

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO DIVISION, POLOKWANE)

CASE NO:732/2012

- (1) REPORTABLE: YES / NO
 (2) OF INTEREST TO THE JUDGES: YES / NO
 (3) REVISED.

Signature

Date: 26 MARCH 2025

In the matter between:

RENTWORKS AFRICA(PTY)LTD

PLAINTIFF

And

LIMPOPO PROVINCIAL GOVERNMENT
 DEPTMENT OF SAFETY, SECURITY AND
 LIAISON

DEFENDANT

 JUDGMENT

MPHAHLELE AJ**A. INTRODUCTION**

[1] The plaintiff, Rentworks Africa seeks payment of an amount of **R 458 964.00** (*Four Hundred and Fifty-Eight Thousand, Nine Hundred and Fifty-Four Rand*) with interests. It is alleged that the claim is for money owing by the defendant for Equipment rental payments outstanding in line with the Master Rental Agreement "The Agreement". The plaintiff and the defendant, the Department of Safety, Security & Liaison concluded a written Master Rental Agreement, in terms of the agreement, the parties established a continuous rental relationship.

[2] According to the plaintiff, the defendant failed at End of Term to comply and to notify the plaintiff within the required ninety (90) days of their intention and failed to deliver the equipment as required. The action is for payment of an amount of **R 458 964.00** (*Four Hundred and Fifty-Eight Thousand, Nine Hundred and Fifty-Four Rand*)

[3] The defendant during the trial abandoned a special plea of Joinder, where they submitted that the Makweru Digital Solutions, who was a third party to the agreement and the main contractor to the defendant, was not joined to the proceedings.

B. BACKGROUND

[4] The agreement was signed by an authorised official of the Department being, the HOD at the time, A dispute arose at end term of the Master Rental Agreement "The Agreement. It was the plaintiffs' case that the Department was obligated to provide Rentworks Africa with at least 90 days' notice prior to the termination of the rental period of their intention.

[5] It was one of the terms of the agreement that if the Department failed to provide the plaintiff with written notice as required, it is agreed that such failure will be regarded as an election by the Department to continue to rent the equipment from Rentworks on a quarterly basis and upon the terms and conditions of the rental agreement until the return of the equipment.

[6] The Department agreed to pay for the equipment rental in installments as follows:

- a. Two (2) quarterly installments of **R 265,889.44** each commencing on 1st October 2007.
- b. Nine (9) quarterly installments of **R152,988.00** each commencing on 1st April 2008
- c. The amount of the quarterly payments was common cause between the parties.

C. NATURE OF THE AGREEMENT

[7] The Equipment Rental Agreement was entered into between the plaintiff represented by M.D Martins representing the plaintiff while the defendant was represented by M.A Thobakgale, who was the Head of the Department of the defendant at the time of signing. The Agreement was signed on the 21st of May 2007

[8] The purpose of the agreement was that the plaintiff was to rent 10(Ten) B350 Konika Minolta colour photocopiers to the defendant for use by the defendant in its head office in Polokwane, and in its district offices within Limpopo Province.

[9] According to the plaintiff the following terms were of the agreement:

Upon signature of the rental schedule by Rentworks and the authorised signatory of the defendant, an agreement will come into effect between the parties for rental of the equipment recorded in the Rental Schedule on terms and conditions set out in the rental agreement and in the schedule on terms and conditions set out in the Rental Schedule.

[10] The plaintiff and the defendant represented by the same persons concluded a Rental Schedule, In respect of the agreement for the rental of equipment arising under the rental agreement, the term of the rental period commences on the first payment date occurring on or after the commencement date and subject to clause 13, which deals with the return of the equipment, continues for the number of months specified in the applicable Rental Schedule. At the conclusion of the rental period, the Department may either (a) return the equipment or (b) request Rentworks to extend the rental period.

D. MERITS

[11] The defendant raised defenses that:

- a. The plaintiff was not entitled to the payment of the balance of the payment after contract termination date, despite the abandonment of the special plea, it is the defendant's submission that there was an award of the tender by the defendant to a company called Makweru Digital Solutions and not the plaintiff.
- b. The main defence by the defendant is that There exists no cession agreement entered between Maweru Digital Solutions and the plaintiff, and

in terms of which Makweru Digital Solutions would have ceded its rights to the plaintiff pursuant to the award of the tender.

- c. That the individual who signed the Mater Rental Agreement was not authorised to sign on behalf of the defendant.
- d. It is further the submission by the defendant that neither the Rental Agreement nor the Rental Schedule make express provision for the unconditional extension of the rental period, upon the expiry of the contract period.

E. DISPUTE

[12] The dispute between the parties arose because of a written contract between the parties. The agreement was testified before me, and it is between the plaintiff and the defendant, and no other party was party to the agreement.

[13] The plaintiff submits that the written agreement is valid while the defendant submits that the agreement is not valid due to lack of authority by the signatory of the department, who was the Head of Department at the time of signing of the agreement.

