IN THE HIGH COURT OF SOUTH AFRICA

(NORTHERN CAPE DIVISION, KIMBERLEY)

Case No: 1469/2016

Heard on: 11-12/12/2018

Delivered on: 07/03/2019

In the matter between

LETLHABILE COACHES CC **Plaintiff**

REGISTRATION NUMBER: 2003/099296/23

And

MINISTER OF POLICE **Defendant**

JUDGMENT

PAKATI J

[1] The plaintiff, Letlhabile Coaches CC ("Letlhabile Coaches") a close corporation duly incorporated and registered as such in terms of the Close Corporation Act, 69 of 1984, issued summons against the defendant, the Minister of Police ("the Minister") in his official capacity, for payment of R414 700-00 arising from repudiation of an alleged agreement entered into by the parties. The defendant

denies that an agreement was concluded by the parties. It alleges that Letlhabile coaches failed to comply with its (the Minister's) procurement process. Evidence was led by the parties on merits only.

[2] Mr Letokore Nicholas Motshabi testified that Letlhabile Coaches conducts a passenger transport business. He is the general manager and a member of the CC. He testified that on 25 February 2016 he received a request from the office of the defendant *via* Colonel SC Senti and/or other employees of the Minister to submit quotations to transport 352 of its trainees from different points in Kimberley *via* De Aar to Oudtshoorn on 28 February 2016 and from Oudtshoorn *via* De Aar to Kimberley on 06 March 2016. Mr Motshabi states that he submitted a written quotation including a declaration (quotation questionnaire), SBD 4: (declaration of interest) and other documents inclusive of a tax clearance certificate which, according to him, constitutes an offer by the plaintiff. He alleges that on 26 February 2016 he received a letter addressed to the Divisional Commissioner, Human Resource Development (page 25 of the bundle) and attached to it was a provisional approval of the transportation of the trainees sent by Col Senti to Mr Motshabi *via* email (page 24 of the bundle). For convenience, I will quote both letters as the plaintiff alleges that they constitute approval of the tender. Page 25 records:

'APPLICATION FOR FINANCIAL AND LOGISTICAL AUTHORITY: ADVERTISING OF PSA ENTRY LEVEL AND TRAINEE POSTS: NORTHERN CAPE

1. This office would hereby like to apply for a financial and logistical authority to transport 352 Trainees to Oudtshoorn Academy on 28 February 2016 returning on 06 March 2016.
2. Attached please find quotation sourced from Letlhabile Coaches, Lucian Transport as well as Big Sky Coaches. The said entities are all registered with the South African Police Services providers.
3. The companies quoted as follows for the return trips:
   3.1 Letlhabile Coaches = R357 000-00
   3.2 Lucian Transport = R57 700 (for a single trip: Springbok via Calvinia)

3.3 Big Sky Coaches = did not respond to request for quotation.

4. Due to time constraints seeing that the trainees are expected to report at the academy on 206-02-29, this office recommends that Letlhabile Coaches be appointed as [the] preferred service provider.'

[3] Page 24 reads thus:

'Good morning Mr Motshabi,

Attached herewith find the provisional approval for the transportation of the trainees to Oudtshoorn College.

The arrangements will be as follows:

Date of Departure	Time	Cluster
Sunday, 28 February 2016	23h00	Kimberly via De Aar
	20h00	Kuruman via Kimberley
	21h00	Upington
	19h00	Springbok via Calvinia

We have been informed that the Trainees will return to the province on Saturday and not Sunday as previously communicated. The Trainees are to report at the college on Monday, 29 February 2016 thus the need to travel on 28-02-2016. Kindly note that we are awaiting official confirmation from our Head Office in this regard. Your office is requested to get in touch with Major Senti if more clarity is required.' My emphasis

[4] Of significance is the handwritten inscription on this page which reads: F.A @ R414 700-00, APPROVED; (i) FA as per par 3, (ii) Procurement to be done at Provincial Office. At the bottom of the page a stamp and the following words appear; BPD 172, FUNDS AVAILABLE and NOT AVAILABLE has been cancelled, Amount R 414 700.00, Resp: 0204, Object: 0152, Project 0672, SCOA: 301366, Fin Auth: 0126 163 585 dated 26 February 2016 and signed by Captain Smit. Mr Motshabi stated that when he received the email with the handwritten inscription and the signature of Colonel EC Pelser.

