS6 invoice and where it went to. The R300 000 came to them. He was not aware of the invoice for the purchase order. That invoice could not be sent and it was not on a valid purchase order. That was after the fact.

18. During cross examination Malherbe said that 30 officers were interested when the training started and 17 had arrived and only 17 needed to be trained. He was with the department in 2012 and was familiar with the procurement process. An ISLO will be completed after the quotation was supplied. There is no standard form similar to what the services department had required. They would send an email with the description of the services required. The email would set out what was required and based on the email they would give a quotation. The department knows that training is within the budget. The services must meet the budget requirements and the necessary services to be rendered in full. The budget is flexible depending on the service required and it must be under R500 000.00. If there is no quotation with the threshold and above R500 000.00 a tender process will have to be followed. All the requirements will be in place and that the vender meets the requirements. He was asked what if he was not familiar with the terms and conditions of tender to supply. He said that he is not aware of it. If he renders service as a vendor he must be aware of the PFMA requirements etc. There must be a purchase order that sets out the terms and conditions. He must know what is required

because he is a vendor. Once the purchase order is approved the supplier would proceed. It was put to him that the terms and conditions are at page 049-13 at page 14 and that the training started on 19 November 2012 and the purchase order was generated on 27 November 2012 and he signed on 13 December 2012 and whether he agreed that the department did not comply with its own process. He said that he was not sure how he was informed to start the training on 19 November and he cannot answer the question. It was put to him that he must have been told when to start the training before the purchase order was created. It was put to him that he was taken to MS1 and he said that MRC2 is day 2 or phase 3 and that he was correct and MRC2 is day 2 of the training and he said ok. He said that he can see from MS3 that the training was for 26 days. He agreed that MS1 and MRC2 means a day. He was asked if he agrees that based on the calculation and date of training and MRC is 15 days and the multiplication of days training took MRC2 cost R1 200 x 26 and on the same quotation 7 times K53 and he replied that he sees it. MS3 shows that it took 26 days. He was asked if he agree about the time period it would take was stipulated as 7 days stipulated and he said yes. He was asked if it did not take 7 days and took 23 days multiplied by 23 and he said it was according to that calculation. He agreed that he said that if the variation came after the fact a new purchase order had to be created. He was asked that if it came after the invoice was settled and the purchase order it could not be valid and he said yes. He was asked if his testimony was that the invoice reflect the time and effort put into training and he said yes. It is correct to process many invoices to reflect invoices given. He was asked that if 17 employees attended training and 30 had to be trained and less was given

training whether the invoice would be less and he said yes. He was asked that if the invoice was less and different to the purchase order it cannot be processed and he said that if it was less it can be processed. He was asked if he agreed that the process was before the department. He said that if it was more he must get permission to alter the training and purchase order and quotation would have to be amended and it was not revised in this case. He was asked why it was not revised. He said they did not receive one and they had received a revised invoice in January/February and processed it. It was put to him that the plaintiff could not know to revise the purchase order and he replied that he was not sure if he knew that. It was put to him that the plaintiff was given the purchase order on 27 November after the fact and continued to 18 December and he could not stop and had asked to be paid for the training for the period of training. He said that the training could have been stopped to revise it and the process also stopped without the purchase order. It was put to him that the plaintiff entered into an oral agreement with the department to render service and started in good faith on 19 November before new terms and conditions of the purchase order. He said there could not have been a verbal agreement before receiving the purchase order. He agreed that the services were provided on 19 November. It was put to him that someone in the department had given the plaintiff permission to start. He said he does not know the supervisor who told them to go for training.

19. The defendants third witness was Godfrey Sekonyane. He testified that he is the deputy director in the special Saturation Ekurhuleni units in the Gauteng Police forum. He is in the motorcycle unit which is his current position. In

