

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 2024-073127

1. REPORTABLE: NO  
2. OF INTEREST TO OTHER JUDGES: NO  
3. REVISED: NO  
DATE: 31 July 2024



In the matter between:

**KOKOBETSO GROUP (PTY) LTD**

**Applicant**

and

**MINISTER OF DEFENCE AND MILITARY VETERANS**

**First Respondent**

**DIKAPI CLEANING SERVICES**

**Second**

**Respondent**

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**JUDGMENT**

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**K STRYDOM, AJ**

*Tendering has become a risky business and Courts are often placed in an invidious position in exercising their administrative law discretion – a discretion that may be academic in a particular case, leaving a wronged tenderer without any effective remedy.<sup>1</sup>*

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<sup>1</sup> *Moseme Road Construction CC and Others v King Civil Engineering Contractors (Pty) Ltd and Another* (385/2009) [2010] ZASCA 13; 2010 (4) SA 359 (SCA) ; [2010] 3 All SA 549 (SCA) (15 March 2010) para 1

## Introduction

1. Pursuant to an advertisement by the first Respondent, the Applicant placed a bid for a tender for the supply of cleaning services to 1 Military Hospital. The tender validity period of 120 days expired on the 25<sup>th</sup> of October 2023. As it had not received any response from the first Respondent, the Applicant, on the 24<sup>th</sup> of June 2024, sent a letter to the first Respondent, requesting information regarding the status of the tender. In reply, on the 26<sup>th</sup>, the first Respondent indicated that the tender was awarded to the second Respondent on the 30<sup>th</sup> of May 2024.
2. Aggrieved by the fact that it had not received a notice of request to extend the bid validity period, prior to lapsing thereof, the Applicant brought this urgent application for interim relief, on the 3<sup>rd</sup> of July 2024, to halt the implementation of the tender awarded to the second Respondent, pending the review and setting aside thereof.
3. Central to both the issues of 'substantial redress in due course' (for purposes of urgency), as well as 'reasonable apprehension of harm' (for purposes of the interim interdict) lies a Court of review's the predilection towards eggs....

## URGENCY

4. As succinctly put by Siwendu J in *Marce Projects*<sup>2</sup>: "...the test for urgency when an audience is sought in the urgent Court is two-fold:
  - a. *whether the Applicant brought the application with the requisite degree of urgency;*" and
  - b. *"whether, not hearing the application on the basis of urgency will deny the Applicant substantial redress in due course."*<sup>3</sup>

### ***Requisite degree of urgency***

5. I do not intend to discuss all the grounds raised regarding the time periods within which the application was brought. I am satisfied that the Applicant has explained the delay between being informed of the award of the tender and the launching of the application.
6. I will however address one of the grounds proffered by first Respondent in this regard. It argues that being an organ of state, it should have been afforded sufficient time to consider

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<sup>2</sup> *Marce Projects (Pty) Ltd and Another v City of Johannesburg Metropolitan Municipality and Another* (33992/2019) [2019] ZAGPJHC 540; [2020] 2 All SA 157 (GJ) (17 December 2019)

<sup>3</sup> *Marce Projects* (Note 2 supra) para 35

the application and to, having decided to oppose it, brief counsel to consult and draft opposing papers.

7. According to the Applicant, an unsigned copy of the application was emailed to state attorney (being the first Respondent's attorney of record.) The first Respondent admits that the signed application was served on the state attorney on the 4<sup>th</sup> of July 2024. It then initiated the process of appointing counsel. Counsel was appointed on the 10<sup>th</sup>, consultations with the relevant officials were held on the 11<sup>th</sup> and the answering affidavit was commissioned and served on the 12<sup>th</sup> of July 2024. This application was set down for the 16<sup>th</sup>, but only heard on the 17<sup>th</sup> of July 2024.
8. Its prejudice in relation to the truncated timeframes, it was argued, relates to the limited time it had to prepare argument following receipt of the replying affidavit, as well as the fact that it was not able to obtain all the records pertaining to the tender. Given that a full set of papers from all parties was before me at the hearing hereof, including heads of argument, the former needs no further discussion.
9. With regards to the latter ground of prejudice, it is important to note that the first Respondent's primary defence is that *"...(t)here was no basis to ask the Applicant to extend its tender validity period. By the time the Applicant's tender validity expired, the Applicant had already been disqualified on account of not having met the functionality criteria."*<sup>4</sup> In substantiation of the Applicant's disqualification, it attached Annexure BMK3 – seemingly a "Phase 2 Step 1 functionality score sheet" which indicates that the Applicant did not score the required 70% to qualify. However, as pointed out by the Applicant, this score sheet was completed on the 31<sup>st</sup> of January 2024 – some 3 months after the tender validity period expired.
10. At the hearing, counsel for the first Respondent indicated that this score sheet might not have been the first disqualification of the Applicant and that, had it been afforded time to obtain all records, it would have been able to prove disqualification prior to lapsing of the validity period.
11. Save to state that it is bizarre that a second assessment would be done after a bidder had already been disqualified, I do not intend to delve into the factual issues raised by this assertion as this issue will be decided upon review. For present purposes however, this argument does not assist the first Respondent's argument against urgency. The first

