



IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG DIVISION)

19/1/2010

CASE NO.: 65243/09

In the matter between

NHLUVUKO CONSULTING HOLDING (PTY) LTD.

Applicant

and

NEW INTEGRATED CREDIT SOLUTIONS (PTY) LTD.

Respondent

(Application for leave to appeal)

in re:

NEW INTEGRATED CREDIT SOLUTIONS (PTY) LTD.

Applicant

and

MADIBENG LOCAL MUNICIPALITY

First Respondent

NHLUVUKO CONSULTING HOLDING (PTY) LTD.

Second Respondent

CORAM: EBERSOHN AJ

DATE HEARD 11th December 2009

JUDGMENT HANDED DOWN ON 19th January 2010

JUDGMENT

EBERSOHN AJ.

[1] For the sake of convenience the parties are referred to as in convention.

[2] An order was granted in the main matter against, *inter alia*, the second respondent by this court. The second respondent now applies for leave to appeal against the order.

[3] The following are the proposed grounds of appeal relied upon by the second respondent:

- "1. That the Honourable Mister Justice Ebersohn erred in granting prayers 2, 4 and 6 of the notice of motion;
2. That the Honourable Mister Justice Ebersohn erred in finding that it was a prerequisite for tenderers (in casu the Applicant) to have been registered as a debt collector in terms of the Debt Collectors Act, Act 114 of 1998, when submitting the tender.
3. That the Honourable Mister Justice Ebersohn erred in finding that Regulation 21(e) of the Municipal Supply Chain Management Regulations (as published in the Government Gazette No. 27636: 30 May 2005) which states that disputes must be settled by means of mutual consultation, mediation, or, when unsuccessful, in a South African court of law, was not applicable and subsequently the First Respondent was absconded(sic) from the provisions of Section 7(2)(a) of the Promotion of Administrative Justice Act, Act 3 of 2000.
4. That the Honourable Mister Justice Ebersohn erred in finding that the First Respondent complied with the provisions of R53 of the Honourable Court's Rules.
5. That the Honourable Mister Justice Ebersohn erred in not ordering the First Respondent to pay the Applicant's costs.

[5] AD FIRST GROUND:

This is not actually a ground of appeal and is not dealt with further in this judgment.

[6] AD SECOND GROUND:

- a) When the Debt Collectors Act ("the Act") is read in its totality it is clearly a prerequisite that to be able to collect debts and to act as a debt collector, one must first be registered either as an attorney, after having been admitted by the High Court as such, or be registered as a debt collector in terms of section 9 of the Debt Collectors Act, Act No. 114 of 1998("the Act"), with the Council for Debt Collectors. This is so because of the peremptory wording of subsection 8(3) of the Act regarding nullity of agreements concluded between a debt collector and his client before of after the said date, namely the 11th August 2003 (GN 24351 of 7 February 2003), without having been registered as a debt collector or an attorney (see in this regard subsection 25 which makes a contravention of section 8 a criminal offence), and it is also clear that nobody may represent to somebody else or to the outside world that one is either an attorney or a debt collector, if you are not, because that would be fraud.
- b) It is clear that when the tender was submitted the second respondent was not registered as a debt collector but falsely represented to the first respondent that it's was a valid tender due to (as phrased in the right hand column on page 92 of the record where a diagram appears of particulars of all the tenderers prepared by the employees of the first respondent) to "Registration with law society or debt collectors". The fraud was perpetrated by the representation by the second respondent that it was registered as such but in a highly misleading manner by utilising the name of a firm of attorneys. It is clear that if the second respondent was candid and did not mislead the first respondent but disclosed that it was neither registered and admitted as an attorney nor registered as a debt collector. its bid would have been thrown out and not considered.
- c) After the tender was awarded to the second respondent an "agreement" was entered into between the first and second respondents, in contravention of the provisions of section 8, which was a criminal act in terms of section 25 of the Act, and the agreement was in any case a nullity in terms of the provisions of section 8(3) of the Act and the tender must have been regarded by the first respondent as a nullity and should have been rejected out of

hand.

[7] AD THIRD GROUND.

- a) Regulation 21 of the Municipal Supply Chain Management Regulations (as published in the Government Gazette No. 27636: 30 May 2005) requires that the supply chain management policy must determine the criteria to which bid documentation for a competitive bidding process must comply, and must also state that in addition to regulation 13 the bid documentation must state that disputes must be settled by means of mutual consultation, mediation, or, when unsuccessful, in a South African court of law. When one reads regulation 21 in its totality, it is clear that it deals with the operation of the tender after it was awarded and the dispute resolution referred to therein refers to the municipality and the tenderer and clearly is not applicable to third parties, like the applicant, who is not contractually bound at this stage to either the first or the second respondent and regulation 21(e) clearly is not applicable and in so far as it needs referring to did not oust the jurisdiction of the High Court because nowhere in the act in terms of which the Regulations were proclaimed is there provision that the jurisdiction of the High Court may be ousted by regulation.
- b) The provisions of Section 7(2)(a) of the Promotion of Administrative Justice Act, Act 3 of 2000, therefore do not apply and in so far as was necessary the court dealt with the matter in terms of the Court's jurisdiction.

[8] AD FOURTH GROUND

Sufficient documentation was placed before the Court to enable the Court to deal with the matter.

[9] AD FIFTH GROUND

Costs are in the discretion of the Court and, the first respondent abiding in the decision of the Court, there was no reason why it should be ordered to pay the costs and in any case the costs should follow the event and was awarded against the second respondent.

[10] There being no reasonable prospects of success with any of the grounds relied upon I accordingly make the following order:

1. The application for leave to appeal is dismissed with costs.



P.Z. EBERSOHN

ACTING JUDGE OF THE HIGH COURT

Applicant's counsel:

Instructed by:

Adv. J.G. VAN DEN BERG

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