2012, he was the chief provincial inspectorate and was setting up the motorcycle vehicle unit. He was working for the Johannesburg Metropolitan Police and was responsible for the Free Way Patrol and Taxi Squad and part of his duties was to train officers to ride motorcycles and vehicles. The unit was created in 2012 and he was in community safety in 2007. When he got there he started a new unit – Special Law Enforcement Unit in 2012. With his experience in patrolling with motorcycles which was not present in Gauteng he requested to start the unit and to look for motorcycles. The riders that they had were people working in different regional offices and they were brought in to the unit. He had a pound in Germiston. His office was there and his unit reported there as well as the members. He met Ndimande towards the end of 2012. Ndimande had come to the pound with motorcycles and riders he could use. He thought that there were between 2/3 motorcycles. He does not recall what was discussed after he met Ndimande but after that he was chosen as the service provider. The training started at the pound and later in Centurion. He did not assist Ndimande to train since he was chosen to do so. The training was later on the road. No advance training is done in the department and he the witness did not do advance training. He did novice training which is the normal police training. He had seen the training at the pound. It moved to Centurion and away from his environment. He was not trained by Ndimande and still does training. The riders came from different regions. He provided those working in his region and brought them to Ndimande. There were 15 people at the pound and 2 were licensed riders and 1 supervisor and another based in Pretoria. They provided 17 to be part of the motor vehicle unit. Two were licenced and did not need to be trained and 15 were trained and 14 got

their licences and 1 had failed. They were trained at the Germiston pound for 9 weeks. There was no break there and they spent the whole day there and then moved to Centurion.

20. During cross examination Sekonyane confirmed that he had previous riding experience. He did not train them in 2012. He only trained them in 2013 after they had been trained by Ndimande who did the licence and novice training. They were new bikers to be used for Law and Enforcement after the training. After the training he took employees with bikes such as 1300cc and 800cc and Ndimande had used such bikes. He the witness took over the training sometime in January 2013. He said that the last training might have been on 18 January 2013 and he trained them thereafter.

21. The defendants closed their case.

*Analysis of facts and arguments raised*

22. The plaintiff contended that on or about November 2012, the first defendant entered into an agreement with the plaintiff for the provision of motorbike lessons and training course by the plaintiff (the initial agreement). The plaintiff issued a quotation for the services that were requested by the first defendant on 1 November 2012. The training commenced on 19 November 2012 and the purchase order which serves as proof of the initial agreement was generated on 27 November 2012. The plaintiff received a copy of the purchase order incorporating the terms of the agreement on 13 December

2012, when he submitted an invoice for the services rendered in respect of the initial agreement. The training continued to run until 18 January 2013.

23. The plaintiff contended that the training was extended through an oral agreement between itself and the first defendant represented by Mayisela who occupied the position of director at the first defendant at the time and was also responsible for overseeing the program. It claims payment for the services rendered as a result of the extension (the shortfall). The first initially defendant denied that the agreement was extended and that it owes the plaintiff any shortfall. In the contrary, it raised a counterclaim in which it alleges that the plaintiff was overpaid because 30 police officers were to be trained and only 17 police officers received training but abandoned their counterclaim.
24. The plaintiff contended that the evidence before this court shows that the terms of the agreement were clearly varied. Once the horse had bolted and the first defendant's officials realised the implications of that variation, it completely denied there was any variation to the initial agreement. But the evidence so it was contended shows otherwise. It particularly shows that the first defendant's officials were well aware of the procurement processes of the first defendant while the plaintiff only received the purchase order incorporating the terms and conditions of the agreement only after it had started rendering services to the first defendant.

25. The plaintiff contended that recently in *Free State Province v Terra Graphics (Pty) Ltd and Another* 2016 (3) SA 130 (SCA) the Supreme Court of appeal admonished this type of conduct by state organs. The first defendant had contended that the outstanding payment due and payable to the plaintiff exceeds the first defendant's threshold of R500 000.00 and since the total amount for the service rendered exceeded its threshold, the contract should have gone on tender.
  
26. The plaintiff contended further that the first defendant in support of its contention, maintain that the plaintiff's quotation which constituted a full package did not stipulate the duration of the training between the commencement of the training until the end date. However, Malherbe, the first defendant's own witness, corroborated the evidence of Ndimande which was that the wording "MRC 2" which appears on the quotation was a reference to day 2 of the training and "MRC 3" was day 3 of the training and that each day of training would be charged at a rate of R1 200.00.
  
