

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)

CASE NO: 2154 / 2024

In the matter between:

UMAHLUKO PROTECTION SECURITY (PTY) LTD
REG NO. 2022 / 738147 / 07

Applicant

And

PRIVATE SECURITY INDUSTRY REGULATORY
AUTHORITY

Respondent

JUDGMENT

KUNJU AJ

A. Introduction

[1] What Maya JA (as she then was) said in **Private Security Industry Regulatory Authority V Anglo Platinum Management Services Ltd [2007] 1 All SA 154 (SCA)** reverberates throughout this application and it bears repeating. She aptly said:

“[24] It is so that there is a legitimate and compelling public interest in the control of the large and enormously powerful private security industry. This is to ensure, for example, that security officers have no links to criminal activities, are properly trained and are subject to proper disciplinary and regulatory standards and avoid any abuses which might be perpetrated by security officers against the vulnerable public. There is therefore a compelling need for vigilance on the Authority’s part to ensure that the objects of the Act

are not undermined”.

[2] The above quoted statement finds resonance in the circumstances of this application. The question that is raised in this application is whether the mere lodgement of an appeal against a suspension of an operating licence in terms of Section 26(1) of the Private Security Regulatory Act no. 56 of 2001 (the Act) gives rise to the suspension being uplifted.

[3] This application has been brought by the applicant against the respondent consequent to a suspension of its operating licence as a security company.

[4] In taking up the cudgels on behalf of the applicant, the applicant's legal representatives brought an urgent application before this Court, crafted along the following terms:

“[1] Dispensing, so far as needs be, with the forms of service provided for in the uniform rules of court and disposing of this application at such time and place and in such manner and according to such procedure as this court deems fit in terms of the rule 6 (12) of the uniform rules.

*[2] It is declared that the applicant **has formally lodged and noted an appeal** under reference number: SEC26/UmahlukoProc.Sec/4563009 in terms of Section 30 (1) of Private Security Industry Regulatory Act No. 56 of 2001 on 16 May 2024.*

*[3] The respondent is directed in terms of section 26 (8) of the Private Security Industry Regulation Act No. 58 of 2001 **to uplift the applicant's suspension of registration** status dated 25 April 2024, **pending the finalization of an appeal formally lodged** and noted under reference number SEC26/UmahlukoPro.Sec/4563009 on 16 May 2024 in terms of section 30(1) of Private Security Industry Regulation Act No. 56 of 2001 on 16 May 2024.*

[4] The respondent is interdicted and restrained from suspending and

*withdrawing the registration number status of the Applicant as a registered security service provider **pending the finalisation of judicial review, if any, filed within 180 days from the date the respondents dismisses the appeal mentioned above**, in terms of the Promotion of Administration Justice Act No. 3 of 2000.*

[5] Directing the Respondent to pay the costs of this application on a scale as between attorney and client”.

B. Background facts

[5] The uncontested background facts set out in the applicant’s founding affidavit are:

[5.1] the applicant is a registered private security company with offices situated at Mt Ayliff, Eastern Cape.

[5.2] during January 2023, the applicant’s services were hired by Uncedo Taxi Association, to provide security services. This entailed escorting taxi owner.

[5.3] due to lack of resources and sufficient personnel the applicant engaged **V. Bhengu Security Services** in order to assist the applicant in discharging its duties for Uncedo Association. In doing so, the applicant concluded a joint venture agreement with V. Bhengu Security Company for the provisioning of the services required by Uncedo Association.

[5.4] while they were providing the services by escorting and protecting the taxi owners of Uncedo and its passengers, the applicant and V. Bhengu Securities (the security guards) were allegedly brutally attacked by taxi owners and drivers of Boarder Alliance Taxi Association of Port St Johns, Eastern Cape.

[5.5] It would appear that there emerged a shooting incident between the association and the members of the applicant. As a culmination of this

shooting incident three (3) employees of the applicant were killed. One taxi driver was also killed.

