



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
(4)	SIGNATURE DATE  09/07/2021 Electronically delivered

CASE NO: 41415/18

In the matter between:-

**THE SOUTH AFRICAN ARMS AND AMMUNITION
DEALERS ASSOCIATION**

APPLICANT

THE MINISTER OF POLICE

FIRST RESPONDENT

**THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICES
GENERAL K J SITHOLE
(In his capacity as Registrar of Firearms)**

SECOND RESPONDENT

MR ABRAHAM MONGWE N.O

THIRD RESPONDENT

**CHAIRMAN OF THE APPEAL BOARD
(AS CONTEMPLATED BY SECTION 128 OF THE
FIREARMS CONTROL ACT 60 OF 2000)**

THE FIREARMS APPEAL BOARD

FOURTH RESPONDENT

**THE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA**

FIFTH RESPONDENT

**STATE INFORMATION TECHNOLOGY AGENCY
(SOC) LTD**

SIXTH RESPONDENT

Registration number 1999/001899/30

DATE OF HEARING: 10 JUNE 2021.

This judgment was handed down electronically by circulation to the parties' representatives by email. The date of hand-down is deemed to be 09 JULY 2021.

JUDGMENT

1. Introduction

- 1.1. This Application is brought on an urgent basis by the South African Arms and Ammunition Dealers Association, the Applicant, against the 1st and 2nd Respondents, seeking orders in the following terms:

- (a) Setting aside the call for the bid with Specification No. RFB 2421 – 2020 entitled “Solutions Design, Migration and Software Development Services” for Firearm control solution for the South African Police Service.
- (b) Setting aside the bid Specification No. RFB 2421 – 2020 entitled “Solutions Design, Migration and Software Development Services” for Firearm control solution for the South African Police Service.
- (c) Ordering the Respondents to comply with paragraph 3.3 of the Court Order dated 5 August 2019 and to consult with the Applicant prior to the issue of any subsequent Bid Specification and call for Bids to be submitted;
- (d) That the consultation with at least the Applicant’s representatives must commence no later than 10(ten) days from the date of this order.

(e) That the Respondents be ordered to comply with clauses 3.1 and 3.3 of the court order dated 5 August 2019 by no later than 31 August 2021.

(f) For an order that clause 3.2 of the said court order be amended and implemented by no later than 31 July 2023.

(g) For an order that the Respondents pay the costs of this application jointly and severally on an attorney and client scale.

2. Factual Background

2.1 On 19 August 2019 in a dispute between the Applicant and all the cited Respondents whereupon the Applicant, an Association of the South African Arms and Ammunition Dealers was seeking, inter alia, as a principal relief, compliance by the Respondents with s 39 (6) as read with Regulations 38, 39, 40 of the Firearms Control Act 60 of 2000 ("the Act") and to generally institute electronic-connectivity as contemplated by the Act, this Honourable Court per Basson J issued an order in the following terms:

1. The 1st and 2nd Respondent must establish electronic connectivity with all holders of a Dealers' License to the Central Dealers Database as contemplated by section 40 and 125 and as foreseen in the provisions of s 39 (6) of the Firearms Control Act of 60 of 2000 ("the Act") as read with Regulations 38, 39 and 40 promulgated in terms of the Act, in order to link the registers to be kept by the dealers and referred to in s 39 (3) in the prescribed manner, within a period of 38 months from date of granting of this order.

2. The 1st and 2nd Respondent must also establish such electronic connectivity with all holders of Manufacturers Licenses Gunsmith Licenses and Importers and Exporters Licenses to the relevant Central Database as contemplated by s 125 and as foreseen in provisions of s 53, 54, 67, 68, 78 and 79 of the Act as read with Regulations promulgated in terms of the Act and applicable thereto, in order to link such registers to be

kept by the Manufacturers, Gunsmith and Importers and Exporters in the prescribed manner within the time period contemplated in paragraph 1 above.