27. The plaintiff contended that the Supreme Court of Appeal, dealing with similar facts in *Passenger Rail Agency of South Africa v Sbhahle Free Services CC* (230/2019) ZASCA 90 (4 August 2020) held at para 26:  

*"The context in which the contract was concluded, the wording of the contract and, to the extent necessary, the contra proferentem rule, ought to be considered in the process of interpretation. It is commonplace that the context includes the subsequent conduct of the parties which would indicate how they*

*understood their contract. It is trite that in order to arrive at the common intention of the parties the contract must be interpreted as a whole."*

28. The plaintiff contended further that the parties entered into a verbal agreement for the provision of the services rendered, notwithstanding the first defendant's procurement processes. It is on the basis of the oral agreement that the plaintiff commenced the training without a purchase order and it is also on the basis of a further verbal agreement that it agreed to vary the terms of the former agreement. It would be insensible to accept that the initial agreement would run for an indefinite period until the police officers obtained their licences at only R300 549.60, especially while aware that some of the first defendant's police officers had no riding experience at all when the training commenced.
29. The plaintiff contended further that the plaintiff fulfilled its obligation in terms of the agreement entered into with the defendant and provided services that were requested from it. The first defendant in turn benefitted from those services and enjoyed the fruits of those services and refuses to compensate the plaintiff for the services rendered. The equitable principle of our law that no one shall be unjustly enriched at the expense of another has long been established and it is against the unjust absorption by the one party of the expenditure or of fruits of the labour of the other party in a manner not contemplated by the parties to the contract.

30. The defendants contended that this is an action brought by the plaintiff claiming the sum of R2 167 869.60 for services rendered in providing motorbike lessons to riders who were employed by the first defendant. The invoice in dispute is questionable for a number of reasons. The invoice in dispute basis its claim on the same quotation which quotation it had submitted as a service provider to the first defendant. Payment had already been made by the first defendant on an earlier invoice submitted by the plaintiff. The first invoice was based on the quotation and a purchase order. The second and revised invoice prepared by the plaintiff extends the service provided in the quotation that was submitted to the first defendant. It should be borne in mind that the plaintiff only submitted one quotation but submitted two invoices based on the same quotation. The second invoice has no purchase order accompanying it and it is not based on a new quotation other than the quotation relied upon and used by the first defendant for which payment has already been made. The second invoice is based on an oral agreement which is alleged by Ndimande to constitute a basis for his invoice to be honoured.
31. The defendants contended that no oral agreement can in any way be accepted as this is against the rules and regulations which require a written agreement. Since the second invoice includes a new amount, the requirement is that a new quotation and a purchase order will be generated which means that part of the procurement rules have been complied with. The remaining section refers to the threshold of the amount claimed which amount in the second invoice exceeds the threshold amount. This in itself disqualifies the plaintiff from being paid. The new amount claimed by the plaintiff requires that a new

tender process kicks in where procurement rules are different to rules where quotations are provided by service providers. On the basis of quotations being received, the Supply Chain Management accepts the lowest quotation and invites successful bidder to accept the offer made. Finally, procurement processes, as evidenced by the first defendant's witnesses confirm that the plaintiff has missed important steps in the procurement process which are a purported oral agreement; no quotation based on the amount of the invoice and further that there is no purchase order accompanying the quotation. Moreover, the above steps could not have materialised, if complied with, since the amount claimed in the plaintiff's invoice exceeds the threshold amount if using the aforesaid method of procurement. In this regard, a completely different set of procurement rules would apply. The plaintiff in submitting the new and revised invoice so it was contended remain unsuccessful on both counts mentioned above. The above are rules required to be complied with, and once the rules are complied with, only then will payment be made by a government department or entity. The plaintiff in its pleadings and its testimony expects the officials of the first defendant to flout procurement rules so that the plaintiff's expectation be fulfilled.

32. It was further contended by the defendants that the first defendant's witnesses testified that they complied with procurement rules and that if officials failed to comply with its own rules and regulations, its conduct would be tantamount to corrupt activities.

