

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

CASE NO: 18849/17

In the matter between:

3/4/2017

ROAD TRAFFIC MANAGEMENT CORPORATION

First Applicant

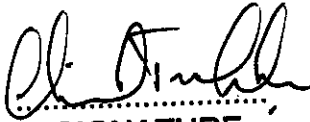
DEPARTMENT OF TRANSPORT

Second Applicant

MINISTER OF TRANSPORT

Third Applicant

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
	03/04/17 DATE	 SIGNATURE

TASIMA (PROPRIETARY) LIMITED

First Respondent

DENESHKUMAR NARAN

Second Respondent

FANNIE LYNEN MAHLANGU

Third Respondent

ZUKO MZIWOXOLO VABASA

Fourth Respondent

MINISTER OF POLICE

Fifth Respondent

DIRECTOR-GENERAL:

DEPARTMENT OF TRANSPORT

Sixth Respondent

KEVIN JOSHUA KARA-VALA

Seventh Respondent

MORNÉ GERBER

Eighth Respondent

CHRIS HLABISA

Ninth Respondent

MAKHOSINI MSIBI

Tenth Respondent

JUDGMENT

Tuchten J:

- 1 This is an urgent application to enforce an order made by the Constitutional Court. Urgency is not in dispute. The issue is straightforward. But the papers have mushroomed. The record consists of 1 395 paginated pages. The heads of argument are voluminous. In the notice of motion, the applicants cited the first to the fifth respondents. The sixth to tenth respondents were joined by Tasima pursuant to one of its counter-applications, with which I shall deal below. The application is opposed by the first to fourth respondents, whom I shall call for convenience the respondents.

- 2 The central issue is whether the order of the Constitutional Court (the hand-over order) required the first respondent (Tasima) to hand over the electronic National Traffic System to the first applicant (RTMC) by a specified date, which translates on my reckoning to 22 December 2016, or by another, later, presently undeterminable date which may be far in the future.

- 3 In the notice of motion, the applicants ask for orders directing the first to fourth respondents, within 24 hours of issue of the order of this court, to vacate the premises from which Tasima operates the system, to hand the system over to RTMC and to hand to RTMC all access codes, keys, source codes and data necessary to access and operate the system.
- 4 The applicants say that the meaning of the hand-over order is that the hand-over had to be completed by the specified date. The respondents say that, properly construed, the hand-over order required Tasima and RTMC either to agree an alternative transfer management plan or conduct the hand-over in terms of the migration plan set out in schedule 18 of what is called the Turnkey agreement. It is common cause that no alternative transfer management plan was concluded. Thus, say the respondents, the process contemplated by sch 18, (but not with all its extended time periods) was the process which the Constitutional Court ordered to be undertaken. It is in issue whether the process contemplated by sch 18 has actually commenced. Only after the completion of the sch 18 process, the respondents say, are they required to hand over the system. Therefore, say the respondents, the hand-over order means that the hand-over must be completed within a reasonable time after the date on which the hand-over order was handed down.

- 5 Tasima has two counter-applications: for payment of amounts exceeding R100 million, for orders, amongst others, directing the second respondent or RTMC and the second respondent jointly and severally to pay Tasima monthly amounts as certified by Tasima itself for its work done and its money disbursed by Tasima in relation to the system until the hand-over is complete, to withdraw certain instructions given to the applicants' officials not to deal directly with Tasima and to make provision for the transfer of Tasima's staff to the RTMC. Counsel for the respondents made it clear that if the main application is granted, the counter-applications should be dismissed. For reasons which will follow, I need say no more about the counter-applications.
- 6 The notice of motion is flawed in some respects. As framed it suggests that the relief I have described is interim relief. As counsel for the applicants accepted and counsel for the respondents submitted, it is not. It is final relief.
- 7 And then the applicants ask that the court issue a rule *nisi* calling upon the respondents named in the notice of motion to show cause why they should not be held in contempt. I am not being asked to pronounce on whether those respondents are in contempt. In principle, a rule *nisi* issues to warn named persons or a class of

persons that relief will be sought against them on a stated date and to invite such persons to show cause why such relief should not be granted. The notice of motion, with the relief set out in Part B of that document, fulfills this function. There can therefore be no good reason to issue a rule in this regard, urgently or otherwise.