3. In order to comply with paragraph 1 and 2 of this order, the 1st and 2nd Respondent shall:

3.1 Undertake or cause to be undertaken a bidding process to secure the services required to give effect to the order, such bidding process to be concluded and a contractor appointed by no later than 31 August 2020.

3.2 The process, design and implementation of the system required to establish such electronic connectivity shall be completed not later than 31 July 2022.

3.3 **During** such process, design and implementation the 1st and 2nd Respondent or their

delegated officials must timeously meet with the Applicant's representatives and such other representatives of the Importers, Manufacturers and Gunsmiths as they deem meet, in order to establish and consider *the needs, requirements and requests of the Dealers, Importers & Exporters, Manufacturers and Gunsmiths* in respect of the system to be implemented;"

6.3.4 Any party to these proceedings may on notice apply to the supervising judge for an order compelling compliance with this order or to interdict non-compliance or such further order or directive. (the "Court Order")

2.2 The 1st Respondent is the Minister of police cited according to the Applicant as the nominal head of the South African Police Services and the 2nd Respondent, the National Commissioner of the South African Police Services, General K G Sithole, as the appointed Registrar of Firearms in terms of s 123 of the Act (Respondents hereafter only refers to 1st and 2nd Respondent). The 3rd to 5th Respondents, are no longer part of the proceedings in terms of the

court order and also since the Applicant is no longer pursuing further relief against the 5th Respondent. The 6th Respondent, that is State Information Technology Agency (SITA) SOC LTD is only cited as an interested party with no relief sought against it.

2.3 Consequent to the court order, on 24 March 2021, the 1st and 2nd Respondents, through The State Information Technology Agency (SOC) Ltd (“SITA”), caused a tender to be advertised for procurement of a service provider who will “supply, design, migration, and develop services for the Firearms Control Solution (FCS) for the South African Police Service (SAPS) to establish a FCS within a period of thirty-six (36) months”.

2.4 The Applicant, is opposed to the tender and has alleged that it in terms of 6.3.4 of the Court order seeking that the tender be set aside, for the reason that it was not consulted for it to be able to have an input on the specifications of the tender bid, and the time lines set out on such consultations not adhered to, alleging further that:

2.4.1 its requirement is in compliance with paragraph 3.3 of the Court Order dated 5 August 2019 that the Respondents to consult with the Applicant representatives on the bid specifications prior to the issue of any subsequent Bid Specification and call for Bids to be submitted;

2.4.2 The Respondents are required to comply with clauses 3.1 and 3.3 of the court order dated 5 August 2019 by no later than 31 August 2021.

2.4.3 The matter remains urgent even though the timelines for such proposals have been extended after the launch of the application.

2.4.4 It is common cause that the order should be amended to therefore set new timelines to be met in order to meet the objectives of the court order. Both parties made proposals, but do not agree on the exact dates.

2.5 It is indeed common cause that the advertising was already delayed as it was later than 30 August 2020, outside the time periods as prescribed in

the court order of 5 August 2019.¹ The Respondents have already extended the time lines. It is however also common cause that the order is actually to be amended to set new timelines within which the objectives of the order are to be met, the parties could not agree on specific dates.

2.6 The issues to be decided being therefore:

2.6.1 Whether the Application is urgent;

2.6.2 Whether in terms of Court order of the 5 August 2019 the First and Second Respondents needed to consult with Applicants before the bid was published in order to prepare and circumscribe the scope of the bid and bid specifications.

2.7 The 1st and 2nd Respondent oppose the Application. Firstly, they deny that bringing the Application under Rule 6 (12) (b) of this Honourable Court is justifiable and allege that the Applicant fails to set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that Applicant could not be afforded substantial redress at a hearing in due course.

¹ CaseLines 002 – 1 to 002 - 8

2.8 The Respondents argue that the applicant has been aware that the first and or second respondents intended to issue the tender as far back as the revised implementation plan was served on it in September 2020 and did not approach the court to halt its issue.