33. The defendant contended that the issue in dispute rests on the second and subsequent invoice submitted by the plaintiff wherein is the amount claimed by the plaintiff. The onus to prove the amount claimed rests squarely on the plaintiff. The plaintiff has based its claim on an oral agreement with Mayisela who was the director of Community Safety at the time in 2012 when the quotation was provided. Ndimande who represented the plaintiff testified that he awaited a purchase order and when the purchase order was not being generated by the first defendant, the plaintiff chose, instead to submit an invoice to the first defendant. The plaintiff has failed to prove on a balance of probability that the second invoice submitted for payment was consistent with the procurement rules: namely that the invoice was required to be consistent with procurement rules, and secondly the plaintiff failed to prove that an oral agreement was the correct approach towards acquiring a tender. Both Mayisela and Malherbe testified that for purposes of succeeding in a procurement process, a bidder is obliged to comply with procurement rules when the bidder applies to be a service provider. The entire process of bidding is reduced to writing. Under no circumstances are oral agreements permitted. It requested that the plaintiff's claim be dismissed with costs.
34. The parties stated in their joint practice note that the issue in dispute is whether the first and second defendant is indebted to the plaintiff for the amount being claimed in its particulars of claim. The defendants disputed that the parties entered into an oral agreement but particularly stated that a written agreement was concluded between the parties.

35. The main issue that this court is required to determine is whether an oral agreement was concluded between the parties in this matter as contended by the plaintiff. The court will also have to determine with who the oral agreement was concluded since the oral agreement cannot be concluded with just anybody. If the court finds that no such an agreement was concluded that is the end of the matter for the plaintiff and its claim stands to be dismissed. It will not become necessary for this court to determine the other issues raised by the plaintiff around unjustified enrichment since that is not the plaintiff's pleaded case before this court. Public funds are involved and this is a factor that this court must take into account when dealing with this matter. The plaintiff bears the onus to prove on a balance of probabilities that the agreement was also partly oral.
36. It is not in dispute that the plaintiff and other service providers were approached by the first defendant to submit quotations for the training of police officers on motorbikes. Service providers who were on the first defendant's data base were requested to provide quotations. Three quotations had been provided and the plaintiff's quotation was the lowest and was then appointed as the service provider based on the quotation it had provided.
37. The plaintiff's quotation is annexure MS1 and also appears on pages 013-9 to 013-10 on Caselines. It is dated 1 November 2012 and states that the full package is 30 and describes what needs to be done and the total price of the quotation is R300 549.60. It also deals with additional lessons etc. The first defendant's purchase order is dated 27 November 2012 and the total amount is

R300 549.60. It was annexed as MS2 and appears on page 013-12 to 013-14 on Caselines. It states that the delivery date is 27 November 2012. It provides amongst others that the plaintiff confirms having read and fully understood the applicable provisions of the general conditions of contracts of the Gauteng Provincial Government which can be viewed electronically at [www.gautengonline.gpg.gov.za](http://www.gautengonline.gpg.gov.za). Clause 9 states that the CPG does not accept over-deliveries and only pays for goods supplied and/or services rendered according to this PO. The CPG is not liable toward the supplier for any amount exceeding the price for goods or services as specified in this PO. Clause 12 provides that this PO forms the entire agreement between the CPG and the Supplier and any variation to this PO must be done in the form of a Change Purchase Order issued by the CPG. It is common cause that there is no Change Purchase Order form that was issued by the first defendant.

38. It is clear from the evidence led and the documents that were placed before this court that the training commenced on 19 November 2012 and ended on 18 January 2013. The training took place on 19, 20, 22, 26, 27, 29 and 30 November 2012; on 5, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21 December 2012 and on 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18 January 2013. There were 17 officers that were trained if one has regard to the attendance register provided. 14 officers obtained licences in January 2014.
39. It is also clear from the quotation what the duration of the agreement was and the costs to be charged for the training. The target was to assist the police

officers to obtain learners and driving licences. The quotation corresponds with the purchase order and it sets out the duration of the agreement and the end result.

40. The plaintiff's pleaded case if one has regard to what is contained in its particulars of claim as seen in paragraph 7 thereof is that on/during November 2012, the first defendant, represented by Mateise Matee and Thami Mayisela engaged the services of the plaintiff for the provision of motor bike driving lessons and training course for 30 police officers of the first defendant. It attached copies of the plaintiff's quotation and the first defendant's purchase order to the services.
41. In paragraph 8 which was pleaded in the alternative to paragraph 7 of the particulars of claim the plaintiff pleaded that on or during 9 November 2012 and at Gauteng the plaintiff duly represented by its managing director, Mr Chris Ndimande and the first defendant, duly represented by both Mateise Matee and Thami Mayisela entered into a partly written and partly oral agreement for the provision of motor bike driving lessons and training course for about 30 police officers of the first defendant (the agreement).
42. In paragraph 9 of the particulars of claim the plaintiff pleaded that the salient express/implied and/or tacit terms of the aforesaid agreement or the services were that the plaintiff shall teach, train and provide motorbike driving lessons to about 30 police officers of the first defendant until they completed and obtained a valid motorbike driving licence for a period of and to be completed