[5] The letter at paragraph 2 was attached to another letter addressed to Colonel Pelser this reads thus:

'Attached please find the request for financial authority to hire busses for the trainees who will be reporting at Oudtshoorn on 2016-02-29. Kindly note that this office has sourced quotations from three service providers hereby attached for ease of reference. Kindly further note that the dates are indicated as 2016-02-28 and the return date 2016-03-06 seeing that the quotations were requested before this office received head office's directive. The above will be communicated with the approved service provider. Due to the volume of the information, the documents will be forwarded separately. Your assistance in obtaining the said financial authority is appreciated.'

[6] Mr Motshabi was referred to an email sent to Col Pelser on 25 February 2016 by Col Senti requesting financial authority. Mr Motshabi confirmed that Col Pelser is the one who signed the financial authority that appears at page 25 of the bundle (see para 4 *supra*) to be the acceptance of the plaintiff's offer and that the order number would follow due to lack of time. He stated that the plaintiff was the only company that submitted the quotation for the entire routes showing that it would be in a position to render the service in full. He viewed pages 24 and 25 of the bundle as confirmation of the booking although the defendant had to pay 25% deposit after receipt of the confirmation of the booking. He stated that even though the documents (pages 24 and 25 of the bundle) did not refer to *'final approval'* but that the defendant was still waiting for official confirmation from Head office, he perceived that Head Office had received the information and were waiting for the order number.

[7] On 28 February 2016 the plaintiff, relying on the acceptance of the offer, dispatched busses to the various pick-up points. The busses picking up passengers from outside Kimberley left Kimberley earlier so as to arrive on time. They were escorted as usual. The bus drivers arrived at the various police stations for the pick-up ahead of time. One of the drivers, Mr Fikile Simon Mana, testified that he was unable to pick-up the trainees and were told that Big Sky Coaches was the one to do the transportation and not Letlhabile Coaches. At that stage Big Sky Coaches were already loading the

trainees. They had to return to Kimberley. Mr Motshabi testified further that no one from the defendant's office informed the plaintiff that they would not render the service anymore. The plaintiff regarded this as a repudiation of the agreement, which it accepted. It claims that it suffered damages to the amount of R 414 700-00 calculated as follows:

7.1 R 27 300 in respect of the provision and use of one semi-luxury coach for sixty seated passengers from Kimberley via De Aar to Oudtshoorn on 28 February 2016;

7.2 R 29 500, 00 in respect of the provision and use of 1 semi-luxury coach for 60 seated passengers from Kimberley via De Aar to Oudtshoorn on 28 February 2016;

7.3 R 74 000, 00 in respect of the provision and use of 2 semi-luxury coaches for the transport of 120 people from Upington to Oudtshoorn on 28 February 2016,

7.4 R 42 550, 00 in respect of the provision and use of 1 semi-luxury coach from Springbok via Calvinia to Oudtshoorn on 28 February 2016;

7.5 R 34 000;00 in respect of the provision and use of 1 semi-luxury coach for 60 seated passengers from Kuruman to Oudtshoorn on 28 February 2016;

7.6 R 27 300;00 in respect of the provision and use of 1 semi-luxury coach for 60 seated passengers from Kimberley *via* De Aar to Oudtshoorn on 06 March 2016;

7.7 R 29 500, 00 in respect of the provision and use of 1 semi-luxury coach for 70 seated passengers from Kimberley *via* De Aar to Oudtshoorn on 06 March 2016;

7.8 R 74 000, 00 in respect of the provision and use of 2 semi-luxury coaches for the transport of 120 people from Upington to Oudtshoorn on 06 March 2016;

7.9 R 42 550, 00 in respect of provision and use of 1 semi-luxury coach for the transport of 60 people from Springbok *via* Calvinia to Oudtshoorn on 06 March 2016; and

7.10 R 34 000, 00 in respect of the provision and use of 1 semi-luxury coach for 60 seated passengers from Kuruman to Oudtshoorn on 06 March 2016.