2.9 The 1st and 2nd Respondent, following a meeting of 7 September 2020 where the Applicant raised concerns about the publication of a tender, drafted a memorandum to advise that the 1st and 2nd Respondent were going ahead with the advertising of the tender and that the consultations that they seek will be conducted after a service provider has been appointed. A memorandum to that effect was dispatched on 25 January 2021.

2.10 Even then the Applicant did not approach the court to halt the advertising of the tender.

2.11 The Applicant in sub paragraphs 6.60 and 6.61 of its founding affidavit confirms that the 1st and 2nd Respondent indicated that the consultation with applicant will take place after the service provider has been appointed.

2.12 An urgent application indeed primarily leads to the abridgment of times which have been prescribed by the Rules, and a departure from established filing and sitting times of the Court. Consequently, the Respondents argue with reference to *Luna Meubel* case at page 137 F, that the Applicant must set out facts in its founding affidavit which, in its opinion, render the matter to be urgent, and, secondly, why it cannot get the desired remedy through an ordinary hearing in due course which it has failed to do.

2.13 I have considered the question of the urgency of the Application in the context of the issues to be decided on the merits and on the time lines set out in the court order to be complied with and convinced that it is necessary that the contrasting understanding and reading of the court order requires resolution as a matter of urgency. The parties have already on their own agreed at relooking at the timelines imposed by the order, but that on its own will not resolve the continue delay.

3. Interpretation of the Order

3.1 According to the Applicant the simple interpretation of paragraph 3.3 of the Court Order is that consultation must take place before the bid specification is determined.

3.2 The Applicant however further argues that at a meeting held between the parties on 7 September 2020, it was agreed on behalf of the 1st and 2nd Respondents that the Applicant's interpretation of the order is correct.² A minute of the meeting that is also referred to by the Respondents in their Answering Affidavit where the issue of consultation as envisaged by paragraph 3.3 of the Court Order was discussed is attached..

3.3 from paragraphs 48³ the minutes and discussion reads as follows:

“48. Mr Hood: There needs to be a discussion on how theory meets practice. I suggest that your client talks to our clients. It does not need to be a meeting involving lawyers, but your client needs to meet the industry to see what issues they are experiencing. I am already. Putting together a list of issues to discuss with Parliament in this regard.

49. Adv Snyman: They can at least meet with the applicants.

² CaseLines 012 – 10 to 012 – 11, para 36

³ CaseLines 011 – 33, para 48 to 57

50. *Adv Mteto: **Ok, we take your point about speaking to the applicants and will put it to our client.***

51. *Adv Snyman: They will be able to meet with the applicants by December. (before tender is due)*

52. *Mr Hood: This must be done before the design and implementation of the system, not after. (gave more examples of issues Dealers face)*

53. *Adv Mpshe: **Ok, we accept.** This explanation has made it clear that consultation is required during the implementation and design phase.*

54. *Mr Hood: ... I do not see how you can design a system without having consulted with my client....*

55. *Adv Mpshe: **Ok, going back to the consultation, I think that in our client's mind, because the court order stated that consultation must occur 'if required', they were misled and were not under the impression that they need to consult with your client unless 'necessary' and up to this point they did not deem it necessary. But now, given your explanation, we think it is necessary. – for the reasons you have just advanced.***

56. *Mr Hood: To make that easier, because there is a lot of bad feelings amongst SAPS and my client - A conversation needs to be had with those designing the IT system (Rautenbach is one of them), not the bureaucrats who is at the top because we do not want to debate policy. We want solutions to the issues our client face.*

57. *Adv Mpshe: **We will accept that name and convey that to client and convey to them that consultation is required.***” [emphasis added]

3.4 Applicant also alleges that on paragraphs 62 of the same minutes the parties, after having discussed who should meet, Mr Hood asked for a timeframe. The minutes continue as follows:

“62. Mr Hood: Can we have a timeframe for when you will come back to us about a meeting? Because we are left with about two months until November 2020.

