



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
31/5/2019	DATE
	SIGNATURE

Case No: 36596/2016

In the matter between:

ROBERT SLAUGHTER

First Applicant

SHAHIT WADVALLA

Second Applicant

REGINALD LEGOABE

Third Applicant

STEVEN NJIRI

Fourth Applicant

and

MUNICIPAL INFRASTRUCTURE SUPPORT AGENT

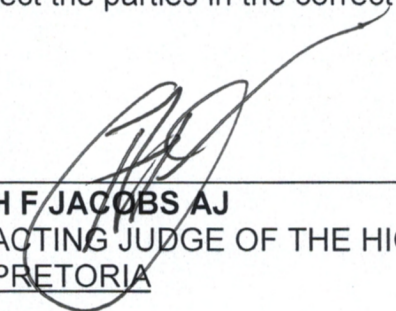
Respondent

JUDGMENT AND ORDER IN TERMS OF RULE 42(1)(b)

HF JACOBS, AJ:

[1] On 31 May 2019 I was informed by the Registrar that my judgment of 30 May 2019 contains a typing error as the respondent is shown as the applicant and the applicants as the respondents.

[2] In terms of Rule 42(1)(b) I hereby correct the typing error and replace the first page of the judgment to reflect the parties in the correct manner.



H F JACOBS AJ
ACTING JUDGE OF THE HIGH COURT
PRETORIA



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(GAUTENG DIVISION, PRETORIA)**

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO ☒
(2)	OF INTEREST TO OTHER JUDGES: YES/NO ☒
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21/5/2019	
DATE	SIGNATURE

Case No: 36596/2016

In the matter between:

ROBERT SLAUGHTER

First Applicant

SHAHIT WADVALLA

Second Applicant

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Respondent

JUDGMENT

HF JACOBS, AJ:

[1] This matter was called in the opposed motion Court. According to the practice note filed on behalf of the applicants it is an application for review. The chronology gleaned from the papers and information supplied to me in open Court when the matter was called is relevant. This application was instituted on

6 May 2016. In the body of the original notice of motion the following relief is claimed:

- "1. *That the Respondent be ordered and/or directed to:*
- 1.1 *Re-appoint the First, Second, Third and Fourth Applicants as Consultants in terms of their submitted bid contracts as Consultants in terms of MISA Tender Bid MISA/PPM/003/2015 and Bid MISA/CE/003/2015 respectively or alternatively.*
- 1.2 *Settle the full expected contract value of the First, Second, Third and Fourth Applicants in terms of their expected income as Consultants in terms of MISA Tender Bid PPM/003/2015 and Bid CE/003/2015 respectively including damages incurred.*
- 1.3 *Settle the outstanding unpaid professional fees of the Applicants for the 3 months contract extension period granted from 1 October 2015 to 31 December 2015 including accumulated unpaid leave days.*
- 1.4 *Settle the costs of this application.*
- 1.5 *Variation of the time periods in terms of Sections 5(1), 5(2), 7(1) and 9 of the Prevention of Administrative Justice Act (PAJA) Act 3 of 2000.*
- 1.6 *Any further / or Alternative relief as the above honourable Court deems fit."*

[2] The applicants gave notice of their intention to amend their notice of motion on 22 April 2019, shortly before the notice of set down was served on the respondent's attorney.¹ The respondent had ten days to object to the proposed amendment, but did not do so. The respondent did later deliver a notice of objection to the proposed amendment but by that time the ten day period had lapsed. The objection was delivered on the 15th of May 2019, a few days before the hearing.

[3] The applicants' amendment was effected on 13 May 2019 when it served its amended notice of motion titled "*SUPPLEMENTED NOTICE OF MOTION*" on the respondent's attorney of record. The body of the "*SUPPLEMENTED NOTICE OF MOTION*" reads as follows:

- "1. *That the Respondent's decision to award Tender PPM/003/2015 and Tender Bid CE/003/2015 be declared unlawful and invalid and be reviewed and set aside in terms of Section 6 of the Promotion of Administrative Justice Act (PAJA) Act 3 of 2000 and/or the Common Law.*
2. *That the Respondent be ordered and/or directed to compensate the full expected contract value of the First, Second, Third and Fourth Applicants in terms of their expected income as Consultants in terms of Tender Bid PPM/003/2015 and Tender CE/003/2015 respectively including damages incurred as per quantum of costs depicted in the annexed Table A.*

¹

According to the stamp on the notice of set down it was served on the State Attorney on 30 April 2019 at 12h00.