[8] Mr Motshabi testified that the plaintiff never received a document setting out any procurement process from the Minister's office or attended a course where the defendant explained their procurement process. He disputed that page 25 of the bundle was the defendant's internal document and stated that the email was attached to a document that was directed to him. The reason why page 25 was attached was for him to have sight of the information contained in it. He states that the defendant would not have forwarded it to the plaintiff. He explained the procedure taken when a request for quotation has been made. He was adamant that the document with the word 'Approved' was for financial authority and that if it was sent for him to see the status of the quotation then it was not supposed to have been forwarded to him. Regarding the tax certificate he explained that an expired one was mistakenly sent with their quotation as it was short notice otherwise they were compliant at the time. He explained further that the information regarding tax is normally sourced from Central Supplier Data Base used by all government departments when they want to know whether or not a service provider is compliant.

[9] Mr Motshabi testified that it had happened before that a service was provided by the service provider while waiting for the order number

especially when emergency situations arise. It was not strange that an order number would be issued at a later stage.

[10] Mr Mana testified that he worked for Letlhabile Coaches for three years as a bus driver. On 28 February 2016 he drove to Upington to fetch police trainees in order to transport them to Oudtshoorn. On his arrival he found that Big Sky Coaches was already there loading the trainees. He then conveyed the message to Mr Motshabi, his employer.

That concluded the plaintiff's case.

[11] Col Sabatha Clement Senti was working at the Provincial Recruitment Office in the Northern Cape. He is currently stationed in Potchefstroom since June 2018.

[12] Col Senti confirmed Mr Motshabi's evidence that during February 2016 the defendant requested for quotations from various service providers including the plaintiff to transport police trainees. He received quotations from the plaintiff, Big Sky Coaches, Lucia Transport and Van Wyk Transport and forwarded them to the Human Resources Development, National Office for financial authority to procure services of the preferred service provider. He received financial authority (pages 24 and 25 *supra*) to procure in the Northern Cape Province. According to him this was not for a specific service provider but to enquire if funds were available to render the service. Col Senti testified that Big Sky Coaches was the preferred service provider. On 26 February 2016 he addressed an email to Mr Motshabi (para 3 *supra*). The purpose of this email (page 24) was to give Letlhabile Coaches dates of departure, the times and the routes in case they were the successful service provider. According to him page 24 of the bundle was not an approval because no order form was issued. He then requested for an order form from Supply Chain Management and was informed

that it could not be issued for Letlhabile Coaches because their tax clearance certificate had expired. That was the reason Letlhabile Coaches was not procured. He was then advised to source alternative transport within the limited time. Big Sky Coaches was ultimately approved as the service provider.

[13] On 28 February 2016 Col Senti was from Bloemfontein when he received information that Letlhabile Coaches' busses were already in various pick-up points. He then conveyed the message that it was not the approved service provider to transport the trainees. He conceded that the order form was not available for Big Sky Coaches at the time in order to complete the procurement process.

[14] Mr Piet Mokoena, a member of the SAPS attached to the Supply Chain Management since 01 October 2011, testified that during February 2016 he was deployed in Kuruman for Imbizo. Col Yolo was at the time in charge of procurement. Mr Mokoena's duties include registering suppliers on the defendant's database, approving quotations and paying the suppliers. Mr Mokoena testified that on 27 February 2016 Col Senti phoned him telling him that Col Yolo informed him that the plaintiff's quotation could not be approved because its tax clearance certificate had expired and an order number would not be issued. Col Senti told him that he would make other arrangements for the transportation of the trainees.