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<sup>4</sup> First Respondent's answering affidavit paragraph 74

Respondent, on the 26<sup>th</sup> of June 2024, indicated that the Applicant failed the second phase functionality assessment. It knew from service of the application on the 4<sup>th</sup> of July 2024, that the Applicant relies on its failure to send a notice of request for extension of the bid validity period to the Applicant before 25 October 2023. The first Respondent fails to explain how it knew of the disqualification of the Applicant on the 26<sup>th</sup> of June 2024 but could not obtain precise records relating to this disqualification when alerted to the challenge to the validity of the tender award on the 4<sup>th</sup> of July 2024. I fail to understand how the appointment of counsel correlates with obtaining records on the strength of which the first Respondent, prior to the launching of the application, relied in communicating its decision to the Applicant.

### ***Substantial redress in due course***

12. As alluded to earlier, the same consideration underpins the Applicant's case for urgency as well as its case its reasonable apprehension of harm – namely the potential that a Court on review would decline to unscramble the egg that is the current tender awarded to the second Respondent.

13. It is important to at this juncture note that, whilst similar, the assessment of substantial redress for purposes of urgency is not the same as the assessment of what a reasonable apprehension of harm would be. In *East Rock*,<sup>5</sup> it was described as follows:

*"It is important to note that the rules require absence of substantial redress. This is not equivalent to irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course, but it may not be substantial. Whether an Applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An Applicant must make out his case in this regard."*

14. The evaluation of the allegations made could also differ. In assessing urgency, "...*(t)he evaluation must be undertaken by an analysis of the Applicant's case taken together with allegations by the Respondent which the Applicant does not dispute.*"<sup>6</sup> As the current matter concerns interim relief, this differentiation does not really enter the fray, however, it should be borne in mind that the emphasis is on the Applicant's case.

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<sup>5</sup> *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) paras 6 and 7

<sup>6</sup> *Mogalakwena Local Municipality v The Provincial Executive Council, Limpopo and others* (35248/14) [2014] ZAGPPHC 400; 4 All SA 67 (GP) (19 June 2014), at paragraphs 63 and 64,

15. *In casu* the Applicant's case for urgency is based on the fact that a Court of review has the discretion to, despite a finding of invalidity, refuse to set aside a tender. The Applicant, on the strength of the authorities fully discussed below, submits that the longer performance in terms of an invalid tender occurs, the less likely a Court of review would be to set aside such a tender. The Applicant therefore urgently needs to halt the implementation of the current tender to avoid the potential loss of any remedy in due course. As will be expanded on below, this submission, in principle, is legally sound.
16. The second Respondent's contentions regarding 'substantial redress', to my mind, are more apt to the consideration of the reasonableness of the harm apprehended. As such, they will be discussed below.
17. Accordingly, the matter is regarded as urgent.

## **REQUIREMENTS FOR AN INTERIM INTERDICT**

### ***Prima facie right***

18. The Applicant asserts that its *prima facie* right is founded in the provisions of Section 217 of the Constitution, which requires that all other procurement legislation, regulations and policies be implemented in accordance with a procurement system that is fair, equitable, transparent, competitive and cost effective. Section 217 as such evinces the importance of protecting public resources.
19. The Applicant, on the strength of Section 217 therefore argues that it, personally, has a right to participate in fair tender processes. Additionally, it founds its right in the broader public interest in the protection of public resources in the procurement process
20. The first Respondent, on the strength of the Constitutional Court's findings in *OUTA*<sup>7</sup> argued that as the interim interdict is sought against an organ of state, the Applicant should have demonstrated a *prima facie* right that is threatened by an impending or imminent irreparable harm. It argued that right to review the impugned decisions did not require any preservation *pendente lite*.
21. The reliance on *OUTA in casu* is misplaced. In *Marce*,<sup>8</sup> Siwendu J explained:

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<sup>7</sup> *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* (CCT 38/12) [2012] ZACC 18; 2012 (6) SA 223 (CC); 2012 (11) BCLR 1148 (CC) (20 September 2012) paras 48 and 50

<sup>8</sup> *Marce Projects* (Note 2 *supra*) paras 77 and 78

*OUTA is distinguishable from the present facts. OUTA does not limit the locus standi of an Applicant who seeks to interdict the implementation of a tender pending a review to a tenderer who contends that the bid was wrongly awarded to the successful tenderer in that it ought to have been awarded to it.*

*In OUTA, the Constitutional Court set aside the interim interdict granted by the High Court on the basis that the impugned decisions fell within the framework of government policy. It was not the Applicant's case in OUTA that the impugned decisions were taken unlawfully. The Applicant sought to impugn the decisions on the sole basis that the costs of collecting e-tolls are unreasonably high and irrational. Hence, the Constitutional Court found that preventing the implementation of the decision under those circumstances will offend the doctrine of separation of powers.*

*.....No organ of state may use the veil afforded to it by the doctrine of separation of powers to implement a decision that was allegedly taken unlawfully.”<sup>9</sup>*

22. The essential difference is this: In OUTA the rationality of the decision taken was attacked. *In casu*, the lawfulness of the decision is challenged. OUTA was an instance where the Court was asked to venture into the domain of the policies underscoring the decision of the executive, whilst *in casu* the Court is asked to judge whether the decision taken complied with legislative framework.

23. The Applicant has established that it has a *prima facie* right.

### ***Reasonable apprehension of irreparable harm***

24. A reasonable apprehension of injury is one which a reasonable man might entertain on being faced with certain facts. The test for apprehension is an objective one. The Applicant must therefore show, objectively adjudicated, that his apprehensions are well-grounded. Mere assertions of his fears are insufficient. The facts grounding his apprehension must be set out in the founding papers to enable the Court to determine for itself whether the fears are reasonable.<sup>10</sup>

25. In the case of *Erasmus v Afrikander Proprietary Mines Ltd*,<sup>11</sup> it was held that it was not necessary for the Applicant to establish on a balance of probabilities that the injury will

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<sup>9</sup> *Marce Projects* (Note 2 supra) para 79

<sup>10</sup> See the discussion in Van Loggerenberg *Erasmus Superior Court Practice* (2ed) Vol. 2 at D6-14.

<sup>11</sup> 1976 (1) SA 950 (W) at 965

occur; he must simply establish on a balance of probabilities that are grounds for a reasonable apprehension that his rights will detrimentally be affected.

26. As discussed under ‘urgency’ *supra*, the Applicant argues that that it would suffer irreparable harm if a Court of review, despite finding that the award of the current tender was unlawful or invalid, in exercising its discretion, decide to not set aside the tender. Should that occur, its right to participate in a valid tender process would be infringed upon and the public resources that would have been expended on an invalid tender, would not be recoverable.
27. Without the benefit of a full record, it is not for this Court to traverse the merits of the future review application. However, as the harm foreseen directly relates to whether or not a Court of review would set aside the present awarded tender, it is necessary to examine the inherent probabilities of such an order being made in future under the specific circumstances of this case.
28. In *Moseme*,<sup>12</sup> the SCA, confirmed that there are categories of cases “...where by reason of the effluxion of time (and intervening events) an invalid administrative act must be permitted to stand.” It held that ‘*considerations of pragmatism and practicality*’ were relevant in the exercise of the discretion...” of a Court of review in such instances.<sup>13</sup>
29. To my mind, the “effluxion of time” should not be understood to constitute a separate distinct factor that would influence a Court of review’s decision. Contextually it should be understood to reference the events that occur during such an extended time period which would, for instance, render a review of the decision moot (e.g. the tender period expired before review) or, due to the nature of the tender, would make it impractical to set it aside (e.g. a bridge that is approximately 70% completed under the invalid tender.)
30. The nature of the tender and the specific facts of each case are therefore determinative in the Court of review’s determination of whether the case before it falls within such a “category of cases.” Despite there therefore being no set list of “types” of tenders that would, on the practicalities, be allowed to stand despite being invalid, our Courts have to some extent provided general guidance as to when such a decision would be practical or pragmatic.