within five days; the plaintiff shall charge an amount of R300 549.60 for each of the five days for the services; the first defendant shall be responsible and liable for ensuring that all of the 30 police officers attends the training to the end; the first defendant shall be liable for all the cost of or associated cost of the services until the complexation of the services/stages of the training as completed; the first defendant shall be liable for any further cost/of any cost for the delays and/or extension of the service resulting from delays occasioned by the conduct of the first defendant and/or any of the police officers' failure in mastering the lessons and/or training for completion within the anticipated period of completion of the training.

43. The plaintiff pleaded in paragraph 10 of the particulars claim that it duly rendered the services, which were initially scheduled for 5 days, for the period 19 November 2012 up to and including 18 January 2013, a period of 36 days, upon the extension and request of the first defendant.
44. The defendants admitted the contents of paragraph 7 of the particulars of claim but denied the contents of paragraph 8 which dealt with the oral agreement and denied paragraph 9 which sets out the terms of the oral agreement.
45. There is a material contradiction between the plaintiff's pleaded case around who the oral agreement was concluded with during November 2012 and the *viva voce* evidence led before this court. In the pleadings it is stated that the oral agreement was concluded between Ndimande for the plaintiff and Matee and Mayisela on behalf of the defendants. However, when Ndimande testified

he said that it was concluded between himself and Matee. There was no reference made to Mayisela being present when the agreement was concluded. Ndimande further testified that he had approached Mayisela after Matee had left the first defendant and Mayisela had told him that another purchase order would follow. Mayisela was the director responsible for the project. Mayisela testified that he had met with Ndimande after they had received the quotation and the plaintiff had been chosen as the service provider. This was before the training had taken place. The meeting took place and he was with Violet Mathege the director of administration and they had a briefing session with the plaintiff since the amount was for less than R500 000.00. This evidence was not challenged by the plaintiff. Mayisela testified further that no oral agreement could be entered into for any amount and the purchase order was the agreement. He later met with the plaintiff when the milestones were discussed. He testified that since the amount involved exceeded the threshold of R500 000 a different process would follow namely a tender.

46. It is also significant that the oral agreement was pleaded in the alternative. I simply do not know how there could be a written agreement and at the same time an oral agreement concluded in November 2012 when the plaintiff had given a quotation for the services that it was going to render. The plaintiff could not indicate when exactly the oral agreement was entered into and what the precise terms of the oral agreement was. There was a threshold of R500 000 and if the amount exceeded R500 000 it had to go out on a tender. The plaintiff's quotation was the lowest amongst the three bids that the defendants had received hence their appointment as service providers.

47. The plaintiff was on the data base of the first defendant. It is of no moment for the plaintiff to contend that it was not aware of the process to be followed. The purchase agreement was the basis of the agreement. I find it rather astonishing that the training would have commenced without the purchase order. No plausible explanation was given why the training had to proceed without the purchase order. I also find it odd that after the purchase order was handed to the plaintiff on 13 December 2012 and after training had proceeded that it did not stop with the training until the entire issue was dealt with.
48. It is clear from the documentary evidence that the training of 30 officers by the plaintiff was quoted to be R300 549.60. What should be kept in mind is the evidence of the defendants namely that three quotations were obtained and the work was given to the company that had provided the lowest quotation namely the plaintiff. The quotation is annexure MS1 and comprises of 2 pages. The date of the plaintiff's quotation is dated 1 November 2012 and it makes it clear that the full package for 30 officers is a unit price of R3 500.00 totalling R105 000.00. There is MRC2 (motorcycle rider course) advance beginner and on road riding for a quantity of 30 at a unit price of R1 200.00. It then sets out MRC3 company bike on road riding and K53 grounds for 30 at a unit price of R1 200.00. It also provides for advance riding course due after one month of riding for 30 at R1 200.00 unit price. There is also a 7 X K53 preparation lessons on grounds for 30 at a unit price of R1 400.00. There is a learners issuing fee for 30 officers at unit price of R60.00. and drivers issuing fee for 30 officers at R228.00. This quotation makes it quite clear what the plaintiff was bidding for. In other words, the document or quotation speaks for itself.