[5.6] On 3 April 2024, the applicant received a notice from the respondent calling upon it to show cause within seven (7) days of receipt of the notice why the registration certificate and the business operations of the applicant were not liable to be suspended pending an inquiry or investigations contemplated under section 26 of PSIRA Act No. 56 of 2001 (the Act) in connection with their involvement in the incident mentioned in paragraph 5.5 above.

[5.7] The discernible infractions and transgressions which were being investigated and to which a response was required are summarised as follows:

[5.7.1] during the shooting incident under investigations applicant used firearms registered under VBhengu Security Services; and

[5.7.2] the applicant entered into an unregistered joint venture agreement with VBhengu Security Services for the provisioning of firearms.

[5.8] On 8 April 2024, the applicant's attorneys in response to a notice to show cause mentioned above, on behalf of the applicant, addressed a letter and the most relevant part thereof is quoted hereunder:

*“[3] It is admitted that there is a contractual agreement between our clients wherein **Umahluko Security Services requested VBhengu Security Services** to assist the company as the company was not that much experienced and it **lacked some resources which VBhengu had**”.*

[5.9] The response also denied any conduct on its part on the date alleged that was inconsistent with the regulations governing it. Instead, it alleged that

it acted in accordance with the regulations. In turn, it pleaded with the respondent not to suspend its registration certificate and business operations. No motivation was offered for the plea. Importantly, at this stage suspension had not taken place.

[5.10] On receipt of the response stated above the respondent on 7 May 2024 sent an email to the applicant through his attorney informing the applicant about a decision taken on 11 April 2024 to suspend the registration of the applicant as a security provider **pending the outcome of the inquiry on the improper conduct of the applicant**. The respondent placed reliance on the provisions of section 26 of the Act for its actions. By operation of law (*ex – lege*) the provisions of Section 26(3) were activated as soon as the suspension took effect.

[5.11] Significantly, paragraph 5 of the notice of suspension mentioned in the preceding paragraph states:

“[5] It is on this basis that the committee believed that it will be in the best interest of the industry to suspend your registration status and afford you the opportunity to present your case before a tribunal on the following reasons:

“[5.1] the nature of the allegations levelled against you are of such a serious nature that it will be undesirable to the public and the industry itself, that your active participation in the industry will cause instability”.

[5.12] It was brought to the attention of the applicant that it was available to it to appeal the decision within a period of 60 days from the date of service of the decision and lodge its appeal with the Minister of Police – using the prescribed forms. In this regard, applicant’s attention was drawn to the provisions of section 30 (1) of the Act.

[5.13] On 14 May 2024, the same day the certificate of urgency and the notice

of motion were issued, an appeal adverted to in the letter of suspension was also served. I should record that the appeal does not constitute an application to uplift a suspension.

[5.14] The application got to be opposed and it is now before this Court on urgent basis.

C. The applicant's contentions

[6] The applicant contends that this is an application that meets the provisions of rule 6 (12) of the uniform rules of Court. The applicant applies that it be heard by this Court on urgent basis.

[7] The applicant contends that it has made out as case for an interim interdict.

D. The respondent's contentions

[8] The respondent's answering affidavit is devoted only on points of law. The points of law raised in response to the application are:

[8.1] lack of jurisdiction;

[8.2] non- compliance with the provisions of section 35 of the General Law Amendment Act 62 of 1955 (the General law amendment Act); and

[8.3] lack of urgency.

[9] The respondent argues that this application is without merit and it stands to be dismissed with costs.

E. The discussion

(a) Points of law

[10] I deem it appropriate that I entertain the points of law which have been raised by the respondent before I deal with the merits of this application. I hasten to do so.

(i) Jurisdiction

[11] The respondent under this point argues that in its observation the basis upon which this Court is alleged to have jurisdiction is that the Uncedo and Border Alliance altercation and incident took place in Port St Johns, a town that falls within the area of jurisdiction of this Court.

[12] In its view, the cause of action relevant to this matter is not the altercation or the incident that took place in Port St Johns but the decision to suspend the operations of the applicant. It argues that the decision was taken in Gauteng province. In paragraph 7.2 of the answering affidavit the contention of the respondent is:

“[2.7] It is my contention that the cause of action is the decision of the Regulatory sub – committee to suspend the applicant after having established prima facie case of improper conduct, and not the shooting incident that occurred in Port St Johns”.