- 8 The applicants also ask the court to authorise the Minister of Police to evict the respondents and otherwise give effect to the order it is proposed I should make. During argument, counsel for the applicants accepted that at this stage there was no need for the Minister of Police to take any action relative to any relief granted. I need say no more about this aspect of the case either.
- 9 But I do not think that these shortcomings are fatal to the application.
- 10 The hand-over order was made in *Department of Transport and Others v Tasima (Pty) Limited*, case no CCT 5/16, and handed down with the judgments of the justices on 9 November 2016. Paragraph 4 of the hand-over order is relevant for present purposes. It reads:

- i Within 30 days of this order, Tasima is to hand over the services and the National Traffic Information to [RTM].
- ii Unless an alternative transfer management plan is agreed to by the parties within 10 days of this order,

the hand-over is to be conducted in terms of the Migration Plan set out in Schedule 18 of the Turnkey Agreement.

- 11 The Constitutional Court itself has laid down how the interpretation of court orders must be undertaken:¹

The basic principles applicable to construing documents also apply to the construction of a court's judgment or order: the court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual, well-known rules ... (A)s 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. If, on such a reading, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify or supplement it.

This approach has been endorsed by this court. Kriegler J in *Ex parte Women's Legal Centre* added that the interpretation of a court order 'entails determining the legal context in which the words in the order were used.

1

Electoral Commission v Mhlope and Others 2016 5 SA 1 CC para 33. Footnotes omitted

- 12 The judgments in CCT5/15 constitute the context against which the order must be read. There were three judgments. They all show an appreciation of the fact that Tasima remained in position as the manager of and supplier of services under the system for far longer than was contemplated by the contract which initially governed the relationship. A web of maladministration led to this result. The judgment of the court shows the intention of the court speedily to bring this undesirable situation to an end. Paragraphs 206-207 of the judgment of the court in CCT5/15 read:²

[206] In the present matter, not only was the extension of the contract between the Department and Tasima unlawful, but it has now expired. It can only be in the best interests of the public that the hand-over of the services and the eNaTIS to the Corporation happens as expeditiously as possible. While I recognise the complexities that this process entails, in light of the success of the counter-application, I am unconvinced that five years is necessary, nor that the unlawfully extended transfer management provisions are inevitably the correct vehicle for bringing the hand-over into fruition.

[207] The Supreme Court of Appeal found that, on the Department's version, a period between four and twelve months is appropriate. The High Court ordered that the hand-over occur within 30 days. This latter period accords with the transfer management plan. I am therefore of the view that hand-over should occur within 30 days of this order. In light of conceivable changes in circumstances, the parties

must meet within 10 days to agree on how the transfer is to be facilitated. Should this agreement fail to materialise, the transfer is to take place in accordance with the Migration Plan set out in the Turnkey Agreement.

- 13 Counsel for the respondents accepted during argument that the interpretation advanced on behalf of Tasima, even with abridged time periods to perform the functions provided for in sch 18, would require Tasima to remain in place for at least twelve weeks while the hand-over plan was developed, agreed and executed. In fact, Tasima has already remained in place for nearly five months since the hand-over order was handed down.
- 14 Counsel for the respondents were constrained during argument firstly to concede that the meaning they say should be given to the hand-over order would require that the injunction in paragraph 4(i) of the hand-over order to be re-written to provide: "Within 30 days of this order, Tasima is to *commence* to hand over ..."; and, secondly, that the intention of the hand-over order, read in its context, was to provide an open ended period, the end date of which could not, when the hand-over order was made, be determined.

- 15 In my view, the interpretation advanced by counsel for the respondents would enable an adroit person to remain in place as the manager of the system for a period the end of which cannot even now be determined with the concomitant substantial flow of revenue out of the public purse.³ The hand-over process contemplated by sch 18 would enable such an adroit person to generate disputes at well nigh every stage of the process and then stall the process by asking the court to rule on such disputes and to invoke appeal processes if at any stage he claimed to be aggrieved by such a ruling. In this context the celebrated fictional suit in Chancery of *Jamdyce v Jamdyce*⁴ comes to mind.
- 16 I reject the interpretation advanced by counsel for the respondents. I find that the terms of the hand-over order, read with the judgments, are unambiguous. They require Tasima to complete the hand-over in 30 days. They do not permit Tasima to remain in place for any longer than that. The period of 30 days has expired. It is not for this court to comment on the wisdom of the order. My duty is to say what it means. I find that it means what it says.