[15] Mr Mokoena explained the Supply Chain process that the end user requests for quotations from service providers. After receiving quotations he sends them to the finance department for financial approval and then to procurement for authorisation. Once authorisation has been granted Supply Chain would issue an order form to the end user who informs the successful tenderer. The service provider would then provide the service according to the order form and thereafter issue an invoice for payment. He could

not tell whether or not the order form was issued to Letlhabile Coaches. On 01 March 2016 Mr Mokoena addressed a letter to Letlhabile Coaches the heading of which reads: "*DECLARATION OF INTEREST: MS BELINDA MITCHELL*." This letter was concerned with Ms Mitchell's relationship with Letlhabile Coaches whilst she was allegedly employed by the Department of Education. He says he was requested by the department through treasury to implement Central Supplier Database in order to log onto the website of DPSA and check all the suppliers' profiles, shareholders' identity numbers and whether they were state employees or not.

That concluded the case for the defendant.

[16] The issue for determination is whether or not an agreement was concluded between the parties namely, whether the plaintiff's offer was accepted by the defendant. The plaintiff alleges that it complied with the defendant's procurement process. The defendant insists that no agreement was concluded by the parties and alleges that the plaintiff's tender was unsuccessful because its tax clearance certificate attached to the quotation had expired. The defendant submits that no order number was issued to the plaintiff and therefore no agreement was concluded. Greenberg JA in **BOERNE v HARRIS**[1]

'It seems to me to follow that the letter, in order to be effective as an exercise of the right of renewal, must unequivocally convey to the recipient, using ordinary reason and knowledge, that it is intended to be such an exercise. It must leave no room for doubt. The recipient is not required to apply any special knowledge or ingenuity in ascertaining the meaning of the letter. Thus if the appellant had chosen to write the letter in Chinese, or to convey his acceptance in the form of a cross-word puzzle, except possibly one that he who runs may read, I think that the respondent would have been entitled to refuse to attempt to translate, or solve the puzzle contained in, the letter and to disregard it. … And in considering how a reasonable person would have construed the letter, the Court must not require the respondent to invoke the assistance of legal advisers, any more than, in the hypothetical cases I have mentioned, she would have to enlist the aid of a Chinese interpreter or an expert in cross-word puzzles. I leave out of

[1] 1949 (1) SA 793 (A) at 801

consideration the case where the recipient, to the knowledge of the sender of the letter, is equipped with the necessary knowledge or ability.'

[17] James J adopted the same approach in NICHOLS v STANLEY[2] where it was held:

'The reasonable man only has doubts when it is reasonable to do so, and the offeror must therefore be bound unless his doubt about the meaning of the acceptance is a reasonable doubt.'

[18] The court is faced with two mutually destructive versions. Nienaber JA in **STELLENBOSCH FARMERS WINERY GROUP LTD AND ANOTHER v MARTELL et CIE AND OTHERS**[3] had this to say:

'[5] On the central issue, as to what the parties actually decided, there are two irreconcilable versions. So too on a number of peripheral areas of dispute which may have a bearing on the probabilities. The technique generally employed by courts in resolving factual disputes of this nature may conveniently be summarised as follows. To come to a conclusion on the disputed issues a court makes findings on (a) the credibility of the various factual witnesses; (b) their reliability; and (c) the probabilities. As to (a), the court's findings on the credibility of a particular witness will depend on its impression about the veracity of the witness. That in turn will depend on a variety of subsidiary factors, not necessarily in order of importance, such as (i) the witness' candour and demeanour in the witness box, (ii) his bias, latent and blatant, (iii) internal contradictions in his evidence, (iv) external contradictions with what was pleaded or put on his behalf, or with established fact or with his own extra curial statements or actions, (v) the probability or improbability of particular aspects of his version, (vi) the calibre and cogency of his performance compared to that of other witnesses testifying about the same incident or events. As to (b), a witness' reliability will depend, apart from the factors mentioned under (a) (ii), (iv) and (v) above, on (i) the opportunities he had to experience or observe the event in question and (ii) the quality, integrity and independence of his recall thereof. As to (c), this necessitates an analysis and evaluation of the probabilities and improbabilities of each party's version on each of the disputed issues. In the light of its assessment of (a) (b) and (c) the court will then, as a final step, determine whether the party burdened with the *onus* of proof has succeeded in discharging it. The hard case, which will doubtless be the rare one, occurs when the court's credibility findings compel it in one direction and evaluation of the general probabilities in another. The more convincing the former, the less convincing will be the latter. But when all factors are equipoised probabilities prevail.'