[13] In paragraph 2.9 of the answering affidavit reference is made to section 21 (1) of the Superior Court Act 10 of 2013. The section in relevant parts provides:

“21 (1) In relation to all causes arising ... within, its area of jurisdiction and all other matters of which it may according to law take cognisance ...”

[14] In the answering affidavit and in argument before me nothing was said about the latter part of the provisions of the section i.e *“and all other matters of which it may according to law take cognisance”*. In short, in my view the Section is not properly interpreted by the Respondent. More on this below.

[15] I am not at all convinced that the point of jurisdiction enjoys any merit. It is destitute of merit on the following summarized grounds:

[15.1] the relief sought is an interdict against the respondent in respect of facts which originated from this Court. The word “causes arising” have been interpreted as signifying not “*causes of action arising*”, but legal proceedings duly arising, that is proceedings duly arising or originating within the area of jurisdiction according to common law (**Vulindlela Furniture MNRS v MEC, Department of Education and Culture Eastern Cape 1998 (4) SA 908 (TK) @ page 919 J – 920 A**).

[15.2] The order sought, if granted will be implemented within the jurisdiction of this Court. Justice **Van Zyl DJP** in the matter of Vulindlela Furniture above, at page 924 – aptly stated the position as follows:

“If the relief claimed is granted, the effect thereof would be to order the respondents to carry out their statutory functions and obligations within this Court’s area of jurisdiction...”

“For these reasons I am of the view that sufficient jurisdictional connecting factors exist and that the cause has arisen within the area of jurisdiction of this Court. In my view every consideration of convenience and common sense dictates that this Court has jurisdiction to hear and determine the applicant’s cause”.

[15.3] As said in **Cordinant Trading CC v Daimler Chrysler Financial Services 2005 (6) SA 205 SCA** – para 11:

*“Plainly what is meant in the above interpretation is **that causes arising does not refer to causes of action but to all factors giving rise to jurisdiction under the common law**”.*

[15.4] **Alkema J** in **Zokufa v Compuscan (Credit Bureau 2011 (1) SA 272 (ECM)** with his extraordinary analytical skill illustrates the issue at hand as follows:

“[33] The approach generally in considering jurisdictional connecting factors is now, I believe, firmly established by the Supreme Court of Appeal. The enquiry depends on (a) the nature of the proceedings, (b) the nature of the relief claimed therein, or (c) in some cases, both on (a) and (b). In Estate Agents Board v Lek (supra) at 1063 F, Trollip JA, said: “I therefore turn to consider whether the court a quo had jurisdiction in these proceedings according to the general principles of our law. That depends on (a) the nature of the proceedings, (b) the nature of the relief claimed therein, or (c) in some cases, both (a) and (b).

*[34] The learned Judge proceeded to point out at 1063H-1064A that approach **(b)** is based on the principle of effectiveness; **but that it is possible for one court to have jurisdiction based on the nature of the proceedings, and for another based on the nature of the relief claimed.** I turn first to the nature of the proceedings in this application.*

*[61] In my respectful view, the preferred approach which accords with the accepted interpretation of s.19(1) and with general principle, is advocated by Joubert in LAWSA (First Reissue) (Vol. 11) p.287 para 305. Relying on Mtshali (supra), Kibe (supra) and Ex parte Hay Management Consultants 19 (Pty) Ltd 2000 (2) All SA 592 (W), the learned author on the subject (Harms) **states that if the requirements for the grant of an interdict are satisfied by facts within the territorial jurisdiction of a High Court, the court will possess jurisdiction to decide the matter.** For the reasons more fully discussed above, I respectfully agree with this approach and I intend to follow it in this case.*

[62] I therefore conclude that in interdict proceedings a court will have jurisdiction if the requirements for the grant of an interdict are satisfied by facts within the territorial area of jurisdiction of that court. I believe, with respect, that this is the only test which should be applied in deciding jurisdiction in

interdict proceedings”.