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<sup>12</sup> *Moseme Road Construction CC and Others v King Civil Engineering Contractors (Pty) Ltd and Another* (385/2009) [2010] ZASCA 13; 2010 (4) SA 359 (SCA) ; [2010] 3 All SA 549 (SCA) (15 March 2010)

<sup>13</sup> *Moseme* (*supra* Note 12) at para 15

31. In *Eskom Holdings Limited and Another v New Reclamation Group (Pty) Ltd*,<sup>14</sup> the SCA considered whether work called for in terms of the invalid tender was divisible. Having found that “...the work involved *ad hoc* collections of material, its subsequent processing and sale..” and that “...(a)ny contractor with the necessary resources could do that, even at this stage it..”,<sup>15</sup> set aside the invalid tender. The fact that the invalid tender’s awarded period had almost expired (only three months were left), did not factor into the SCA’s decision.<sup>16</sup>
32. In *Marce Projects*<sup>17</sup> (a case relied on by the Applicant), an interim interdict was granted to halt the further implementation of a purportedly invalid tender. In that case the tender involved the supply, delivery, maintenance and support services for the City’s fire services fleet. The tender had already been partially fulfilled (17 fire trucks had already been delivered). In granting the interim order, Siwendu J found that:
- “If the interdict is not awarded, the continued implementation of the tender will render the review academic as it will limit the just and equitable relief that the Court may award. The review Court is unlikely to set aside the tender and contract concluded pursuant thereto retrospectively, as doing so will require the return of the vehicles that have been delivered and the return of funds paid. Such an order will be impractical, as it will not restore the parties to their respective positions before the award was made.”*<sup>18</sup>
33. In another case referenced by the Applicant, *Document Warehouse (Pty) Ltd v South African Social Security Agency and Others*,<sup>19</sup> a similar interim interdict was granted. There the impugned tender concerned delivery of document storage services. In that case, the tender had yet to be implemented. If it was allowed to be implemented, millions of documents would have to be transferred from DWS (the previous service provider) to Metrofile (the new service provider). By the time a review application would have been heard, Metrofile would already have had to lease premises for storage and a large portion of the documents would have been transferred to it. Potteril J held that, given the expense, risk to SASSA beneficiaries and indivisibility of the nature of the work that would have been

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<sup>14</sup> *Eskom Holdings Limited and Another v New Reclamation Group (Pty) Ltd* (358/08) [2009] ZASCA 8; 2009 (4) SA 628 (SCA) ; 2009 (8) BCLR 813 (SCA) ; [2009] 2 All SA 513 (SCA) (13 March 2009)

<sup>15</sup> *Eskom* (Note 14 supra) para 16

<sup>16</sup> *Eskom* (Note 14 supra) para 15

<sup>17</sup> *Marce Projects* (Note 2 supra)

<sup>18</sup> *Marce Projects* (Note 2 supra) para 85

<sup>19</sup> *Document Warehouse (Pty) Ltd v South African Social Security Agency and Others* (2023-088251) [2023] ZAGPPHC 1857 (2 November 2023)

done by the time the review application (even on an expedited basis) would have been heard, it was improbable, that the Court would set aside the tender.

34. The Applicant also referred to *Gibb (Pty) Ltd v Passenger Rail Agency of South Africa and Another*<sup>20</sup> where Wilson J halted the implementation of a tender involving the provision of engineering services for the modernisation of PRASA's depots. The judgment does not explicitly discuss the foreseen harm, but given the nature of the services to be provided, the tender was for a fixed period and for a fixed project. Either the project would have been completed rendering a review moot, or, if partially implemented, a Court of review would be unable to set it aside on the basis of the practicalities.
35. In all the cases discussed *supra*, it was reasonable to conclude that the proverbial egg would, by the time the review application was heard, either have been scrambled (partial performance of work of an indivisible nature) or already have been consumed (mootness of relief sought due to completion of the work or project).
36. Counsel for the second Respondent submitted that the nature of the work in terms of the impugned tender *in casu* is such that the "egg would not even crack."
37. The tender concerns daily cleaning services rendered at 1 Military hospital. As any home keeper would well know, cleaning is never done. Regardless of for how long the second Respondent had been cleaning the hospital by the time the review is heard, the extent of cleaning services needed would be the same as at inception of the tender. There can never be partial fulfilment of the tender, which would render it impractical to set it aside and restore the status *quo*. Neither would the effluxion of time result in the finalisation of the "project", rendering a review moot.
38. Insofar as the harm to the public interest in protecting public resources is concerned, counsel for the second Respondent argued that, on a practical basis, the granting of the present interdict would be pointless. The Applicant does not seek the cessation of cleaning services at the hospital pending the review. In fact, it has argued (regarding balance of convenience) that the first Respondent could obtain such services in the interim using emergency procurement provisions. Such interim service providers would in any event have to be paid. As a result, the only effect of the interdict on the public purse would be the redirection of payments from the second Respondent to the interim service provider.