*63. Adv Mpshe: **We will discuss with our clients and see when they can do this.**”*
[emphasis added]

3.5 According to the Applicant it was abundantly clear from the minutes that the agreement in respect of prior consultation and interpretation of the court order was reached with the legal representatives of first and Second Respondents, in so far as the court order was not clear, from which they allege the Respondents are now reneging.

3.6 Mr Snyman argues on behalf of the Applicant that all the above-mentioned makes it clear that the First and Second Respondents are bound by the agreement. He points out that the authority of the legal

representatives to agree to prior consultation_is not challenged by the Respondents, even if the court order does not provide for it. The First and Second Respondents are bound thereby.⁴

3.7 Finally, that in so far as the 1st and 2nd Respondent envisage that consultation with applicant and other industry players will take place in phase 7 as outlined in the bid specification under paragraph 2.2. there are concerns regarding the efficacy of the system that its members are going to interface with once the 2nd Respondent puts it in place.

3.8 It is the Applicant's argument that if the bid specification is used to submit bids and a bid is awarded before consultation with the Applicant, there is little possibility that the specification and parameters of the tender will accommodate the Applicant members' needs and requirements as well as cover what the Firearms Control Act requires.

3.9 It is therefore critical that the proper specifications be derived before it is used to award a tender, then the parameters of the tender would be correct.

3.10 The Applicants also argue that, reading the order, it provides for consultation with the Applicants before the specifications are determined which it argues is logical as the specifications must cater for the needs and requirements of the members of the Applicants in order to connect to the different databases established by the Registrars of Firearms and vice versa. The Applicant's members will be one of the main users of the system as they will inter alia have to submit all forms and registers to the 2nd Respondent as Registrar.

3.11 It alleges that its members will suffer prejudice should the process be allowed to continue without compliance with the order as it will result in a system that is not compliant with the legislation or impractical to work with.

4. Respondent's Answer in relation to Court Order

4.1 The Respondents allege that this Application works against what the Applicant initially brought to this Honourable Court. Whilst the Respondents in an effort to establish an electronic-connectivity in

compliance with the court order, albeit various obstacles being encountered due to the fact that there are various role players in the matter, such as SITA, have forged ahead to ensure that there is progress in the establishment of e-connectivity.

4.2 However, what the Applicant has brought before this Honourable Court is an application which will further delay the establishment of electronic-connectivity, which the Applicant has alleged the lack thereof is detrimental to its activities, hence the 1st and 2nd Respondent are forging ahead to put systems in place.

4.3 It is the Respondents case that the Applicant and other members of the firearm industry/stakeholders will be consulted to ensure compliance with the Act and court order.

4.4 Paragraph 3.1 of the court order states that the 1st and 2nd Respondent shall undertake or cause a bidding process to be undertaken to secure the services required to give effect to such bidding process, be concluded and a contractor appointed by no later than 31 August 2020.

4.5 According to the Respondents there is no condition in the paragraph to the effect that the bidding process can only take place after consultation with the applicant.

4.6 The Respondents submit that sub paragraphs 3.2 and 3.3 read together clearly state that the applicant and other industry players shall be consulted during the process of design and implementation of the system as they deem meet.

4.7 As a result, they allege it has been expressed on several occasions that the 1st and 2nd Respondents will consult once the service provider is appointed. The Applicant has been aware of this as late as 28 September 2020 and the 1st and 2nd Respondent re-affirmed their position in a memorandum sent to them in 25 January 2021.

4.8 It is also their argument that the court order does not specify that the Applicant and other industry players must be consulted even during the tender/bid specification period. The bid specification issued on 24 March

2021 only relates to the appointment of the service provider not the specification of the system that will be used to achieve the ultimate e-connectivity.

4.9 Furthermore, the Respondents submit that the Applicant's members are stakeholders in the firearm industry and have to comply with the Act, regulations and policies regarding the Central Firearms Registry.