[16] All the facts in support of the interdict sought are located within the jurisdiction of this Court. The facts which gave rise to the withdrawal of a certificate of operation occurred within the jurisdiction of this Court. If successful, the interdict will reverse that which took effect within the jurisdiction of this Court and the order will also be implemented in this area of jurisdiction.

[17] The suspension of the applicant's business operations occurs and is felt within the jurisdiction of this Court. If the order is granted the resumption of applicant's business activities or operations will take place within the jurisdiction of this Court. Thus, the nature of the proceedings brought gives this Court jurisdiction to hear this application. So is the relief sought. With these observations I grapple to appreciate and understand the contention against the jurisdiction of this Court raised by the respondent.

[18] I am in disagreement with the interpretation of the phrase “cause of action” contended for by the respondent, I hold a view that the Johannesburg High Court has a concurrent jurisdiction with the Mthatha High Court over this matter. For these reasons, the point of lack of jurisdiction taken by the respondent is dismissed.

(ii) Lack of urgency

[19] Suspension of business operations and withdrawal of operating licence renders this matter urgent. These are matters that cannot wait for too long.

[20] I am disagreement with the contention of the respondent that this matter is not urgent

[21] I am persuaded that in accordance with the provisions of rule 6 (12) a case is made out for the abridgement of Court rules.

(iii) Non – compliance with General Law Amendment Act 62 of 1995

[22] Section 35 of the General Law Amendment Act provides:

“35 Interim interdicts against the State

*Notwithstanding anything to the contrary contained in any law, no court shall issue any rule nisi operating as an interim interdict against **the Government of the Union including the South African Railways and Harbours Administration or the Administration of any Province, or any Minister, Premier or other officer of the said Government or Administration** in his capacity as such, unless notice of the intention to apply for such a rule, accompanied by copies of the petition and of the affidavits which are intended to be used in support of the application, was served upon the said Government, Administration, Minister, Premier or officer at least seventy-two hours, or such lesser period as the court may in all the circumstances of the case consider reasonable, before the time mentioned in the notice for the hearing of the application”.*

[23] The provisions of Section 35 do not make reference to the respondent. It is not alleged why the respondent believes that it was necessary for it to benefit from the provisions of section 35.

[24] It may very well be that the view point of the respondent is that it is the organ of the State. That is not the point I have to decide. Even if it was, the section does not mention the respondent. The Section is specific that it regulates interdicts against the State. The Respondent is not the Government of the Union or Republic of South Africa. If it is perceived to be a State, the papers do not explain the factual or legal basis for that conclusion. If anything, I would speculate if I were to conclude that the respondents is a state. I lack facts to reach that conclusion. Due to lack of adequate information I do not make conclusion as to whether the respondent is a State or not.

[25] Even if it was entitled to benefit, it did benefit because:

(a) the application papers were served upon the respondent on 16 May 2024 at 15h28; and

(b) the application was set down and heard on 21 May 2024.

[26] The application served before me after 14h30 on 21 May 2024. The time that was afforded to the respondent is way above the stipulated time in the Act. In any event, respondent did not suffer any prejudice even if it was less. Evidently, the respondent had enough time to the extent that it filed heads of arguments. I am not aware that it is a requirement that heads of argument should be filed in urgent applications. Yes, it is a good practice to do so, the Courts receive the necessary assistance from the parties. I only raise this to demonstrate the ample time that was at the disposal of the respondent. Consequently, I would have been inclined to grant condonation if it was necessary.

[27] For reasons set out in paragraphs 25 and 26 of this judgment I equally dismiss this point.

(b) the merits

[28] I am now left with the merits of this application. In essence the applicant seeks for an order set out in paragraph 3 of the notice of motion, that pending an appeal, the suspension and the withdrawal of his certificate should be interdicted. In its affidavits and heads of argument the case is predicated on the law of interdict.

[29] My analysis of the facts of this matter reveal that the suspension and the withdrawal of the applicant's licence took effect on 11 April 2024 and in turn such decision was communicated to the applicant on 7 May 2024.

[30] This being an interim interdict it remains to be seen how the applicant meets the requirements for an interlocutory interdict. It is to this I now turn.

