



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES / NO
Of Interest to other Judges:	YES / NO
Circulate to Magistrates:	YES / NO

Case No: 2003/2019

In the matter between:

MANANYANI SECURITY SERVICES CC
(Registration Number 2006/081992/23)

Applicant

and

SEDIBENG WATER

First Respondent

M.A. SHASHA, ACTING CHIEF EXECUTIVE

Second Respondent

CORAM: MOROBANE, AJ

JUDGMENT: MOROBANE, AJ

HEARD ON: 14 JUNE 2019

DELIVERED ON: 18 JUNE 2019

- [1] This is an urgent application by which the applicant seeks an interdict prohibiting the first respondent from implementing the cancellation of an agreement pending the outcome of the arbitration proceedings. The application is opposed by the first respondent (“Sedibeng water”) and the second respondent.

- [2] On 10 May 2019 my brother Loubser, J postponed the application to the opposed roll on 13 June 2019, which rolled over to the following day. The answering affidavit, the replying affidavit and the heads of argument were duly filed in terms the Court order.
- [3] The brief facts are that on 03 June 2010 and at Bothaville the parties concluded a non-renewable security service agreement (“the Contract”) for the provision of security services by the applicant. On 31 May 2015 the five years’ contract came to an end. A month to month extension of the contract was granted by Sedibeng water as from 1 June 2015 subject to a one month’s notice. The applicant accepted the offer and the contract is still in operation to date. On 26 April 2018, Sedibeng water served the applicant with a one month’s notice of the cancellation of the month to month agreement. As a result, the applicant referred a dispute for arbitration and, on 20 March 2019, the arbitrator issued an award on preliminary issues as identified by the parties.
- [4] Counsel for the respondents submitted that these proceedings lacked urgency as contemplated in the Uniform Rules. He submitted that the applicant created its own urgency. For instance, on 18 April 2019, Sedibeng water instructed the applicant to vacate its premises by 12 May 2019. Eight days later the applicant objected to the instruction and refused to vacate the premises on the set date. The founding affidavit was signed on 5 May 2019, but it was only served on 7 May 2019. The application was set down for hearing on 10 May 2019, two days before the date on which the applicant was to vacate the premises.

[5] The provisions of Rule 6(12) of the Uniform Rules read as follows:

‘(a) In urgent applications the court or a judge may dispense with the forms and service provided for in these rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure (which shall as far as practicable be in terms of these rules) as to it seems meet.

(b) In every affidavit or petition filed in support of any application under paragraph (a) of this sub rule, the applicant shall set forth explicitly the circumstances which he avers render the matter urgent and the reasons why he claims that he could not be afforded substantial redress at a hearing in due course.’

[6] The establishment of a *prima facie* right, or a *prima facie* case, became the basis according to the traditional approach, of the threshold test which had to be satisfied by an applicant in order to succeed in his application for an interim interdict (see **CB Prest, Law and Practice of Interdicts**, Juta 1996 at 57).

[7] In ***LF Boshoff Investment (Pty) Ltd v Cape Town Municipality* 1969 (2) SA 256 (CPD)** at 267A-F, the court confirmed the requirements for a temporary relief urgent interdict as: a clear right or a *prima facie* right which the applicant seeks to protect, though open to some doubt; in case of a *prima facie* right, a well-grounded apprehension of irreparable harm to the applicant if the interim relief is not granted and he ultimately succeeds in establishing the right; that the balance of convenience favours the granting of the interim relief; and the applicant has no other satisfactory remedy.

- [8] It was submitted on behalf of the applicant that the matter is urgent with reference to paragraphs 10 to 13 of its founding affidavit. This Court is called upon to protect the integrity of the arbitration proceedings which the respondents are alleged to have disregarded, disrespected and circumvented. It also stated as follows:

‘10.1 That this matter is urgent can, equally, permit of no doubt. The Respondents are determent to either by hook or by crook to get rid of the provision of security services contact between the Applicant and the First Respondent. They are determined to do so even in total respect of the constitutional injunction enshrined in Section 34 of the constitution.’

- [9] The applicant alleged that it has taken all reasonable steps to prevent this litigation, but was put in the most unenviable position of having to do so by the conduct of the second respondent. It has no other remedy other than to approach the court with no inconvenience to the Sedibeng water. According to its statement of claim, the matter still needs to be arbitrated upon. Also, that the applicant will suffer irreparable harm if this application were to be dismissed since 34 families stand to suffer harm.

- [10] In its affidavit, the applicant maintains that the respondents are in contempt as the arbitration proceedings are not concluded. The arbitration clause provides that “any award” made by the arbitrator shall be final and binding on the parties. Its contention is that the matter must still be arbitrated upon despite an interim award being issued. In summary, the applicant seeks the relief on the same points that was already decided on in the interim award.

- [11] It is upon the applicant to establish on the papers before the court a prima facie case. In ***Caledon Street Restaurant CC v Monica D' Aviera [1998] JOL 1832 (SE)*** at 7-8 the court said:

'It is incumbent on the applicant to persuade the court that the non-compliance with the rules and the extent thereof were justified on the grounds of urgency. The intent of the rules is that a modification thereof by the applicant is permissible only in the respects and to the extent that is necessary in the circumstances. The applicant will have to demonstrate sufficient loss or damage were he to be compelled to rely solely or substantially on the normal procedure. The court is enjoined by rule 6(12) to dispose of an urgent matter by procedures "which shall as far as practicable be in terms of these rules". That obligation must of necessity be discharged by way of the exercise of a judicial discretion as to the attitude of the court concerning which deviations it will tolerate in a specific case.'

- [12] Once the arbitrator has made a ruling on a preliminary point, he becomes *functus officio* and cannot revisit his earlier ruling with another. The interim award deals with issues which, in the normal process, they cannot be altered by him other than confirming the same. In that respect, the interim award has a final effect and stands to be reviewed by the court or another appropriate body.
- [13] The applicant failed to set forth the circumstances which renders his application urgent. It has failed to give an explanation about the eight days' delay in reacting to the letter from Sedibeng water. In the same breath, there is an alternative relief other than by an urgent application which is contractual in nature. In my opinion, the matter is not urgent and the requirement of an interim interdict

were not satisfied. The applicant failed to make out a case for the relief sought and the application should fail.

[14] I accordingly make the following order:

1. The application is struck from the roll for lack of urgency, with costs.

V.M. MOROBANE, AJ

On behalf of the applicant: Adv. B Knoetze SC
Instructed by:
Mogotsi Attorneys
BLOEMFONTEIN

On behalf of the 2nd respondent: Adv. MDJ Steenkamp
Instructed by:
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