



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 2824/2024

In the matter between

Rantoa Service Providers CC

Applicant

and

**MEC: Department of Police, Roads and Transport,
Free State Province**

First Respondent

**Head of Department: Police Roads and Transport,
Free State Province**

Second Respondent

**Neutral citation: Rantoa Service Providers CC and MEC: Department of Police,
Roads and Transport Free State Province and 1 other**

Coram: Gusha AJ

Heard: 01 August 2024

Delivered: This judgment was handed down and released to SAFLII. The date for hand-down is deemed to be 22 August 2024.

Summary: Application to furnish reasons – s 5 of the Promotion of Administrative Justice Act 3 of 2000 – written reasons furnished two days before date of hearing – costs only remaining for determination.

ORDER

The respondents to pay costs on Scale B, the one paying the other to be absolved.

DRAFT JUDGMENT

Gusha AJ

[1] In its notice of motion, the applicant initially sought, as its first prayer, an order compelling the respondents to furnish it, within 14 days of the order sought, with full and adequate written reasons why its bid for the tender: PR&T/BID 07/2022/2023 (the bid) for appointment of a contractor for special maintenance of the primary road between Hoopstad and Bloemhof in the Lejweleputswa District Municipality was not successful. It further sought, as its second prayer, an order compelling the respondents to furnish it with the documents relevant to the adjudication and awarding of the bid. The aforementioned relief was sought in terms of s 5 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). Its third and last prayer was an order for costs.

[2] Section 5 (1) of PAJA provides that any person whose rights have been adversely affected by administrative action and who has not been given reasons for the action, may within 90 days, request that the administrator concerned furnish written reasons for the action. Such reasons must be furnished within 90 days after receiving the request.

[3] I interpose here to mention that this matter initially served before Reinders J on 21 June 2024 on the unopposed motion roll. On the papers before me it appears that subsequent to the matter being set down for hearing on the 19th June 2024, the respondents on the 26th June 2024 filed their notice to oppose. Pursuant thereto and on 27th June 2024 Reinders J postponed the matter to the opposed motion roll for hearing on 1 August 2024 and directed 'the respondent (*sic*) to file its answering affidavit on or before the 13th July 2024' (the order). It is apposite to mention that contrary to the order, the respondents, to date, failed to file their answering affidavit(s).

[4] During arguments on the 1st August 2024 I was advised by the parties that the

respondents have since furnished the applicant with written reasons, albeit belatedly on 29 June 2024. I was also furnished with the letter detailing the written reasons as furnished. The contents of the letter are self-explanatory.

[5] The aforesaid notwithstanding, the applicant persisted with its prayer to compel the respondents to furnish it with 'full and adequate' reasons. This it submitted, was because the respondents furnished it with inadequate reasons as certain annexures referred to in the written reasons furnished were omitted.

[6] In my view, nothing turns on the fact that Annexures A and B referred to in the letter were not attached. A careful reading of the letter shows that Annexure A is a list of goods and services required by the department, whereas Annexure B is a Government Gazette dated 23 February 2024. Both these documents, in my view, could have been accessed by the applicant online and with relative ease.

[7] The reasons furnished, effectively and adequately inform the applicant why its bid was unsuccessful – the bid was cancelled and thus no award, to any bidder, was made. The letter, albeit belated, is dispositive of the first prayer as sought, and the applicant's persistence therewith is futile.

[8] With regards to its second prayer, the applicant conceded that due to the furnished written reasons, its prayer to compel the respondents to furnish it with the documents relevant to the adjudication and awarding of the bid was now rendered moot. Consequently, the only issue remaining for determination is costs.

[9] Notwithstanding the fact that I have found no reason to grant the first and second prayers sought, the respondents' tardiness and indolence must redound to its disadvantage. In the circumstances of this case, albeit not successful, the applicant is entitled to its costs occasioned by these proceedings. This much is conceded by counsel for the respondents.

[10] The parties are however at variance with regards to the scale on which same is to be awarded. The applicant submits that I must award a punitive cost order as the respondents were reckless at best and vexatious at worst in their handling of this matter.

[11] The respondents oppose the cost order sought and submitted that they tendered costs on a party-party scale but that same was rejected. They submitted that they were not vexatious or reckless in handling this matter, but rather tardy. Counsel for the

respondents tried to persuade the court that this tardiness was due to human error – they apparently laboured under the belief that the letter was dispatched to the applicant, when in fact it was not. I am not persuaded. The respondents' misery is not due to human error but rather to its own indolence.

[12] They were nonchalant, tardy and indolent in their handling of the request for reasons by the applicant. The request for reasons was made on 1 November 2023. Upon not receiving same, the applicant launched this application. The passivity continued, not even a notice of set down was enough to move the respondents into action, either by furnishing the requested reasons or by filing their opposition to the notice of motion as issued and only filing same some two days before date of set down. The nonchalance and indolence did not end there, notwithstanding the order to file their answering affidavits, by the 1st of August 2024, the respondents still had not filed same. To their credit it would appear on the papers before me that they moved into some action on 29 July 2024 and dispatched, via electronic mail, a letter to the applicant informing it that the requested reasons were furnished on or about 11 June 2024. However, it appears on the papers before me that this letter dated 11 June 2024 was never dispatched to the applicant.

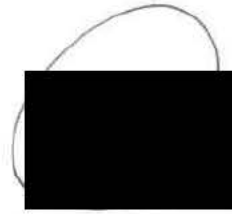
[13] It is a well-established principle of our law that the general rule regarding costs is that the unsuccessful party pays the costs of the successful party on the party and party scale. Equally established is the principle that the court exercises a discretion when considering an appropriate costs order and should, of necessity, exercise same judiciously.¹ In the exercise of its discretion, the court must carefully weigh the issues in the case, the conduct of the parties and any other circumstance which may have a bearing on the issue of costs and then make such order as to costs as would be fair and just between the parties.

[14] I am however not persuaded that this matter is one warranting a punitive cost order; it was a relatively non-complex matter. The main tussle between the parties was rendered settled prior to hearing, furthermore, the respondents' indolence notwithstanding, the applicant could have and indeed should have arrested its own costs as soon as it received the written reasons.

¹ *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another* [2015] ZACC 22; 2015 (5) SA 245 (CC) para 85.

[15] In the result the following order is made:

The respondents to pay costs on Scale B, the one paying the other to be absolved.



NG GUSHA AJ

On behalf of the Applicants:
Instructed by:
BLOEMFONTEIN

Adv. D.R. Thompson
Gcasamba Inc

On behalf of the Respondent:
Instructed by:

Adv K. Motholo (Ms)
Office of the State
Attorney
BLOEMFONTEIN