(i) Interdicts

[31] Just as a starting point, interdicts are not designed for the past invasion of rights. They are designed to protect present and future violation of rights.

[32] The suspension and withdrawal of business operations is something that took place on 11 April 2024 as adverted to above. In colloquial terms : I want to say : the horse has bolted. Generally, this should be the end of this application. However, for completion, I deal with individual requirements for a temporal interdict below. I limit my discussion to the requirements I believe are dispositive of this aspect of the case.

Prima facie right

[33] In order for the above requirement to be resolved in favour of the applicant, the applicant ought to show the Court the basis upon which it argues that the mere lodgement of its notice of appeal entitles it to the suspension being uplifted. The right envisaged under this requirement is a prima facie right that is threatened by an impending or imminent harm.

[34] Section 26 (1) of the Act provides:

*“If there is a prima facie case of improper conduct in terms of this Act, or of the commission of an offence referred to in the Schedule, against a security service provider, **the Authority may suspend the registration of the security service provider—***

(a) pending the conclusion of an investigation or enquiry by the Authority into the alleged improper conduct; or

(b) pending the conclusion of the criminal investigation by the State into the offence in respect of that security service provider, or a determination by the prosecuting authority or the finalisation of criminal proceedings in regard to the offence”.

[35] On the other hand Section 26 (8) of the Act provides:

“The Authority may uplift the suspension of the registration of a security

service provider if there is reason to do so”.

[36] Section 30 (1) of the Act provides:

“(1) Any person aggrieved by—

(a) the refusal by the Authority to grant his or her application for registration as a security service provider;

(b) the suspension or withdrawal of his or her registration as a security service provider by the Authority; or

(c) a finding against him or her, of improper conduct in terms of this Act, or the punishment imposed in consequence of the finding,

may within a period of 60 days after service of the notification of the relevant decision contemplated in paragraph (a), (b) or (c), appeal to an appeal committee”.

[37] In a nutshell, these provisions of the Act mentioned above are the sections which are relevant in the determination in this matter.

[38] The effect of suspension which in this matter was activated or given effect to in terms of Section 26 (1) is that the applicant is not permitted to render any security services – **unless with a written permission of the respondent**. This simply applies by operation of law. Section 26(3) of the Act provides:

“(3) The effect of a suspension of registration is that the security service provider whose registration is suspended may not render any security service, unless the prior written permission of the Authority has been obtained, but during the period of such suspension the security service provider is still bound by all the obligations of a registered security service provider provided for in this Act and in the Levies Act”.

[39] What emerges from the sections quoted above is that the respondent is granted through a statute powers to suspend the operations. As said above, it would appear that there are *prima facie* grounds of misconduct which have been established by the respondent against the applicant. They are set out in subparagraph 5.7 of this judgment. The rhetorical question is : did the applicant make an application to the respondent to uplift the suspension pending the finalisation of the inquiry or investigations including the appeal? That was not done.

[40] From a letter of suspension dated 25 April 2024 it appears that a consideration was made whether to suspend or not the applicant. Ultimately, it seems that a decision was taken in the interest of Private Security Industry to suspend the applicant. When the respondent suspended the applicant's business operations, it exercised a discretion.

[41] In this application, the applicant makes out a case that once an appeal is issued, the operation of suspension of business operation is uplifted. It appears from the provisions of Section 26 (8) of the Act to be the prerogative of the respondent whether to uplift or not the suspension. How it exercised such a discretion or its powers is not attacked in these proceedings. In fact, no application was ever made to the respondent, seeking to uplift the suspension pending the finalisation of the inquiry.

[42] It would seem to me that it would have been necessary for the applicants to apply to the respondent to uplift the suspension activated in terms of section 26 (3). Potentially, it is where the respondent would have gleaned if there are good reasons or not for the respondent to uplift the suspension. It is these considerations that make it difficult for me to interfere with the statutory power given to the applicant. I see no ground for interference at all. This appears to be a serious defect in this application. I find no unlawful conduct that has been committed by the respondent on the facts of this matter. It will be constitutionally incorrect for the Court to usurp the powers and duties given to the respondent by law in the absence of an unlawful conduct.

