



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 018542/2022

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: YES

Date: 19 November 2024

In the matter between:

AFRIRENT (PTY) LTD

(Registration No. 2003/023485/07)

AFRIRENT HOLDINGS (PTY) LTD

(Registration No. 2017/056600/07)

FIRST APPLICANT

SECOND APPLICANT

and

NNSI GROUP (PTY) LTD

(Registration No. 2012/213397/07)

FIRST RESPONDENT

**THE CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

SECOND RESPONDENT

**THE MUNICIPAL MANAGER OF THE CITY
OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

THIRD RESPONDENT

In Re

NNSI GROUP (PTY) LTD

APPLICANT

(Registration Number: 2012/213397/07)

and

**THE CITY OF JOHANNESBURG METROPOLITAN FIRST RESPONDENT
MUNICIPALITY**

**THE MUNICIPAL MANAGER OF THE CITY OF SECOND RESPONDENT
JOHANNESBURG METROPOLITAN
MUNICIPALITY**

**AFRIRENT (PTY) LTD
(Registration №: 2003/023485/07) THIRD RESPONDENT**

**AFRIRENT HOLDINGS (PTY) LTD
(Registration № 2017/056600/07) FOURTH RESPONDENT**

JUDGMENT

ALLY AJ

[1] This is an interlocutory application in terms of Rule 30A launched by the applicants wherein they claim the following:

- 1.1. that the first respondent (NNSI Group (Pty) Ltd) be ordered to serve and file its Rule 53 (3) notice within 10(ten) days of service of this order upon its attorneys of record by the applicants' attorneys of record;
- 1.2. that the first respondent (NNSI Group (Pty) Ltd) be ordered to pay the applicants' costs on an attorney and client scale including the costs consequent upon the employment of two counsel, one of which is a senior counsel.

[2] The applicants are represented by Adv. P.G. Cilliers SC with Adv A.P.J. Els and the first respondent is represented by Mr Ramothwala.

FACTUAL MATRIX

[3] The first respondent launched a review application concerning a certain tender advertised by the City of Johannesburg Metropolitan Municipality and awarded to the applicants.

[4] The parties met with the Deputy Judge President Ledwaba for case management of the matter and a directive¹ was issued by Ledwaba DJP. Paragraph 3 of the Directive provides as follows:

"3. You are directed to serve and file by uploading unto CaseLines:

*3.1 Applicants' supplementary affidavit together with Rule 53 (3) Notice no later than **7 MARCH 2023**;*

*3.2 Respondents' answering affidavit by no later **17 APRIL 2023**;*

*3.3 Applicants' replying affidavit by no later than **11 MAY 2023**;*

*3.4 Applicants' heads of argument by no later than **31 MAY 2023**;*

*3.5 Respondents' heads of argument by no later than **15 June 2023**;*

[5] Applicants contend that whilst a supplementary affidavit was served and filed, the respondents' failed to serve a Rule 35(3) notice in accordance with the directive of Ledwaba DJP.

¹ Caselines: Section: 23-12: Annexure "PJ1"

[6] The first respondent on the other hand contends that the applicants together with the second and third respondents are being obstructive. First Respondent alleges that the second and third respondents were the subject of two contempt applications for the production of the record of proceedings now being requested from the first respondent.

[7] The first respondent submits that it is not in a position to comply with Rule 53(3), *inter alia*, because it cannot certify the record, and that the second and third respondents have served and filed a Rule 53 record of proceedings². It must be stated that the said record of proceedings was served and filed prior to the case management meeting before Ledwaba DJP.

[8] The first respondent alleges further that because of the obstructive behaviour of the second and third respondents, it has decided to amend its notice of motion³ after the directive of the DJP⁴.

ANALYSIS AND EVALUATION

[9] The First Respondent has chosen to review the decision of the second and third respondent. Rule 53 (3) of the Uniform Rules of Court, in my view, clearly guides

² Caselines: Section 13

³ Caselines: Section 19-3

⁴ *supra*

an applicant in review proceedings as to what should be done⁵. It cannot be that an applicant decides of its own accord that it will not perform in accordance with these provisions. Furthermore, in line with Rule 53, Ledwaba DJP gave directions as to how this matter should be proceed.

[10] The first respondent has served and filed its supplementary affidavit mentioned in the DJP's directive and has chosen to amend its notice of motion. However, the first respondent, mentions that it will rely on a USB or flash disk or memory stick as part of its case⁶. This very statement is what the applicant in this interlocutory application wants the first respondent to do, namely, indicate what it would be relying on its review application.

[11] *I must agree with the first respondent, however, that the delivery of blackened out or blank pages by applicant cannot be condoned. It is understandable that the applicant requests the documentation to be kept safely and confidentially but that is why the registrar is there. It is the registrar's duty to keep the Rule 53 record safely.*

[12] However, the first respondent did not launch a counter-application for the applicant to produce a clear record of its bid and this Court, in my view, cannot *mero motu*, order same. This Court can, however, deal with the approach of the applicant in the review proceedings, when dealing with the costs of this application.

⁵ Venmop 275 (Pty) Ltd and another v Cleverlad Projects (Pty) Ltd
and another 2016 (1) SA 78 (GJ) at para 17

⁶ Caselines: Section 19-14: para 3.3 et seq

CONCLUSION

[13] Accordingly, in my view, the first respondent must comply with Rule 53(3) before the review application is heard.

COSTS

[13] The applicants have requested a punitive costs order against the first respondent should the application be successful. The first respondent has similarly submitted that the applicants should be penalised with a punitive costs order should it be successful.

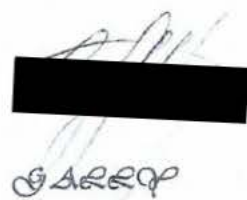
[14] It is trite that a Court has a discretion when awarding costs and that this discretion must be exercised judiciously.

[15] I have had regard to the attitude of both parties and am of the view that a deviation from the norm that costs follow the result, should be applied. Accordingly, the costs of this application shall be costs in the cause.

[16] Accordingly, the following Order shall issue:

- a). the first respondent (NNSI Group (Pty) Ltd) is hereby ordered to serve and file its Rule 53 (3) notice within 10(ten) days of service of this order upon its attorneys of record by the applicants' attorneys of record;

- b). the costs of this application shall be costs in the cause.



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

Electronically submitted therefore unsigned

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 19 November 2024

Date of virtual hearing: 25 August 2023

Date of judgment: 19 November 2024

Appearances:

Attorneys for the Applicant: **ALBERT HIBBERT ATTORNEYS**

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Counsel for the Applicant: **Adv. P.G. Cilliers SC with Adv. APJ Els**

Attorneys for the 1st Respondent: **MAFONA RAMOTHWALA**

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Mr Ramothwala