[14] It is important to note that the terms of the agreement were not in dispute and the main dispute raised by the defendant was the authority of the signatory of the defendant.

F. EVIDENCE

[15] The plaintiff led evidence by Ms. Chantel Henrikson did testify that: The plaintiff was approached by Makweru Digital Solutions to execute a contract awarded by the defendant, and the contract was going to end in 2010.

[16] When the termination period approached, she had not had any notification from the defendant and that in terms of clause 13.2 of the defendant was required to deliver the equipment to the plaintiff upon the expiry of the term in good working condition to the plaintiff's nominated address.

[17] She further testified that the defendant did not provide the plaintiff with the notice of termination, which was supposed to be delivered 90 days prior to the termination of the agreement. As a result of the failure of the defendant to provide the notice of termination of the agreement, it resulted in an automatic extension.

[18] The defendant was therefore liable for payment of the amount of R 458 964.00 (*Four Hundred and Fifty-Eight Thousand, Nine Hundred and Fifty-Four Rand*), which payment is the quarterly payments of R 152 988.00 which

became due for the following quarters: 01 July 2010, 01 October 2010, 01 January 2011. It was further testified that the equipment was delivered in April of 2011.

[19] The defence witness, Mr. Kola, testified to the defendant that: he was employed as the CFO of the Department of Safety and Security and Liaison from March 2006 to March 2006. Regarding the agreement, he testified that the contract was awarded to Makweru Digital Solutions.

[20] According to him Makweru Digital Solutions was supposed to have entered into a contract with the defendant, he was responsible for making sure that invoices were processed, and payment was made. He further stated that invoices submitted to his office by the plaintiff were verified and effected by the defendant.

[21] He stated that he received the letter from Makweru Digital Solutions regarding the term ending of the rental equipment, which was thirty- six months was coming to an end and the retrieval of the machines was scheduled to be the 30th September 2010 and with the last retrieval of the machines at head office to the on the 30th of November 2010. According to him the plaintiff was aware of this letter.

[22] He stated that Ms. Petro Probert of Rentworks Africa wrote to him, and the letter and the letter stated that:

[23] *"I refer to your letter dated 23rd February 2011.*

1. I confirm that the contract 1106LPG002 did expire on the 30/09/2010

2. I did receive the communication supply chain e.g. Eunice Mazunda and I responded to every query.

3. According to the contract, the items had to be returned to the warehouse 30/09/2010, a request for collection was only received on the 06/12/2010. This constitutes to the first rental payment to be raised for a full quarter according to the contract as the assets were not at the warehouse on 30/09/2010. The request for collection was also made without supplying the physical addresses of where all the photocopiers were located. I cannot request a collection quote if I don't have the physical addresses. The physical addresses were only forwarded by yourself to Pontsho Teme at our offices on February 2011. I then requested a collection quote which is for payment by the department, collection cost or delivery of the assets to our designated warehouse in the responsibility of the Limpopo: Department of Safety and Security- I will forward the Master Rental Agreement for your perusal.

4. The collection cost will be R 9500.00. Please confirm if I can forward formal quote.

[24] It is important to note that the other important letter was forwarded to Itec Meso (Pty) Ltd (Makweru Digital Solutions), not the plaintiff. The letter dated 23 February 2011.

1. "Kindly note that the contract for photocopy machines has expired on 30/09/2010.

2. *The Supply Chain Management Unit has communicated several times with your institution. Yet we are not getting any response.*
3. *The Department of Safety and Security and Liaison is kindly requesting the collection of Photocopy machines from District offices. We request that you give this matter the necessary attention it deserves.*

[25] The contract did put the responsibility of delivery on the defendant, and it was admitted that the equipment was delivered in April of 2011. It was not disputed that the equipment was delivered in April 2011.

G. ANALYSIS OF EVIDENCE

The agreement

[26] The defendant's first defence was that the agreement was void in that the contract was awarded to another company called Makweru Digital Solution falls away, the reason is that all times during the term of the contract, the defendant has complied with the terms of the Equipment Rental Agreement.

[27] It is a common cause between the parties that the plaintiff and defendant entered into agreement without the main contractor, the agreement which is currently the subject of dispute between the parties was signed by the plaintiff

and the defendant only. Therefore, the testimony of Makweru Digital Solutions is not required.

[28] This aspect has been conceded by the witness and testimony of Mr. Kola who was the CFO at the time, by acknowledging that he received invoices from the plaintiff and also honouring those invoices not once but all the time during the term of the agreement.

Lack of Authority of the HOD

[29] Mr. Kola could not testify to the lack of authority of the former Head of Department and according to him, he did not know why Equipment Rental was entered into with the plaintiff instead of the company that was awarded the main contract in terms of a tender process.

[30] I had a closer look at the interpretation clause of the Master Rental Agreement and clause 1.1 which reads:

“Authorised signatory means a signatory authorized by the Renter in writing and in accordance with the provisions of the PFMA for all purposes arising in connection with this Agreement, including but not limited to, the signing of Rental Schedules from time to time”

[31] The defendant had to adduce evidence on reliance of the aspect of lack of authority of the Head of Department to sign the agreement, The only witness who testified was a CFO in the employ of the defendant, however his testimony was not sufficient on the matter of lack of authority.

