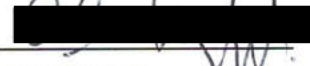


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case No: 2023/122252

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: YES/ NO
30 July 2024	
DATE	SIGNATURE

In the matter between:

ONECONNECT SOLUTIONS (PTY) LTD

APPLICANT

And

UNIVERISTY OF JOHANNESBURG

FIRST RESPONDENT

EIFFEL CORP (PTY) LTD

SECOND RESPONDENT

**PERSONNEL VISION (PTY) LTD T/A
VISIONS CONSULTING**

THIRD RESPONDENT

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email and by being uploaded to CaseLines. The date for hand-down is deemed to be 30 July 2024

JUDGMENT

G S MYBURGH, AJ:

- [1] This is an application for leave to appeal against a judgment and order which I delivered in January this year, in terms of which I dismissed the main application with costs.
- [2] The test which applies is well known – in essence, a party who seeks leave to appeal is required to demonstrate that it has prospects of success on appeal; alternatively, that there is some other compelling reason to grant leave. It was not contended that there are extraneous compelling reasons, and I do not think there are any. The question is thus simply whether I believe that another court might reasonably come to a different conclusion.
- [3] Mr Kutumela, who appeared for the applicant argued that my judgment departs, in certain material respects, from established jurisprudence. He also argued that the effect of my judgment would be to pre-empt the decision of the court which may, in due course, come to hear the review. I am not persuaded that my judgment has either of the effects contended for; however, for reasons which appear hereunder, I do not consider it necessary to deal further with this argument.
- [4] An argument which I understood to be central to the applicant's case was that I ought not to have found that the applicant's tender in respect of the alternative product "Ultra" was in fact non-compliant (this for reasons which appear from my judgment) as the respondent had not raised that as a defence. I have to confess to being in two minds about this as I am not convinced that a distinction falls properly to be drawn between a tender which, on analysis, and bearing in mind what transpired during the bid clarification process, is found not to cover everything that was required, and one which is non-compliant. In either event, the price tendered would not cover everything that was required by the RFP or invitation to tender, and the price could accordingly be said to be misleading – as the university considered the applicant's tender to be.
- [5] That said, I accept that "non-compliant" is something of term of art and that another court might reasonably adopt a view not quite as narrow as that which I

adopted and my reasonably come to a different conclusion – especially on this on this issue. I have accordingly decided that leave to appeal ought properly to be granted. As it appears to me that the issues are essentially of a legal rather than factual nature, I am of the view that the appeal should lie to the Supreme Court of Appeal.

[6] I accordingly make the following order:

Order

- a. The application for leave to appeal is granted.
- b. The appeal shall lie to the Supreme Court of Appeal.
- c. The costs of the application for leave to appeal shall be costs in the appeal.


G S MYBURGH
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES:

For the Applicant:	Adv L Kutumela
Instructed by:	Motsoneneng Bill Attorney Inc.

For the 1 st Respondent:	Adv C Avidon
Instructed by:	Lawtons Africa

Date of Hearing:	20 June 2024
Date of Judgment:	30 July 2024