

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2023-071950

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
_____	_____
DATE	SIGNATURE

In the matter between:

MABOTWANE SECURITY SERVICES CC

First applicant

KNM SECURITY CC

Second applicant

LL SECURITY CC

Third applicant

MCC SECURITY & PROJECTS CC

Fourth applicant

AZEEM MOHAMMAD

Fifth applicant

ZABALAZA ENTERPRISE (PTY) LTD

Sixth applicant

and

THE CITY OF EKURHULENI METROPOLITAN MUNICIPALITY First respondent

DR IMOGEN MASHAZI N.O.

Second respondent

NIST INVESTMENTS CC

Third respondent

GS SECURE (PTY) LTD

Fourth respondent

SSG SECURITY SOLUTIONS (PTY) LTD	Fifth respondent
TACTICAL SECURITY SERVICES CC	Sixth respondent
EZINGENI SECURITY & CLEANING (PTY) LTD	Seventh respondent
BRAVOSPAN 90 CC	Eighth respondent
MASINGITA SECURITY SERVICES (PTY) LTD	Ninth respondent
CAREWELL HOLDINGS 5 (PTY) LTD	Tenth respondent
SOS PROTECSURE NATIONAL DIVISION CC	Eleventh respondent
MOTANE INVESTMENT CC	Twelfth respondent
THE SPECIAL INVESTIGATING UNIT	Thirteenth respondent
THE MINISTER OF FINANCE: ENOCH GODONGWANA N.O.	Fourteenth respondent
COMBINED PRIVATE INVESTIGATIONS (PTY) LTD	Fifteenth Respondent

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the parties/their legal representatives by email. The Order is further uploaded to the electronic file of this matter on CaseLines by the Judge or his/her secretary. The date of this Order is deemed to be 14 May 2023.

REASONS FOR ORDER MADE ON 19 APRIL 2024

HA VAN DER MERWE, AJ:

- [1] In the application before me, the applicants sought a number of documents that form part of the record pertaining to the decision by the first respondent to award tenders to the third to twelfth respondents. The application before me is interlocutory to the main application in which the applicants seek to review the award of the tenders. On 19 April 2024, I made an order directing the first

respondent to make the documents sought by the applicants available to them, subject to a confidentiality regime that is set out in some detail in the order.

- [2] Mr Cilliers appeared for the applicants. He moved for a draft order (“the draft order”) to be made an order of court. Ms Rajah appeared for the first and second respondents. She informed me that between counsel for the applicants and counsel for the first and second respondents, they had come to an agreement on the draft order, but since the first and second respondents’ mandate to their legal representatives to agree to the terms of the draft order would not be forthcoming during the motion court week that the application was set down, the draft order could not be made an order by agreement. Thus, while Ms Rajah had no mandate to agree on behalf of her clients to the draft order being made an order of court, she had no submissions to make in opposition to the order sought by Mr Cilliers.
- [3] On 3 May 2024 the first respondent, by a notice to that effect, requested my reasons for making the order I did on 19 April 2024. My reasons follow.
- [4] In terms of rule 53(1)(b), the applicants are entitled to the record of the proceedings sought to be reviewed in the main application. It is well-established that if the documents to which an applicant is entitled are confidential, the court may make an order providing for reasonable means to preserve the confidentiality that attaches to such documents. Implicit in this is that before a court’s discretion to provide for reasonable means to preserve the confidentiality of documents is engaged, it must first be established that the documents are indeed confidential.
- [5] On the facts before me, the only evidence that the documents sought by the applicants is confidential, is the say-so of the first and second respondents’ attorney. He states as follows in the first and second respondents’ answering affidavit:

“It is common cause that all the bidders are *de facto* business competitors of the Applicants and that sensitive commercial information is contained in the tender documents which form part of the record.”

- [6] The first and second respondents' claim that the documents are confidential, is challenged in the replying affidavit.
- [7] The first and second respondents' attorney's say-so that the documents contain "sensitive commercial information" does not establish that it is confidential. The mere fact that the applicants and third to twelfth respondents are competitors, does not in and of itself justify the conclusion that the documents contain confidential information.
- [8] Moreover, it is not explained why the first and second respondents saw fit to assume the role of champions of the third to twelfth respondents' interests. Notable in its absence is a claim to confidentiality by those respondents. In my view, it was for the third to twelfth respondents to claim confidentiality, not the first and second respondents, especially when there is nothing in the affidavits to suggest that the first or second respondents' own interests are imperilled by providing the documents to which the applicants are entitled in terms of rule 53(1)(b).
- [9] On the facts before me, therefore, the applicants are entitled to the documents sought in this application without more and there is no case made out for a confidentiality regime.
- [10] The draft order provides for less than what the applicants are entitled to, in that it provides for a confidentiality regime that the first and second respondents had no business to impose. As the applicants sought an order for less than what they are entitled to, I made the draft order an order of court.

H A VAN DER MERWE
ACTING JUDGE OF THE HIGH COURT

Heard on: 19 April 2024

Delivered on: 14 May 2024

Appearances:

For the applicants: PG Cilliers SC & APJ Els SC

Instructed by: Albert Hibbert Attorneys

For the fifth respondent: Adv H Rajah

Instructed by: K M Mmuoe Attorneys