REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION, PRETORIA

Case No: 39600/22

Reportable: No
Of interest to other Judges: No
Revised: No

[redacted]

SIGNATURE

Date:

In the matter between:

MT CREATIONS TRADING ENTERPRISE (PTY) LTD AND 16 OTHERS — Applicants

and

UNIVERSAL SERVICE AND ACCESS AGENCY OF SOUTH AFRICA — Respondent

---

JUDGEMENT

MOOKI J

1 The applicants claim payment from the respondent for services rendered by the applicants. The respondent engaged the applicants to install set-top boxes and related accessories as part of the switch from broadcasting using an analog signal to broadcasting using a digital signal. Users required set-top boxes or decoders to receive a digital signal.

2 The South African Post Office supplied the applicants with the set-top boxes and related accessories for installation by the applicants. The applicants in turn installed the set-top boxes and/or decoders at the behest of the respondent.

3 A dispute arose among the parties regarding payment by the respondent to the applicants. The dispute was referred to arbitration. The parties settled their dispute.

4 The parties agreed to the following as part of their settlement: the respondent would pay the applicants the sum of R20 000 000.00, of which R12 500 000.00 would be paid upon signature of the settlement agreement; the respondent would retain R5 730 679.41 as set-off for outstanding stock. The respondent would also retain an amount of R1 769 320.59, which would be deposited into an interest-bearing account pending verification of

the correctness of payments made by the South African Post Office to the applicants and the number of uninstalled and/returned stock. The respondent was to verify the outstanding stock.

5 The settlement was made an arbitration award on 3 November 2020. The award was later made an order of court.

6 The respondent paid the amount of R12 500 000.00. The respondent also paid the amount of R1 769 320.59, with interest. The respondent retains the amount of R5 730 679.41. The applicants contend that the respondent's verification process established that there is no outstanding stock, with the result that the respondent is required to pay the R5 730 679.41 to the applicants.

7 It is denied on behalf of the respondent that verification has been completed. The respondent's executive caretaker is said to have commissioned an "open audit" which established substantial discrepancies. The executive caretaker is further said to have commissioned a "forensic audit" in May 2020 for the verification of outstanding and unreturned set-top boxes and antennae/dishes. The audit is said to be ongoing. It is contended on behalf of the respondent that the applicants may be found to be indebted to the respondent.

8 The applicants wrote to attorneys for the respondent on 11 July 2022, demanding payment in the amount of R5 730 679.41. There were further exchanges of correspondence between 11 July 2022 and, at least, by 12 September 2022. It was never contended on behalf of the respondent

during the exchanges that the respondent had commissioned or that an audit had revealed discrepancies.

9 It was pointed out on behalf of the applicants that the respondent was required, in terms of the settlement agreement, to have completed the verification by 31 July 2020. It was pointed out on behalf of the applicants that the respondent did not include a copy of the report or audit mentioned by the respondent. It was further pointed out that there is no mention of when the stated verification would be completed, and the reasons for the delay.

10 The applicants denied that the settlement agreement provided for the respondent to undertake an “audit”; that the respondent was to verify stock listed in annexure A to the settlement agreement, and that the stated forensic audit was not a legal basis for a refusal to pay.

11 It was contended on behalf of the applicants that uninstalled stock was returned to warehouses of the South African Post Office and that the total number of returned stock was confirmed at a meeting on 23 October 2019. The respondent also verified stock in warehouses of the South African Post Office in November 2021. The verification was made at the behest of the Minister of Communications and Digital Technologies.

12 The applicants drew attention to a “Stock Count Report” that was prepared following verification by the respondent at the instance of the Minister. The report is dated 13 November 2021. The applicants contend that the

report shows that the verification has been completed, with the result that the respondent had no cause to withhold the R5 730 679.41.

13 I agree that the respondent has no cause to withhold the R5 730 679.41 being claimed by the applicants. The respondent's acting chief executive officer, who deposed to the answering affidavit, was not candid with the court. She made unsubstantiated averments that "an open audit" revealed substantial discrepancies. She did not explain why an audit that was commissioned in May 2020 remained outstanding. She does not say who is undertaking the audit. There is no confirmatory affidavit in relation to her averments.

14 The respondent's acting chief executive officer, more fundamentally, was not frank with the court by failing to mention the Stock Count Report. This report is dated 13 November 2021. It is addressed to the deponent as the respondent's acting chief executive officer. She had no basis to say that an audit was pending since May 2020 when she knew of the Stock Count Report long after May 2020.

15 The "purpose" of the Stock Count Report is stated as "To provide a final report on the national stock count on the BDM inventory in the South African Post Office Warehouses and local branches as instructed by the Minister of Communications and Digital Technologies."

16 The stock count was completed in November 2021. It is not understood how the respondent's acting chief executive officer can say, on oath, that

there is a pending audit in relation to the stock when she has long been aware that "a final report" had been prepared at in relation to such stock.

17 Paragraph 2.2 of the Stock Count Report details the stock count process. The process included a photographic record that stock exists in a particular warehouse or branch. Paragraph 2.3 of the report details the "stock count assurance." It is recorded that "The nationwide stock count was conducted with both the Internal Audit Teams of USAASA and the South African Post Office."

18 The applicants' indebtedness was subject to stock verification; with the R5 730 679.41 kept in an interest-bearing account pending such verification. The applicants have shown that the verification has been done. The respondent has no cause to withhold the payment.

19 The respondent sought condonation for the late filing of its answering affidavit. The delay is condoned.

20 I make the following order:

(1) The respondent is ordered to pay the applicants:

a. The sum of R5 730 679.41;

b. Interest on the sum of R5 730 679.41 at 9.5% from 14 February 2020 to date of payment.

(2) The costs of the application, including the costs of the postponement on 15 August 2023.

[redacted]

O MOOKI

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearance:

On behalf of the Applicants	**T Mphahlane**
Instructed by:	**Madima Attorneys Inc.**
On behalf of the Respondent	**C Setlhako**
Instructed by:	**The State Attorney, Pretoria**
Date of Hearing:	**27 May 2024**
Date of Judgement:	**13 August 2024**