3. *That it be declared that the Applicants are entitled to the three (3) months contract extension period granted from 1 October 2015 to 31 December 2015 including accumulated unpaid leave days as per quantum of costs depicted in the annexed Table A.*
4. *That the Respondent be ordered and/or directed to pay the costs of this application.*
5. *Variation of the time periods in terms of Sections 5(1), 5(2), 7(1) and 9 of the Prevention of Administrative Justice Act (PAJA) Act 3 of 2000.*
6. *Any further / or Alternative relief as the above honourable Court deems fit."*

[4] Counsel for the respondent raised the point *in limine* that the application for review has been brought outside the 180 day period provided for in section 7 of the Promotion of Administrative Justice Act, 3 of 2000. He submitted that the initial notice of motion quoted in paragraph [1] above provided for no review while the substituted notice of motion does. Counsel for the respondent further stated that prejudice to the respondent is evident and that it had not had the opportunity to file an answering affidavit in response to the "SUPPLEMENTED NOTICE OF MOTION" which incorporates the relief aimed at the review of administrative action.

[5] During argument counsel for the applicants draw my attention to the following chronology of the matter:

[5.1] The decision the applicants challenge in these proceedings was taken on 20 October 2015;

[5.2] The applicants requested written reasons for the administrative action on 7 December 2015.² The respondent failed to furnish written reasons in terms of the PAJA and the applicant launched an application to compel supply of the reasons. The application to compel was granted by Nobanda AJ on 4 March 2016. The respondent still failed to supply the reasons but applied to this Court for the rescission of the order of Nobanda AJ compelling it to furnish written reasons. The application was rescission was dismissed by Peterson AJ.³

[6] The respondent's counsel stated that the reasons supplied by the respondent and the record furnished to the applicants took place in response to the initial notice of motion which did not include relief aimed at the review and setting aside of the administrative action concerned. For that reason, so the submission went, the applicants should withdraw this application and commence with the proceedings afresh. The submission was further that should the application continue the respondent stands to suffer prejudice as it had not answered in the proper context to an application for review as the matter presently stands.

² See Record: p 208.

³ See Record: p 558.

[7] According to the endorsements on the court file the papers in this application (1 500 pages) have been considered and read or at least served before Judges of this Division on not less than five occasions. There seems to be considerable animosity between the litigants and I consider it appropriate to, in addition to my finding on the point raised *in limine*, direct the management of the application in future. I am of the view that a proper schedule for the process would facilitate what the Rules of Court envisage.

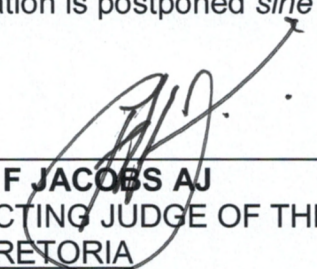
[8] Section 7 of the PAJA and the judgments of our Courts requires from an applicant to institute review proceedings without undue delay and within the 180 day period stated in section 7 of the PAJA. Applications launched outside the 180 day period may only be considered if a proper explanation is tendered on oath for the delay. It might be relevant in future for a Court to consider as a Court of first instance or on appeal why the claim for review was only introduced at a late stage of the proceedings. Under the circumstances it would be appropriate to direct the applicants to, if so advised, to deliver an improved notice of motion which complies with the provisions of Rule 53 and to apply for a variation of time in terms of section 9 of the PAJA, if so advised. It might in later proceedings appear not to be necessary but it is, in my view, better to act in this regard on the side of caution.

[9] There is no explanation on paper why the amendment introducing a claim for relief framed in a prayer for review was only introduced during May 2019. In that regard the respondent's point *in limine* should be upheld.

[10] The respondent is not without blame for the delay in finalisation of the proceedings. The record shows how the respondent as administrator cooperated very little in performing its functions in terms of the PAJA. It is not necessary at this stage to elaborate on this aspect.

Under the circumstances I make the following order:

1. The respondent's point *in limine* is upheld;
2. The costs of the proceedings during the week of 27 May 2019 are to be costs in the application;
3. The applicants are afforded 15 days from the date of this order to file an amended notice of motion and a supplementary founding affidavit in terms of Rule 53, and to make application in terms of section 9 of the PAJA for a variation of the time period of 180 days, if so advised;
4. The respondent is afforded 20 court days to answer to any papers filed by the applicants in terms hereof. The 20 day period shall commence on the day on which the applicants serve their papers, if any, as provided for above; and
5. The balance of the application is postponed *sine die*.



H F JACOBS AJ
ACTING JUDGE OF THE HIGH COURT
PRETORIA