



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

CASE NO: 11833/2008

In the matter between:

SETUMI FORCE SECURITY

Plaintiff

And

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

Defendant

JUDGMENT

LEDWABA, J

[1] The defendant filed an exception to plaintiff's particulars of claim alleging that the particulars lacked the necessary averment to sustain a cause of action.

[2] In the defendant's notice of exception in clause 1.7 of the defendant's mentioned a somewhat different ground of exception and stated the following:

"The Plaintiff has not compiled with the conditions of service relating to the provision of the contract, ergo, the allegations contained in the body of the Plaintiff's particulars of claim making a case for unlawful cancellation of the provision of guarding services contract: The Security Services RFB No. 2004 29 do not support the prayers concluding the Plaintiff's particulars of claim, consequently the Plaintiff's particulars of claim are rendered excipiable."

[3] The Department of Justice in its letter dated the 18th February 2005 confirmed that the plaintiff was nominated to provide guarding services at selected arrears. The condition stated in the said letter, it was submitted by Advocate Lebala SC, representing the defendant, were complied with.

[4] In the particulars of claim plaintiff admitted that on the 25th February 2000 it signed the Memorandum of Agreement Regarding the Security Service RFB No. 2004 29, (the agreement) see annexure B on pages 123-153 of the indexed pages.

[5] The relevant special condition that the defendant alleged plaintiff has not complied with reads as follows:

"1. The latest Government Gazette makes provisions for remuneration/wages of the Security Services Trade.

1.1. For the purpose of this contract, use will be made of the relevant Category Security Officers, as defined in the Order made in terms of Section 51A(2) of the Labour Relations Act, 1956, as published by Government Gazette n. 22873 dated 30 November 2001, as amended.

*1.2. It is expected that the contractor shall pay his/her employees at least a minimum monthly basic wage, as prescribed for Area concerned of the order for the security Officers Trade (Government Gazette no. 25075 dated 13 June 2003, as amended). Employees must be paid within seven (7) days in the new calendar month after the service has been rendered to the previous month. **Failing which, the service will be terminated with immediate effect.**"*

[6] The Department of Justice addressed a letter dated 3 March 2005 to the plaintiff stating the following:

- "...It is a condition of this contract document that your company must remunerate your employees in terms of Government Gazette n. 25075 dated 13th June 2003, as amended.*
- On perusal of your documentation the Department note that you do not comply with this requirement.*

In terms of the stipulation of this requirement the Department have no alternative but to inform you that the Department cannot continue with engaging your firm for

the provision of said services (Memorandum of Agreement Regarding-The Security Service RFB No. 2004 29-page 12, paragraph 1.2).” See annexure D on page 155.

[7] Advocate Lebala SC informed the court that in terms of the agreement between the plaintiff and the defendant, the plaintiff was supposed to commence rendering service on 1 April 2005. This simply implies that the defendant terminated the agreement before services were rendered.

[8] However, Advocate Lebala SC argued that the plaintiff has not complied with the agreement's specific condition by not remunerating its compiled in terms of the provisions of the Government Gazette no. 25075 and consequently the defendant discontinued engaging the plaintiff for the rendering of guarding services.

[9] On careful perusal of the agreement I cannot find any evidence to support the defendant's allegation that the plaintiff does not comply with the special condition in clause 1.2. of the special conditions in the agreement.

[10] I also fail to understand what prompted the defendant to allege that the plaintiff does not comply because the plaintiff had not, by then, started rendering the service and the first wages to be paid to the plaintiff employees in respect of service to be rendered basis on bid were due by the 7 May 2005.

[11] Of significance is that the plaintiff in paragraph 4 of its particulars of claim made the following allegation:

“4. The Plaintiff

in writing and as part of the bid 29 submitted, accepted the Department's Bid conditions and a copy of the standard Bid document containing these conditions.

duly complied with all its obligations and requirements and specifications of the Bid 29 and timeously submitted its bid to the first Defendant.” (own underlining).

[12] On careful perusal of the plaintiff's particulars of the claim I cannot find anything untoward to support the exception raised by the defendant.

[13] The defendant failed to show and satisfy the court about the averment that it alleges is lacking in the plaintiffs particulars of claim.

[14] The exception raised by the defendant is, in my view frivolous.

[15] I therefore make the following order:

The exception is dismissed with costs.

A. P. LEDWABA

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JUDGE OF THE HIGH COURT