[43] As Moseneke CJ points it in **National Treasury and Others v Opposition to**

Urban Tolling Alliance and Others 2012 (6) SA 223 (CC):

*“[50] Under the Setlogelo test, the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. **It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made.** Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated **a prima facie right that is threatened by an impending or imminent irreparable harm.** The right to review the impugned decisions did not require any preservation pendente lite”.*

[44] To me, the applicant has failed to make out a *prima facie* case that brings its application within the provisions of section 26 (8) of the Act. Without the respondent first exhausting the provisions of section 26 (8) of the Act, I do not see how it can claim entitlement to have the suspension uplifted. For this reason this requirement is not satisfied.

Balance of convenience

[45] It is necessary for this Court to weigh the harm to be suffered or endured by the applicant if temporary interdict is not granted as against the harm the respondent will suffer or bear if the interdict is granted.

[46] The **National Treasurer** case above in paragraphs 63, 64, 65 and 66 reminds us thus:

*“[63] There is yet another and very important consideration when the balance of convenience is struck. It relates to separation of powers. In ITAC we followed earlier statements in Doctors for Life and warned that: **“Where the Constitution or valid legislation has entrusted specific powers and functions to a particular branch of government, courts may not usurp that power or function by making a decision of their preference. That would frustrate the balance of power implied in the principle of***

separation of powers. The primary responsibility of a court is not to make decisions reserved for or within the domain of other branches of government, but rather to ensure that the concerned branches of government exercise their authority within the bounds of the Constitution. This would especially be so where the decision in issue is policy-laden as well as polycentric.”

[64] In a dispute as the present one, this does not mean that an organ of state is immunised from judicial review only on account of separation of powers. The exercise of all public power is subject to constitutional control.⁴⁰ In an appropriate case an interdict may be granted against it. For instance, if the review court in due course were to find that SANRAL acted outside the law then it is entitled to grant effective interdictory relief. That would be so because the decisions of SANRAL would in effect be contrary to the law and thus void.

[65] When it evaluates where the balance of convenience rests, a court must recognise that it is invited to restrain the exercise of statutory power within the exclusive terrain of the Executive or Legislative branches of Government. It must assess carefully how and to what extent its interdict will disrupt executive or legislative functions conferred by the law and thus whether its restraining order will implicate the tenet of division of powers. Whilst a court has the power to grant a restraining order of that kind, it does not readily ³⁹ ITAC above n 17 at para 95. ⁴⁰ Pharmaceutical Manufacturers Association of South Africa and Another: In Re Ex Parte President of the Republic of South Africa and Others [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC) at para 20. MOSENEKE DCJ 32 do so except when a proper and strong case has been made out for the relief and, even so, only in the clearest of cases.

[66] A court must carefully consider whether the grant of the temporary restraining order pending a review will cut across or prevent the proper exercise of a power or duty that the law has vested in the authority to be interdicted. Thus courts are obliged to recognise and assess the impact

of temporary restraining orders when dealing with those matters pertaining to the best application, operation and dissemination of public resources. What this means is that a court is obliged to ask itself not whether an interim interdict against an authorised state functionary is competent but rather whether it is constitutionally appropriate to grant the interdict”.

[47] I observe as I stated above that it is the preserve of the respondent whether or not to suspend the applicant. I also observe that it is equally the prerogative of the respondent whether to uplift or not the suspension. As said above, the way the discretionary power was exercised is not attacked. The reasons advanced by the respondent for suspending the licence of the applicant negates any contention that balance of inconvenience is passed. On the information available, the respondent is not allowed to use firearms approved for use by another security entity. I do not believe that this should be allowed to carry on.

[48] Importantly, in this matter the complaint is not that a case predicated on the provisions of section 26 (8) was not properly considered. The case is that the mere existence of an appeal necessitates the suspension to be uplifted without more. That power is bequeathed to the respondent by the Act and there is no case that it has not been properly considered. On this point too, I do not believe that the applicant has met this requirement. The respondent acted according to law. The suspension occurred by operation of law as mentioned above.