4.10 Regulation 38(1) of the Firearms Control Regulations, 2004 stipulates that *"The workstation of a dealer contemplated in section 39(6) of the Act, must link to the central dealers' database by way of software and an electronic network connectivity that is compatible with the infrastructure and standards of the South African Police Service."*

4.11 The Respondents allege that the Applicant's demand to be consulted with regard to the specification is contrary to the Regulation that envisages a scenario wherein the Applicant and other industry players have to establish a workstation that is compatible with that of the SAPS and not the other way round.

4.12 The Respondents therefore submit that any interpretation of Regulation 38(1) to mean that SAPS's e-connectivity system must adapt to what the applicant and its members and other industry players are using, will be absurd and not in line with the intention of the Firearms Control Act as well as the Regulations thereto.

Setting aside of the bid

4.13 In addition, the Respondents further argue that the Applicant fails to set the basis in law that permits it to seek an order setting aside an administrative action taken by the 1st and 2nd Respondent.

4.14 Section 6 of Promotion of Administrative Justice Act, 3 of 2000 ("PAJA") as well as common law clearly stipulate the instances in which an administrative action taken by an organ of state can be taken on review and be set aside.

4.15 The applicant has not demonstrated the reason for its relief to have the administrative decision of the first and second respondents to be set aside.

4.16 The issue therefore to be determined is what exactly was ordered by the court order, in order to determine whether or not the Respondents issuing of the tender bid without the alleged consultation was non-compliant with the terms of the court order therefore justifying the setting aside thereof.

5. Legal framework

5.1 For a court order to be complied with, parties on whom the order applies must know what it requires them to do. Clarity in framing a court order also helps the process of enforcing it: see *Eke v Parsons* (CCT214/14) [2015] ZACC 30; 2015 (11) BCLR 1319 (CC); 2016 (3) SA 37 (CC) (29 September 2015 on par 59. If there is no clarity, the proper court to determine the interpretation to be placed upon a Judgment or order is the court which made it (albeit not the same judge). If on a proper interpretation thereof the meaning thereof remains obscure, ambiguous or otherwise uncertain, a court may generally clarify its judgment or order so as to give effect to its true intention, provided it does not thereby alter 'the sense and substance of the judgment or order.'

5.2 This is more so because the order represented the intention of the High Court and not that of the parties, hence when interpreting a court order, the purpose is to ascertain the intention of the Court; see *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others* [2012] ZASCA 49; 2013 (2) SA 204 (SCA) (*Finishing Touch 163*) at para 13. See also *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A). Also once an agreement is made an order of court it is an order of court notwithstanding that the making thereof might have been by agreement between the parties. The parties' settlement being novate by operation of law. *Mv Tirupati: Mv Ivory Tirupati and Another v Badan Urusan Logistik (aka Bulog)* [2002] ZASCA 155; 2003 (3) SA 104 (SCA). A court may not grant an order with an obscure purpose even if it is by agreement. Parties to litigation should therefore seek to ensure that the wording of the conditions of any order granted by the Court are clear and unambiguous to avoid having to resort to an analysis of the court's order where there are no reasons given.

5.3 In *Eke*, the Constitutional Court, with reference to *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd and Others* [2012] ZASCA

49; 2013 (2) SA 204 (SCA) (*Finishing Touch* 163) at para 13 and also *Firestone South Africa (Pty) Ltd v Genticuro AG* 1977 (4) SA 298 (A), set out the well-established test on the interpretation of court orders to be as follows:

“The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court’s intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court’s reasons for giving it must be read as a whole in order to ascertain its intention.”

5.4 The principles of interpretation to be applied having been affirmed in *Natal Joint Municipal Pension Fund v Edumeni Municipality* 2012 (4) SA 593 (SCA) by Wallis JA to be as follows:

[18]..The present state of the law can be expressed as follows: interpretation is the process of attributing meaning to the words use in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the

document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.... The 'inevitable point of departure is the language of the provision itself' read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.