³ The point about the outflow of revenue is not that it would all constitute profit in the hands of Tasima. It would probably not. But Tasima would be in control of that revenue.

⁴ See Charles Dickens' *Bleak House*, first published in serial form in 1852-1853.

- 17 There is a further ground upon which the interpretation advanced by counsel for the respondents cannot be correct. By notice of motion dated 8 December 2016 under case no. 5/2016, Tasima approached the Constitutional Court urgently on notice of motion "in terms of rules 11, 12, 18 and 29" of the Rules of that court, to clarify or vary the hand-over order in a number of respects.
- 18 In prayer 2.1, Tasima asked that a paragraph 4(iii) be inserted in the hand-over order to provide that the hand-over be conducted in terms of the "handover Migration Plan" attached to its main founding affidavit. It is made clear in this affidavit that Tasima's contention before the Constitutional Court was, as it was in this court, that hand-over simply could not be completed within a period of 30 days; in other words, that on Tasima's construction of the hand-over order, compliance with the hand-over order was impossible within the period of 30 days.
- 19 Prayer 2,2,2 invited the Constitutional Court to declare, in the alternative to prayer 2.1 that the "Migration Plan does not have to provide for transfer within 30 days".

20 By order dated 8 February 2017, the Constitutional Court held:

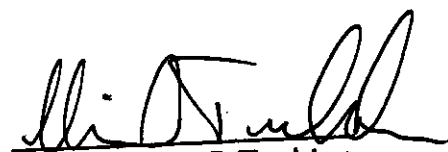
The Constitutional Court has considered this urgent application for direct access. It has concluded that the application should be dismissed as it bears no prospects of success.

21 I am therefore in the unusual situation of having for my guidance a pronouncement of the apex court not merely on the principles I have to consider but the very arguments and facts in the case itself before me. But counsel for the respondents submit that the order of 8 February 2017 is neutral because it could have issued on procedural rather than substantive grounds.

22 I cannot agree. Constitutional Court rule 29, to which Tasima directly referred in its notice of motion for urgent relief, makes rule 42 of the Rules of this court, *mutatis mutandis*, applicable to proceedings in the Constitutional Court. Rule 42(1)(b) empowers the court to vary an order or judgment in which there is an ambiguity or patent error or omission. I cannot conceive that any court, much less the highest court in the land, would decline to clarify or correct its order if an ambiguity or patent error in its judgment or order were duly brought to its attention. The order of 8 February 2017 is therefore high support for the conclusion at which I arrived, independently of that order.

- 23 It is not in dispute that a hand-over of the system carries with it the obligation to comply with the provisions of the notice of motion I have identified in paragraph 3 above. It follows that relief in terms of the notice of motion must issue and that Tasima's counter-applications must be dismissed. Because the relief sought is final and not interim relief, I shall not accede to the prayer that my order will be subject to confirmation at a later date as envisaged in Part B of the notice of motion.
- 24 One final observation: as I see it, there is nothing in the hand-over order or the order of this court to prevent the parties from continuing after the hand-over to cooperate in ensuring that the transfer is achieved as swiftly and in as orderly a fashion as possible.
- 25 Costs must follow the result. I make the following order:
- 1 The first, second, third and fourth respondents are hereby directed forthwith:
- 1.1 to vacate the premises located at 13 Howick Close, Waterfall Park, Bekker Road, Midrand (the premises) from which the first respondent operates the electronic National Traffic Information System (eNaTIS); and

- 1.2 to hand over control of the eNaTIS system to the first applicant (RTMC); and
- 1.3 to hand over to the RTMC all access codes, keys, source codes and data necessary to access such premises and to operate the eNaTIS.
- 2 If any of the first to fourth respondents fail to comply with this order, the Sheriff is authorised and directed to evict such respondents from the premises and to take all steps necessary, including using the services of specialist or expert service providers, to give effect to this order.
- 3 The first, second, third and fourth respondents, jointly and severally, are ordered to pay the costs of this application, including the costs consequent upon the employment of both senior and junior counsel.



NB Tuchten -
Judge of the High Court
3 April 2017