[19] Rule 22 (2)[4] provides that the defendant shall in his plea either admit or deny or confess and avoid all material facts alleged in the

[2] 1962B(2) PH A29 (N)
[3] 2003 (1) SA 11 SCA para 5

combined summons or declaration or state which of the said facts are not admitted and to what extent and shall clearly and concisely state all material facts upon which he relies.

[20] The defendant denies that an agreement was concluded by the parties as alluded to earlier. For this assertion it relies on the following:

20.1 That no order form was issued to the plaintiff;

20.2 That the plaintiff's tax certificate attached to its quotation had expired; and

20.3 That Ms Mitchell, a member of the plaintiff, was also a government employee at the time.

NO ORDER FORM ISSUED

[21] Mr Motshabi testified that under normal circumstances an order form would be received before services had been rendered. However, when the defendant's request for quotation is sent at short notice the order form would be sent after services have been rendered. He mentioned an incident after the trip *in casu* when the plaintiff had to pick up defendant's trainees from Cape Town and the order form was sent after the service had been rendered. His evidence was confirmed by Senti and Mokoena in this regard.

[22] Mr Motshabi stated further that the plaintiff never received a document explaining the procurement process from SAPS and he did not attend a course where the defendant explained its procurement process.

[23] Ms Phakama, on behalf of the defendant, further put to Mr Motshabi that Senti would say that page 24 was sent in order to take note of the times, he indicated that the document did not say '*please find*

[4] Uniform Rules of Court

change of times'. He added that Senti did not say that he would communicate the final word but that the plaintiff should get in touch with Senti if they required more clarity. Ms Phakama put to Mr Motshabi further that the reason the plaintiff's bid was not approved was because it omitted to disclose that one of its members was a government employee and that its tax certificate had expired. This argument does not hold water taking into account the document titled '*Declaration of Interest*' signed by the plaintiff dated 25 February 2016 and the fact that the defendant failed to plead as such in its plea.

MS MITCHELL'S ISSUE AND THE EXPIRED TAX CLEARANCE CERTIFICATE

[24] Mr Motshabi testified that the document issued by the Commissioner and Intellectual Property Commission (CIPC) was signed at the time Ms Mitchell was no longer its member. It was not signed to have her removed as a member. He indicated that they applied to have her removed before 20 February 2016 and the application was approved. He stated that he did not know how the process worked as their auditors attend to such issues. She was not a member of the CC as from 05 February 2016 although the CIPC document at page 13 of the bundle was signed on 20 February 2016 the application for her a member of the CC from 02 August 2011 and was replaced by a Mr Fabian Earl Van Heerden on 05 February 2016. At the time the quotation was submitted to the defendant on 25 February 2016 she was no longer a member. Her removal had already been granted.

[25] Notably, the issue raised by the defendant concerning Ms Mitchell as well as the tax certificate that had expired were also not pleaded. When it was put to Mr Motshabi that the defence witnesses would testify that the plaintiff's quotation was unsuccessful because its tax

certificate had expired and that it omitted to declare that one of its directors was a government official he said that from the document titled '*Declaration of Interest*' completed and signed on 25 February 2016, Ms Mitchell was not the plaintiff's member. Neither Col Senti nor Mr Mokoena testified that the plaintiff's quotation was not approved because Ms Mitchell was a government official and also the member of the plaintiff.

[26] Col Senti testified that the defendant could not issue an order form to the plaintiff because it submitted an expired tax certificate. He confirmed that was the only information that was conveyed to him at the time. He denied that it was an afterthought though he could not explain why it was raised for the first time in his evidence. He stated that he was unaware that it was not mentioned in the defendant's plea.

[27] On the other hand Mr Mokoena did not have first-hand knowledge of the expiry of the tax certificate. On 01 March 2016 he addressed a letter to Letlhabile Coaches titled '*Declaration of Interest: Ms Belinda Mitchell'* as alluded to earlier. The third paragraph of this letter states:

> 'Whilst waiting the respond, the company will never be afforded an opportunity for quotation at any South African Police Service Supply Chain Management offices and failing to provide the respond the matter will be reported directly to National Treasury.'

