

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 2020/18623; 2020/18624 & 2020/18626

1. Reportable: No

2. Of interest to other judges: No

3. Revised

Wright J

16 April 2024

In the matter between:

INSTRUMENT TRANSFORMER TECHNOLOGIES (PTY) LTD

Applicant

and

ESKOM HOLDINGDS SOC LIMITED

1ST Respondent

YURISHA PILLAY

2ND Respondent

LERATO MORIFE

3RD Respondent

ACTOM HIGH VOLTAGE EQUIPMENT (PTY) LTD

4TH Respondent

JUDGMENT

WRIGHT J

- [1] There are three related applications before me. While there has been no formal consolidation, it is common cause that the applications effectively cover the same territory.
- [2] The first respondent, Eskom called for tenders relating to the supply of certain equipment to Eskom. The successful tenderer was Actom, the fourth respondent. Instrument, an unsuccessful tenderer is the applicant. The second and third respondents, Ms Pillay and Ms Morife work for Eskom and were involved in the tendering process.
- [3] On 29 July 2020, Instrument launched a review application. It sought to review the decision by Eskom to disqualify it from the tender process and it sought to set aside the award of the tender to Actom.
- [4] On 4 August 2020 Instrument sought to amend its notice of motion to add a prayer for an order that part of the award to Actom be reconsidered by Eskom.
- [5] It is common cause that three contracts, each for a period of four years, were awarded to Actom consequent upon its successful tender. It is further common cause that these contracts end on 14 May 2024, that is one month from the second day of the hearing of this matter, today 16 April 2024.
- [6] It is thus beyond doubt that the applications are moot. The contracts have been implemented. It would be unwise to attempt to reverse the flow of the water which has passed under the bridge.
- [7] Because the three applications are moot, a High Court may not consider the merits of the application further. See **Solidariteit Helpende Hand NPC and others v Minister of Co-operative Governance and Traditional Affairs 2023 JDR 0964 (SCA)** 31 March 2023 at paragraphs 18-21.

- [8] Regarding costs, the present applications were launched about two months after the three contracts had been agreed. It seems trite that, other things being equal, the longer such contracts are in existence and are implemented, the stronger becomes the case for mootness.
- [9] As early as 25 November 2020, some four months after the applications had been launched, Eskom, through its attorney offered to have Eskom reconsider Instrument's bids. There is some suggestion that this letter may originally have been part of settlement negotiations and might have been privileged for that reason. However, this letter was placed before court by Instrument so it cannot contend that I may not take it into account.
- [10] Instrument, instead of diligently working with Eskom to go about a reconsideration by Eskom, dragged its feet in prosecuting these applications. Instrument persists with its applications, as late as today, 16 April 2024. Punitive costs follow.
- [11] The time between the launching of the applications and the letter of 25 November 2020 is so short that in the circumstances of this matter it does not play an appreciable part in the question of costs.

ORDER

- [1] The applications are dismissed.
- [2] In all three applications the applicant is to pay the respondents' costs, including those of two counsel, both for the first to third respondents and for the fourth respondent, where so employed, including the costs of the hearing on 15 and 16 April 2024.
- [3] All costs to be on the scale as between attorney and client.



WRIGHT J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Heard on: 15 and 16 April 2024

Delivered on: 16 April 2024

Appearances:

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