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<sup>20</sup> *Gibb (Pty) Ltd v Passenger Rail Agency of South Africa and Another* (35870/2021) [2021] ZAGPJHC 146 (26 August 2021)

39. I pause to note that the Applicant had attempted to infer that public harm could ensue as a result of the second Respondent's inexperience in delivering the tendered services. This allegation was based on, for instance the brevity of similar work listed on the second Respondent's own social media profiles. At the hearing I had already indicated that this allegation was unsubstantiated and would not be entertained.
40. In any event, in instances where the Court of review finds the egg to be rotten, the consideration of practicality and pragmatism no longer apply. The SCA, for instance, emphatically stated in *Millennium Waste Management*<sup>21</sup> that, had the successful tenderer been shown to have been complicit in bringing about the exclusion of the tender “....it would have been appropriate to set the decision aside for that reason alone...” Likewise, in *Moseme*,<sup>22</sup> when it considered whether the balance of convenience favoured the Applicant, the SCA remarked that “(t)hese problems may not be of any consequence in the case of corruption or fraud or where the successful tenderer was complicit in the irregularity.”

### ***Balance of convenience***

41. The Applicant's submissions regarding the prejudice it would suffer, should the interdict not be granted, are by and large the same as argued for purposes of 'foreseeable harm' supra: i.e that there is a perceived risk that the continued implementation of the tender would result in the Court of review declining to set it aside. As discussed *supra*, *in casu*, the realisation of this 'risk' is, at most, an academic possibility.
42. I have likewise already addressed the alleged prejudice to the public purse.
43. At the hearing, counsel for the Applicant also argued that the broader public interest and confidence in the lawful procurement processes would be prejudiced if this Court “turned a blind eye” to invalid or unlawful tender awards. I agree. It would be a lamentable failure of justice for any Court to ignore invalid or unlawful administrative decisions. The public can however rest assured that once the Court tasked with determining whether the present decision was invalid or unlawful, being the *Court of review*, makes such a finding, it will not simply “turn a blind eye”.

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<sup>21</sup> *Millennium Waste Management (Pty) Ltd. v Chairperson of the Tender Board: Limpopo Province and Others* (31/2007) [2007] ZASCA 165; [2007] SCA 165 (RSA); [2008] 2 All SA 145; 2008 (2) SA 481; 2008 (5) BCLR 508; 2008 (2) SA 481 (SCA) (29 November 2007) para 15

<sup>22</sup> *Moseme* (Note 12 *supra*) para 21

44. On the other side of the scale is the prejudice to be suffered by the first and second Respondents should this interim interdict be granted.
45. The health risks that would emanate from a failure to clean 1 Military Hospital daily, need not be enumerated on. The Applicant sought to underplay this risk by referring to the invocation of “emergency procurement” processes by the first Respondent. I requested the first Respondent to provide a supplementary note setting out how these “emergency procurement” procedures work. I am grateful to Mr Loselo for the very well drafted guide to the intricacies of procedures to be followed before services can be procured ‘urgently’. The note clearly set out the legislative framework, policies, addendums to policies, meeting requirements and a plethora of other tapes of reddish colour, before services can be obtained on the basis of urgency. Counsel listed ten well substantiated reasons why the emergency procurement procedures were not suitable to the matter *in casu*. I am satisfied that a concise and legally sound answer to the Applicant’s assertion in this regard would be: “It doesn’t work like that.”
46. The second Respondent, upon being awarded the tender, appointed approximately 105 employees, who had been employed by the previous service provider. If the interdict were to be granted it would either have to continue paying their salaries or would have to retrench them. The former would result in its own undoing, whilst the latter would be devastating to 105 households.
47. The Applicant argued that the employees could simply be ‘transferred’ to the interim service provider. Even if it did “work like that” there is no guarantee that another company would employ the employees.
48. As to the financial impact of the interdict on the second Respondent itself, the Applicant submitted that, given the short period since being awarded the tender, the second Respondent would be able to simply continue doing the other work it did prior to the awarding of the current tender. This argument did not find favour in Court and, upon further consideration finds even less so now.