[28] Mr Mokoena testified that the said letter related to the Central Supplier Database, a new system that was to be implemented from 01 April 2016 that updated the suppliers' information on a daily basis and did not concern the plaintiff's tax clearance certificate. What is surprising is that the document signed on 25 February 2016 by the directors of Letlhabile Coaches accompanying the quotation was attached to this letter. However, he denied that his letter of 01 March 2016 related to the service that had to be delivered by the

plaintiff on 28 February 2016 but a general letter in order to correlate information with the CSD process. His assertion that the tax certificate was a non-issue at that stage is absurd considering that he attached SBD 4 (the document attached by the plaintiff to the bid documents) regarding the procurement process of 25 February 2016. He further testified about a procurement process which he said was on the prescripts of their department on request yet this document was not discovered. When he was asked why it was not placed before court taking into account that the defence relied on it he said it was not requested from him.

[29] Mr Mokoena testified that he noted that the plaintiff's tax clearance certificate had expired and that concerned him as the Head of Procurement. However, he did not raise it in his letter to the plaintiff. His explanation was that it did not concern the plaintiff's tax clearance certificate but the member of the plaintiff who was allegedly also employed by the government. It is clear in my view that this letter was addressed to the plaintiff to clarify something in relation to the service that was to be rendered by the plaintiff and was not a general letter as he testified. He conceded that the letter had nothing to do with the plaintiff's tax clearance certificate at the time.

[30] Mr Mokoena also could not explain why the plaintiff's tax clearance certificate was not raised in the plea. He stated that he had come to court to testify about the procurement process as that was all he knew. He could not explain why Col Senti phoned him instead of Col Yolo who was in his office in possession of the plaintiff's file.

[31] It is undisputed that the issue of the tax clearance certificate was never brought to the attention of the plaintiff before and after the delivery of the services. No explanation was forthcoming from the

defence witnesses as to why this was not done. The letter dated 01 March 2016 is the only letter addressed to the plaintiff which did not mention anything about the tax certificate but that the plaintiff had failed to disclose that Ms Mitchell was also a government employee. Notably, no document was supplied by Supply Chain Management stating the reason why the plaintiff's bid was unsuccessful. Mr Motshabi testified that it was a mistake that an expired one was attached otherwise the plaintiff was compliant. None of the defence witnesses could explain why this issue was not raised with the plaintiff at any stage. The only reasonable inference that can be drawn from the defendant's conduct is that this was an afterthought. If it was an error not to raise these defences with the plaintiff the defendant could have applied for an amendment of its plea. See **CIRCLE CONSTRUCTION (PTY) LTD v SMITHFIELD CONSTRUCTION**[5]

[32] The only issue that is left for determination is whether pages 24 and 25 constitute acceptance of the agreement between the parties. The SCA as per Wallis JA (Farlam JA, Van Heerden JA, Cachalia JA and Leach JA concurring) in **NATAL JOINT MUNICIPAL PENSION FUND v ENDUMENI MUNICIPALITY**[6] dealt with the interpretation of the words in a document thus:

'[18] Over the last century there have been significant developments in the law relating to the interpretation of documents, both in this country and in others that follow similar rules to our own. It is unnecessary to add unduly to the burden of annotations by trawling through the case law on the construction of documents in order to trace those developments. The relevant authorities are collected and summarised in *Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School.* The present state of the law can be expressed as follows: Interpretation is the process of attributing meaning to the words used 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

[5] 1982 (4) SA 726 (N) at 730
[6] 2012 (4) SA 593 (SCA) at 603F-604C para [18]

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. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or business-like for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. 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.'