49. The purchase order was generated by the first defendant based on the quotation of the plaintiff and is dated 27 November 2012 and is annexure MS2 and it comes to R300 549.60. Clauses 9 and 12 states that *“The CPG does not accept over-deliveries and only pays for goods supplied and/or services rendered according to the PO. The CPG is not liable toward the Supplier for any amount exceeding the price for goods or services specified in this PO. Clause 12. This PO forms the entire agreement between the CPG and the Supplier and any variation to this PO must be done in the form of a Change Purchase Order issued by the CPG”*.
50. It is unclear why the plaintiff had commenced with the training before it had received the purchase order. It is clear from clause 12 of the purchase order that the variation of the purchase order must be in writing and could only be varied in terms of a change of purchase order. There is no such change of purchase order.
51. Ndimande as stated earlier testified that he had met with Matee when they had discussed the training and when the oral agreement was concluded. One would have expected there to have been correspondence between the plaintiff and Matee about the oral agreement that was concluded with her. Evidence was led before this court about an email that was sent to Matee dated 2 June 2013 by Ndimande. Ndimande wrote a letter that appears at page 049-4 on Caselines. It states that *inter alia* that the training was scheduled from 19 November 2012 until 18 January 2013 and subsequent payment followed the invoice for R300 549.60. He states the following: *“Kindly take notice that*

*the training was scheduled for 5 (five) days however, same was extended by 36 days. As indicated the original period of training was the abovementioned (5) days and the extension was necessary. As you see we are all aware that you cannot train a person from being a non-rider to a fully licensed rider within 5 days and we as a training company would not leave the training half-way which will be risky for both officers and fellow road users and the school were are task as per contract to train them from the beginning until they get their licences, and it was communicated to Director Thami Mayisela. As a result there is a shortfall in the sum of R1 867 320.00."* This letter was addressed to Matee. There is also a letter of demand dated 14 June 2012 from LegalWise that were representing the plaintiff and it confirmed *inter alia* that it was for 5 days but extended by 36 days. In Mattee's email dated 2 June 2014 to Ndimande she states that Mayisela said that Ndimande did not discuss the monetary part with him. He had met with him and had discussed other issues and not the extension and monetary part. It was improper to any manager to give verbal consent in relation to procuring services without necessary protocols followed. She said she was not sure how she could assist him because there is no written consent and proper channels were not followed. According to the PFMA Act that governs government spending any amount above R500 000.00 should go for tender, in his case the amount far exceeds the amount and should have gone for a tender. Ndimande in an email on the same day thanked Matee for the feedback.

52. There is no reference made in any of the correspondence by Ndimande about who the person is with whom the contract was extended. This is rather strange

because if this was done with Mayisela or Matee one would have expected him to have said so. It is further not stated when the agreement was amended or when the oral agreement was entered into.

53. The plaintiff has failed to prove that the written agreement as referred to in the purchase order was amended. It is clear that he was dealing with somebody but is unclear who that person but it was certainly not Matee or Mayisela.

54. The action stands to be dismissed.

55. I do not believe that this is a matter where costs should follow the result bearing in mind that the first defendant had benefitted from the services that were rendered by the plaintiff. A just order as far as costs are concerned is that each party is to pay its own costs.

56. In the circumstance I make the following order:

56.1 The plaintiff's action is dismissed.

56.2 Each party is to pay its own costs.



FRANCIS J  
JUDGE OF THE HIGH COURT

FOR PLAINTIFF : S LINAKWE INSTRUCTED BY  
MORWASEHLA ATTORNEYS

FOR DEFENDANTS : M ALLY INSTRUCTED BY STATE  
ATTORNEY

DATE OF HEARING : 31 OCTOBER 2022, 1, 2 NOVEMBER 2022

DATE OF JUDGMENT : 9 MAY 2023

*This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for hand-down is deemed to be 10h00 on 09 May 2023.*