***The absence of a suitable, alternative remedy***

49. Having found that there is no well-grounded reasonable apprehension of harm that would befall the Applicant, should the interdict not be granted in the interim, the Applicant’s remedy, is the review application itself.

50. Furthermore, if the Applicant's intimations of impropriety on the part of the Respondents in the awarding of the tender, on review are proven to substantiate fraud or corruption and it is proven that the Applicant should have been awarded the tender, it would also be entitled to claim for damages.<sup>23</sup>

## FINDING AND COSTS

51. By virtue of the reasoning set out above, it is found that the Applicant has failed to satisfy the requirements for the granting of the interim relief sought.

52. Counsel for the Applicant argued that, should the application be dismissed, the principles in *Biowatch*<sup>24</sup> should apply and no order of costs should be made. That applications for the review of public tenders, invoke the principles of *Biowatch*, in relation to costs, is not seriously in dispute. For instance, in *SMEC South Africa (Pty) Ltd v City of Cape Town and Others*,<sup>25</sup> in finding that *Biowatch* was applicable to the review of as a tender, the Court stated that:

*"...in addition to the constitutional dimensions inherent in all PAJA reviews, this case (like all tender reviews) concerns section 217(1) of the Constitution and various enactments and municipal policies designed to give effect to it."*

53. The first Respondent argued that *Biowatch* was not applicable to this interim application as it was, in fact, not the application in terms of which the Applicant sought to protect his constitutional rights. It was argued that the review application was the application concerned with the protection of constitutional rights.

54. I disagree with this contention. The fact that the Applicant sought interim relief to proactively protect the constitutional rights of itself and the public, does not negate the fact that it sought to assert constitutional rights. Interim interdicts halting the implementation of tenders frequently form an essential step in the enforcement of constitutional rights. The need to halt implementation as soon as reasonably possible is evidenced by the various cases discussed under the heading "Reasonable apprehension of irreparable harm" *supra*.

55. As a result, the following order is made:

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<sup>23</sup> See for instance: *Minister of Finance and Others v Gore NO* (230/06) [2006] ZASCA 98; [2007] 1 All SA 309 (SCA); 2007 (1) SA 111 (SCA) (8 September 2006) para 52

<sup>24</sup> *Biowatch Trust v Registrar, Genetic Resources, and others* 2009 (6) SA 232; 2009 (10) BCLR 1014 (CC).

<sup>25</sup> *SMEC South Africa (Pty) Ltd v City of Cape Town and Others; SMEC South Africa (Pty) Ltd v City of Cape Town and Others* (8277/2021;14097/2021) [2022] ZAWCHC 131 (23 June 2022)

## ORDER

1. The application is enrolled and determined as a matter of urgency pursuant to the provisions of uniform rule of Court 6(12) and any non-compliance with the ordinary rules and practices pertaining to forms, service and enrolment is hereby condoned.
2. The application for interim relief as set out in Part A of the Applicant's notice of motion dated 3 July 2024 is dismissed.
3. Each party is liable for its own costs in relation to the application for interim relief as set out in Part A of the Applicant's notice of motion dated 3 July 2024.

  
**K STRYDOM**  
**ACTING JUDGE OF THE HIGH**  
**COURT, GAUTENG DIVISION,**  
**PRETORIA**

**Judgment reserved: 17 July 2024**

**Supplementary submissions received: 22 July 2024**

**Judgment handed down: 31 July 2024**

**Appearances:**

For the Applicant:

Adv T Moloi, instructed by Tshikosi Incorporated Attorneys

For the first Respondent:

Adv P Loselo, instructed by the State Attorney, Pretoria

For the second Respondent:

Mr N J Esterhuyse, instructed by Du Plessis Van Der Westhuizen Inc