ORDER FOR SPECIFIC PERFORMANCE

[33] Our law is clear that a plaintiff is entitled to claim specific performance in the circumstances where it is possible to do so. Innes J in the case of **FARMER'S CO-OP SOCIETY (RE) v BERNY 1912 AD 343 350** held:

'Prima Facie every party to a binding agreement who is ready to carry out his own obligation under it has a right to demand from the other party so far as it is possible, a performance of his undertaking in terms of the contract. As remarked by Kotze CJ in: Thompson v Pullinger (1894)1 OR at p301, the right of plaintiff to the specific performance of a contract where the defendant is in a position to do so is beyond all doubt'. It is true that Courts will exercise a discretion in determining whether or not decrees of a specific performance will be made. They will not, of course, be issued where it is impossible for the defendant to comply with them. And there are many cases in which justice between the parties can be fully and conveniently done by an award of damages. But that is a different thing from saying that a defendant who has broken his undertaking has the option to purge his default by the payment of money. For in the words of Storey (Equity Jurisprudence, sec 717 (a), 'it is against conscience that a party should have a right of election whether he would perform his contract or only pay damages for the breach of it'. The election is rather with the injured party, subject to the discretion of the Court[7].

It is evident in the present case that specific performance is possible. For that reason, the Plaintiff has elected to approach the court to enforce the agreement for payment of R414 700-00 arising from repudiation of an alleged agreement entered into by the parties.

[34] **SPECIFIC PERFORMANCE AS REMEDY FOR BREACH**

[7] The Law of Contract in South Africa, 4th ed, by RH Christie, p 607-608

CHRISTIE'S LAW OF CONTRACT IN SOUTH AFRICA 7ed (2016) at 616 states:

'*The remedies available for a breach or, in some cases, a threatened breach of contract are five in number: specific performance, interdict, declaration of rights, cancellation, damages. The first three may be regarded as methods of enforcement and the last two as recompenses for non-performance. The choice among these remedies rests primarily with the injured party, the plaintiff, who may choose more than one of them, either in the alternative or together, subject to the overriding principle that the plaintiff must not claim inconsistent remedies and must not be overcompensated'.*

[35] Mr Motshabi testified that the letter of 26 February 2016 was an acceptance of the quotation. Interpretation of a document is on an objective basis. If one has regard to page 24 and 25 read together there is no other reasonable person who would have understood it otherwise than being an acceptance of the offer. An explanation that page 25 was an internal document does no hold any water because Col Senti testified that he could not remember why he attached it to the letter he addressed to Mr Motshabi. Considering that there was no communication to the plaintiff telling him that there was non-compliance with his documents and so his quotation was not approved.

[36] Col Senti conceded that the email he sent to Mr Motshabi on 26 February 2016 read with page 25 would reasonably have led one to conclude that the quotation was approved. The two letters were, according to him, clear and unambiguous. The letter further indicated that Col Senti should be contacted for further clarity. Nothing in the said letter required any clarity. Both the plaintiff and Col Senti understood that the confirmation that was awaited from Head Office was the order number. The version that was put to the plaintiff and its witnesses contradicted what was stated in the plea.

Col Senti concedes further that the handwritten inscription on page 25 would have induced the plaintiff to believe that the quotation was approved. Based on this he could not blame the plaintiff for having dispatched busses to the various pick-up points as nothing was communicated to them up to that point.

[37] I have no doubt in my mind that the plaintiff managed to prove its case on a balance of probabilities. A valid agreement was concluded between the parties which the defendant repudiated. The plaintiff fully complied with the defendant's procurement process.

[38] On the other hand the defendant does not genuinely and seriously place the events in dispute. It failed to show that the plaintiff did not comply with its procurement process. The applicant is therefore entitled to enforce the agreement.

In the circumstances I make the following order:

1. **The defendant, the Minister of Police, accepted the plaintiff's offer and therefore a valid contract was entered into by the parties. The plaintiff, Letlhabile Coaches, succeeds on the merits.**
2. **The defendant is ordered to pay costs of suit.**

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BM PAKATI
JUDGE-NORTHERN CAPE DIVISION, KIMBERLEY

On behalf of the Plaintiff: *Ms J Snyders*
Instructed by: *ENGELSMAN MAGABANE INC.*

On behalf of the Defendant: *Ms NM Phakama*
Instructed by: *OFFICE OF THE STATE ATTORNEY*