6. Analysis

6.1 Section 39 (3) requires an Applicant's member, that is a dealer, to keep such registers as may be prescribed and containing such information as may be prescribed at the premises specified in the dealers' licence. Furthermore, the dealer is then required to establish and maintain a workstation which links the registers referred to in subsection 3 to the central dealers' database in the prescribed manner; see s 39 (3) and (6) of the Act.

6.2 In terms of Regulation 38 (1) the dealers' workstations are therefore required to (must) link to the central database through a software and an electronic network connectivity that is compatible with the infrastructure and standards of the SAPS." Making compliance with s 39 (3) and monitoring by the SAPS easier.

6.3 The purpose for which the order was made, being the issue that was alive at the time, was to make sure that the Respondents makes it possible for the dealers to comply with s 39 (3) by establishing electronic-network connectivity as envisaged in the provisions of s 39 (6) of the Firearms Control Act of 60 of 2000 ("the Act") as read with Regulations 38, 39 and 40 promulgated in terms of the Act, in order to link the registers to be kept by the dealers as referred to in s 39 (3) in the prescribed manner. Reference is also made to s 40 and 125 Central Firearms Register therefore requiring other stakeholders, namely the Manufacturers, Exporters and Importers Gunsmiths and Firearms Owners to be also compliant. The Respondents are required to do so within a period of 38 months from date of granting of the order.

6.4 In order to ensure compliance and cohesion, the court instructed the parties unambiguously, of the steps that were to be taken by the Respondents to ensure that the electronic – network connectivity as envisaged in s 39 (6) is established and the Applicant dealer compliance as set out by the law, that the dealer software and electronic network connectivity is to be compatible with the infrastructure and standards of the SAPS, is safeguarded. It sanctioned a consultation, to take place between the Firearms dealers and the Respondents on what the infrastructure and standard of the SAPS (as the enforcers of the Act) is to be, therefore getting clarification of what their software would have to comply with. On the other hand for the stakeholders be able to indicate their needs or requirements and challenges in relation to compliance for consideration by the Respondents.

6.5 As the order clearly spells out that the purpose of the consultation was to establish and consider *the needs, requirements and requests of the Dealers, Importers & Exporters, Manufacturers and Gunsmiths* in respect of the system to be implemented, which considerations would certainly be within the confinement of the Act and the concomitant Regulations. It was

therefore for information gathering purposes which would then be considered by the Respondents.

6.6 In accomplishment of the aforementioned objective the court order, encompassed in simple terms a two staged process, to be embarked on and completed by the 1st and 2nd Respondent in two separate time frames, as follows:

3.1 Undertake or cause to be undertaken a bidding process to secure the services required to give effect to the order, such bidding process to be concluded and a contractor appointed by no later than 31 August 2020.

3.2 The process, design and implementation of the system required to establish such electronic connectivity shall be completed not later than 31 July 2022.

6.7 The requirement that there be consultations with the stakeholders is specifically stated that it is to take place **during** the process of design,

manufacturing and implementation. The court has put a proviso in clear and simple terms that:

3.3 During such process, design and implementation the 1st and 2nd Respondent or their delegated officials must timeously meet with the Applicants' representatives and such other representatives of the Importers, Manufacturers and Gunsmiths as they deem meet, in order to establish and consider the needs, requirements and requests of the Dealers, Importers & Exporters, Manufacturers and Gunsmiths in respect of the system to be implemented;"

6.8 The court separated compliance in respect of the bidding process and the process, design and implementation of the system and ordered that the consultation with the stakeholders happen specifically during the process of design and implementation, taking into consideration the importance of Applicants being informed of how the system is to be designed and implemented and to be given an opportunity to put forward their needs

that are to be considered in the specifications thereof. The Respondents have undertaken to do that prior to the beginning of the process of design instead of during as set out in the court order and therefore in line with what was intended by the court order.

6.9 It is also logical as the service provider or contractor appointed will still have to be briefed on the process, design and implementation as there would be no specifications on the design and implementation during the bidding process.