[32] The HOD was the Head of Administration at the time of signing the agreement, the defence aspect also falls off. I am satisfied that the plaintiff did prove the existence of the agreement which gives rise to the claim.

End of Term

[33] It is very critical to attend to the matter of timelines at the end of term of the contract. All witnesses who testified did not disagree regarding the timeline of the contract end of Term, the letters and the date of retrieval of the assets. According to the witness of the plaintiff, the assets had to be returned to the warehouse by 30 September 2010, and a request for collection was received by the plaintiff on the 6th of December 2010. The official physical addresses of the defendant were on the 2nd of February 2011. This testimony was not disputed, and both parties were on the same page as to the dates of the intended retrieval.

[34] In terms of Clause 13.1 of the Agreement the parties agreed that:

"13.1 At the end of the Term, you may either return all the Equipment or request us under clause 20 to agree to extend the Term of vary the Equipment rented.

You must in either case give us notice of your intention at least 90 days prior to the expiry term. We will give you at least 30 days' notice of your obligation to give us the aforesaid notice. If you elect not to give written notice within the aforementioned period you agree that, unless we otherwise notify you in writing, you agree that you continue to rent all the equipment from us on a quarterly basis upon the terms and conditions of this Agreement until you have returned all Equipment to us.

13.2 If you give us notice under clause 13.1 that you will be returning the equipment then you must deliver all the equipment to us on expiry of the of the Term in accordance with clause 13.3 and 13.4. If you do not do so, you hereby direct us to extend the Term for a further (3) months at a time and upon the terms and conditions of this Agreement until you return all the Equipment in accordance with clause 13.3 and 13.4".

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[35] The court in the case of *Barkhuizen v Napier* remarked in paragraph 56 thereof that:

"There are two questions to be asked in determining fairness. The first is whether the clause itself is unreasonable. Secondly, if the clause is reasonable, whether it should be enforced in the light of the circumstances which prevented compliance with the time limitation clause."

¹ (*Barkhuizen v Napier* (CCT72/05) [2007] ZACC 5; 2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC) , 4 April 2007)

[36] In this current case the defendant had not pleaded impossibility to perform in line with the term of the clause which contained the automatic renewal of the contract. The circumstances which led to the not performance with the clause.

[37] The extent to which the contract was freely and voluntarily concluded is clearly a vital factor as it will determine the weight that should be afforded to the values of freedom and dignity. The other consideration is that all persons have a right to seek judicial redress. These considerations express the constitutional values which must now inform all laws, including the common law principles of contract.²

[38] While it is necessary to recognise the doctrine of *pacta sunt servanda*, courts should be able to decline the enforcement of a time limitation clause if it would result in unfairness or would be unreasonable. This approach requires a person in the applicant's position to demonstrate that in the circumstances it would be unfair to insist on compliance with the clause.

[39] In the matter before me, the defendant has not sustained any defence that suggests that the enforcement of the automatic extension clause would be unreasonable and or impossible to comply with and also the clause in question is not against public policy.

H. COSTS

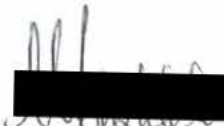
² (Barkhuizen v Napier (CCT72/05) [2007] ZACC 5; 2007 (5) SA 323 (CC); 2007 (7) BCLR 691 (CC) , 4 April 2007)

[40] The plaintiff seeks costs on attorney and client scale, which costs were terms of the agreement between the parties in terms of the Master Rental Agreement. It is further trite law that costs will follow suit.

I. ORDER

[41] I hereby make the following orders:

- i. The plaintiff's claim succeeds
- ii. The defendant is ordered to pay the plaintiff an amount of R 458 964.00(*Four Hundred and Fifty-Eight Thousand, Nine Hundred and Fifty-Four Rand*)
- iii. Interests at the applicable rate *temporae morae*, to date of payment
- iv. Cost of suit, taxed on attorney and own client scale



M.A. MPHAHLELE

ACTING JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION, POLOKWANE

APPEARANCES

HEARD ON : 04th DECEMBER 2024

JUDGMENT DELIVERED ON : 26 MARCH 2025

COUNSEL FOR THE PLAINTIFF : ADV. S AUCAMP

Instructed By : KWA ATTORNEYS
: PLAINTIFF'S ATTORNEYS
C/O BADENHRST ATTORNEYS
TEL:105 296 4063
lindi@kw.co.za
bp.admin7@gmail.com

COUNSEL FOR THE DEFENDANT : ADV.LESEGO MONTSHO MOLOISANE

: ADV.FUNEKA MZILIKAZI

Instructed By : STATE ATTORNEY POLOKWANE
DEFENDANT'S ATTORNEYS
TEL-015 230 6322
REF-1024/13/M-nm(KT)