

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 44095/2012

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHERS JUDGES: YES/NO
(3)	REVISED
<i>12/8/2013</i>	
DATE	SIGNATURE <i>[Signature]</i>

~~13/8/2013~~

12/8/2013

TASIMA (PTY) LIMITED

Applicant

and

THE DEPARTMENT OF TRANSPORT

First Respondent

**THE DIRECTOR GENERAL: DEPARTMENT
OF TRANSPORT**

Second Respondent

THE MINISTER OF TRANSPORT

Third Respondent

WERNER EDUARD KOEKEMOER

Fourth Respondent

And

**ROAD TRAFFIC MANAGEMENT CORPORATION
(APPLICATION TO INTERVENE)**

Fifth Respondent

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

EBERSOHN, AJ

1. In this application for leave to appeal the parties will be referred to as in convention.
2. The applicant brought an urgent application against the first, second, third and fourth respondents to compel them to comply with court orders made in the past by Mabuse J and Strijdom AJ, more in particular to make urgent payment of long outstanding money (R118 502 705,13) to stave off a possible liquidation of the applicant Tasima; and a crash of the ~~eNatis~~ ^{Ha} TIS system, and to grant certain authorisations and approvals to enable Tasima to enter into agreements with certain key parties and to convene a meeting with all the eNatis governance structures contemplated in Schedule 11 of the agreement (par.4 of the Strijdom order). 
3. The fifth respondent wanted to intervene but as it was part of the first respondent leave was not granted.
4. The court fully dealt with all the issues in the judgment.
5. The fifth respondent, being under the impression that leave was granted to intervene, filed a notice of application for leave to appeal, although it had nothing to do with the breaches of the Mabuse and Strijdom orders. The application was

abandoned by Adv. Roux SC who was brought into the case overnight when he realised that leave to intervene was not granted.

6. The first, second and third respondents sought leave to appeal against all the orders made by the court except orders 7.1 and 7.2. Mr Roux SC who argued the application on their behalf restricted his argument, in his usual candid manner, to five main points.

7. He argued firstly that the first respondent was within its rights to withhold payment to Tasima. The contentions of the respondents were fully dealt with in the main judgment and summarised in [28] and the finding that there is no actual “dispute” between the parties regarding payment (*Defante and Another v Delta Electrical Industries Ltd and another* 1992 (2) SA 221(C)) Mr Roux argued that the first respondent was entitled to retain amounts regarding PC 67, PC 68 and PC 69 but conceded that with regard to the amounts outstanding on the other PC’s the respondents were in the wrong. He also had problems to explain the excessive delay on the part of the respondents and their failure to come to a point. Adv. Roux SC is not to be blamed for that as there appears to have been a deliberate delay on the part of the respondents.

8. He argued, secondly, that the court erred in ordering the respondents to grant, sign and make available to Tasima the outstanding PRQs. This court dealt with this

aspect in paragraphs [33] to [41]. This court's finding appears from paragraph [40] of the judgment.

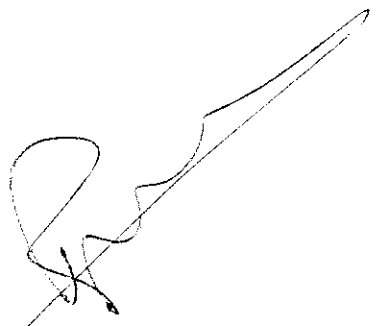
9. He argued, thirdly, that the time given to the respondents to perform was too short. The court pointed out to him that the respondents had months and months during which they should have performed. For months on end they caused problems for Tasima. This court got the clear impression that the respondents wanted Tasima to crash financially so as to get rid of Tasima, for another body to take over most probably the fifth respondent. The respondent also delayed the arbitration over the validity of the lease aspect with Tasima.

10. He argued, fourthly, that it was a complicated matter for the respondents with many aspects and that they acted upon advice. Tuchten J and the Full Bench severely criticised their conduct and also the State Attorney. After judgment in the main matter was handed down by this court the State Attorney withdrew as attorneys of the Respondents and a private firm of attorneys was engaged. It is clear that the respondents after the judgment of the Full Bench came to hand and, hopefully, was read by the role players in the Department of Transport they ought to have understood that they were no longer in breach of contractual obligations but were blatantly in breach of judicial obligations imposed upon them by Mabuse J and Strijdom AJ. To do so blatantly is contempt of court and the consequences must be suffered lest all respect for the courts are lost.

11. Mr Roux argued, fifthly, that the court unduly punished the officials too severely. That was his opinion.
12. He concluded that reasonable prospects existed that another court may come to a different conclusion.
13. Mr. Leech SC for the applicant Tasima pointed out that the respondents were in breach of court orders issued on four different occasions (twice by consent) namely the Teffo order, The Mabuse order, the Strijdom order and also the order of the Full Bench and the respondents deliberately failed to comply with those judicial orders.
14. Mr Leech argued that the respondents were trying to assert a right to go behind the court orders and disobey it.
15. He pointed out that the important concession by Adv Roux SC that the respondents have not over a long period of time declared disputes over their obligation now the issues before this Court in terms of the procedure laid down in the agreement between the parties and that, on their own version the respondents had no excuse for not paying and signing the authorisation.
16. Having reconsidered the matter this court is of the firm belief that no other reasonable court could come to another decision.

16. The following order is made:

1. The application for leave to appeal is dismissed with costs, including the costs of senior counsel.
2. The first respondent is to pay the costs of the application for leave to appeal.



P EBERSOHN

ACTING JUDGE OF THE NORTH GAUTENG HIGH COURT

For the Applicant : Adv BE Leech

For the Respondent : SC Adv B Roux SC
Adv JA Mohale

Date of Judgment: 12 Augustus 2013