Other remedy

[49] As said above, I believe that it was available to the applicant to invoke the provisions of section 26 (8) by writing to the respondent and ask it to uplift the suspension on whatever grounds the applicant would have furnished to the respondent. If that had been done the Court would not have been confronted with an application seeking it to usurp its powers by engaging on matters that are statutorily bequeathed and endowed to the respondent. That I cannot do without more.

[50] I do not get a sense that it was impossible for the applicant to expedite the

appeal process in respect of suspension. No case is made out that there has been an attempt to have the appeal quickly heard or considered. The appeal itself would have constituted an alternative remedy. The fact that the respondent is allowed by the Act to uplift a suspension – presupposes that the applicant had internal remedy – that is to apply for the respondent to uplift the suspension. The applicant did not do so.

[51] What is clear is that on the very date the application was issued, the appeal got to be issued and served. That conduct puts credence to my observation that the appeal was issued mainly to strengthen the ill-conceived contention that the mere presence of an appeal automatically uplifts suspension. Of course, that argument is not supported by the facts and the law. I consider it bogus in law in any event.

[52] There are two paragraphs of the notice of motion that must be dealt with. Paragraph 4 suggests that there are some review proceedings to be launched. It reads:

“The respondent is interdicted and restrained from suspending and withdrawing the registration status of the applicant as a registered security service provider pending the finalisation of judicial review, if any, filed within 180 days from the date the Respondent dismisses the appeal mentioned above, in terms of the Promotion of Administrative Justice Act No. 3 of 2000”.

[53] As said above, this paragraph refers to past invasion of the alleged rights. The relief has another confusion. The applicant is not sure whether it will file a review or not. Further, it is not based on any existing decision susceptible to review. It is built on the assumption that the review appeal will be dismissed. No review at all is before me. I have no clue what the merits of the review will look like. There is simply no reviewable decision before me. If anything, I can characterise this relief as a pure fishing expedition.

[54] There is also paragraph 3 of the notice of motion. As said above, this paragraph assumes that the mere existence of an appeal renders the suspension

uplifted. Nowhere in the papers does the applicant:

[54.1] allege that the provisions of section 26 (8) were not considered; or

[54.2] attack a failure on the part of the respondent to properly consider the provisions of section 26 (8).

[55] The applicant's high water mark of its case is:

*"5.15 The applicant seeks this Court's assistance and intervention. Also seeks an order directing that the respondent to uplift the suspension, **since there is a reason being an appeal**".*

F. Conclusion

[56] As said above, no case is made out that the conduct of the respondent is unlawful. Infact, the provisions of the Act do not seem to have been violated by the respondents.

[57] The use of firearms of another security company by the applicant is not a small matter. In that process four people were killed. It is not denied by the applicant that the joint venture agreement for renting firearms was not registered. All these uncontested infractions are in breach of the code of conduct of the respondent.

[58] I consider the above allegations serious and for that reason find myself unable to interfere with the powers that are preserved for the respondent in terms of the Act.

[59] There is no right flowing from a declarator that is sought in paragraph 2 of the notice of motion. Also, it is pursued on the basis that once the existence of an appeal is established, the suspension will be uplifted. That is a wrong premise. It is the duty of the respondent to make that determination. The respondent could have decided that the appeal was not a good reason for it to uplift the suspension. The point though is that no such application was ever directed to the respondent to uplift the

suspension.

G. Costs

[60] Having gone through the papers and considered this application I do not believe that applicant has made out a case for the interim relief sought.

[61] I have also dismissed the legal points which were raised by the respondent.

[62] An appropriate costs order should be the one directing the applicant to pay 50% of the taxed or agreed costs of the respondent. All the legal points raised by the respondent did not succeed. They were all unmeritorious. I have taken that into account in my consideration of costs.

H. Order

[63] In these circumstances, an order in the following terms shall issue:

[63.1] the application is dismissed.

[63.2] the applicant shall pay 50% of the respondent's taxed or agreed costs.

[63.3] such costs shall be taxed on scale **A**.

V. KUNJU

ACTING JUDGE OF THE HIGH COURT

Appearances

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Heard : 21 May 2024

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