6.10 The issuing of the tender bid for the appointment of the contractor or service provider without consultation was therefore in line with the court order.

7. Agreement on the interpretation of the court order

7.1 In the alternative, the Applicant alleges that if the order did not envisage the consultations occurring prior to the tender bid process, the Respondents had subsequently agreed with the Applicant's interpretation of

the court order that the consultations had to happen before the tender bid. Further that, the agreement is apparent from the minutes of the meeting that took place following the order on 7 September 2020.

7.2 The Respondent deny that at the meeting it had conceded that that is what was ordered by the court. Now reading the minutes of 7 September 2020, it becomes apparent that consultation was a point of discussion between the parties, however as to whether there was an agreement on the consultation taking place prior to the bidding process, contrary to the wording of the order, it is not evident. On the other hand, the discussion seems to confirm the court order that the consultation should be before the design and implementation of the system. A Mr Hood on behalf of the Applicants had stated in the meeting that *“This must be done before the design and implementation of the system, not after. (gave more examples of issues Dealers face). Upon which Mr Mpshe on behalf of the Respondents had responded “**Ok, we accept.** This explanation has made it clear that consultation is required during the implementation and design phase. Mr Hood then retorted “... I do not see how you can design a system without having consulted with my client. Evidently, there is no reference of a consultation before the tender bid or bidding process but prior to the designing thereof.*

7.3 It is obvious that the consultation the Applicants were insisting on was on the design and implementation of the system as Mr Hood further stated that: *A conversation needs to be had with those designing the IT system.*

7.4 The argument therefore by Mr Snyman for the Applicant that it was abundantly clear from the minutes that a different agreement in respect of prior consultation and interpretation of the court order was reached with the legal representatives of 1st and 2nd Respondents in so far as the court order was not clear, from which they allege the Respondents are now reneging has no merit.

7.5 Mr Snyman argues further that such an agreement exists and is binding on the First and Second Respondents. He points out that the authority of the legal representatives to agree to prior consultation is not challenged by the Respondents, even if the court order does not provide for it. However, there is no agreement to consultation taking place prior to the tender bid, but, as it could be made out from the order and the minute, such was to take place prior the design and the implementation, that is what is binding to the Respondents.

7.6 As a result, the issuing by the Respondents of the tender bid for the appointment of the contractor, without prior consultation did not result in the contravention of the Court Order. Consultation is according to the court order meant to take place prior the design and implementation of the system. Therefore the Plaintiff has failed to make case for the setting aside of the tender bid as per prayer 1 and 2.

7.7 The issue of whether or not the Applicant has used the proper procedure to seek the setting aside of the tender bid does not arise. However paragraph 6.3.2 indicates the steps a party that is aggrieved by the failure of the other party to comply with the order may take, inter alia, by applying for an order compelling compliance or to interdict non-compliance or such further order or directive.

7.8 In relation to the time periods within which compliance is to be due, the parties are agreed that they should be extended to accommodate the various delaying factors indicated by the parties and also the time period that was expended on litigation. The Application was heard on 7

June 2021 as a result a further period of a month should be added to the proposed date.

8. Under the circumstances the following order is made:

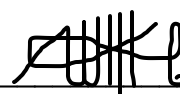
1 The Applicant's Application to set aside the Respondents' tender bid of 24 March 2021, calling for the bid with Specification No. RFB 2421-2020 is dismissed.

2. Clause 3.1 of the court order dated 5 August 2019 is amended and the Respondents are ordered to comply with the order by no later than 31 September 2021.

3 Clause 3.2 of the said court order is hereby amended and implementation to be by not later than 31 July 2023.

4 Consultation as per paragraph 3.3 of the Court order to take place as per court order prior to the design and implementation of the system upon which the needs and requirements of the dealers will be established for consideration by the Respondents.

5 The Applicants to pay the costs of the Application.



N V KHUMALO

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

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