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

CASE NO: 2025-024691

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED.
06/03/2025

In the matter between:

**THE CONSTRUCTION EDUCATION AND
TRAINING AUTHORITY (CETA)**

Applicant

and

V2 DIGITAL (PTY) LTD
(Registration Number: 2017/535298/07)

First Respondent

KYXIS TECHNOLOGIES CC
(Registration Number: 2010/135500/23)

Second Respondent

JUDGMENT

LABUSCHAGNE J

[1] The applicant is the Construction Education and Training Authority, an organ of state which applies on an urgent basis for relief for the restitution and return of its cloud-hosted property after expiry of its contract with V2 Digital (Pty) Ltd (the first respondent).

[2] The applicant accuses the first respondent of holding the applicant to ransom and raising and justifying invoices after termination of the contract. The second respondent is the new service provider appointed by the applicant in December 2024.

[3] The applicant was in a contractual relationship with V2 Tech Holdings (Pty) Ltd during 2023. At that time Mr Otto Nel was employed as the Chief Operating Officer of V2 Tech Holdings. The applicant required a service provider that had a Level 1 BEE compliant service provider classification and who had to be on the Central Supply Database of the Government. V2 Tech Holdings (Pty) Ltd was a Level 4 BEE service provider but was not on the Central Supply Database of the Government. This information was only disclosed after the hearing in the circumstances set out below.

RELIEF SOUGHT IN PART A

[4] The applicant has brought its application in Part A and Part B. Part A serves before this Court on the basis of urgency. In terms thereof, the applicant seeks on the basis of urgency an order for the following relief:

4.1 Ordering the first respondent to immediately take all necessary steps to restore and reinstate to the applicant the full and effective functionality of all CETA systems and data that are currently being hosted, managed, controlled and/or retained by the first respondent.

4.2 Ordering that the said restoration and reinstatement of functionality of all CETA systems and data include that the respondent is obliged and compelled:

4.2.1 To perform a full handover of the CETA systems and data in its possession or under its control to Kyxis, acting as agent on behalf of the (probably -my insertion- applicant);

4.2.2 To grant all administrative access to the Meraki Infrastructure to the second respondent, to remove all third-party service provider access and to provide complete control of C-channel for the CETA's website domains, which are ceta.org.za and ceta.co.za;

4.2.3 To provide the applicant and the second respondent with the correct encryption keys in order to enable the second respondent to perform a backup restoration of the data belonging to the applicant;

4.2.4 To provide the second respondent with Virtual Machines, to enable it to restore the applicant's four operating systems, to provide thorough infrastructure testing, to perform network configuration and optimisation and security protocols;

4.2.5 To implement and fully comply with the handing over procedure as set out in the *"CETA ICT handover document signed by the parties on 24 January 2025."*

4.3 The CETA handover document referred to is a 17-page document, which ostensibly already existed at the end of December 2024. That was the date of the first handover meeting. At that time, paragraph 11 of the document read differently as to what it read on 24 January 2025, the second handover meeting. On the disputed issues before me the document of 24 January 2025 reads:

"11. POPIA compliance and data governance

In alignment with the Protection of Personal Information Act (POPIA) and the CETA's data governance policies, the CETA requires V2 Digital to adhere to strict data protection and confidentiality standards.

As V2 Digital's contract with the CETA concluded on 31 December 2024, the CETA formally requests that V2 Digital purge all copies of trade secrets, confidential information, and any other data or electronic media – including backups and archived files – that may reside within its systems.

This data purge must be completed by the end of the Azure migration of the CETA infrastructure, with final sign-off from CETA, V2 Digital and Kyxis.

Further, V2 Digital must provide written confirmation of the date destruction to ensure compliance with POPIA regulations and the

CETA's data governance framework. This confirmation is essential to safeguarding the CETA's sensitive information, prevent unauthorised access, and upholding the principles of data privacy, integrity and accountability."

[5] The applicant entered into a separate contract with V2 Digital (Pty) Ltd (the first respondent) for the provision of ICT services at management.

[6] The service level agreement of the applicant with V2 Digital was signed on 23 February 2024 and was envisaged to last for only 3 months, up to 13 May 2024. However, it was through a number of extensions extended until the last day of December 2024 when the contract came to an end.

[7] The scope of the work included managed security services and infrastructure monitoring with offsite backups of critical data.

[8] The contract does not provide for subcontracting and the obligation to host the critical data of the applicant, including its personal information was the contractual obligation of the first respondent.

[9] Clause 22 of the service level agreement sets out termination conditions. As will appear from the terms set out below, the contract envisaged a seamless handover on date of termination of the contract. The contract reads in part:

"22.1 Upon termination of this agreement for any reason whatsoever, whether pursuant to the provisions of clause 21.2 above or otherwise (and without prejudice to any other rights or remedies of CETA under this agreement or in law) the company shall:

22.1.1 Forthwith cease to provide the services;

22.1.2 During the notice period referred to in item 4 of annexure A;

22.1.3 Return to CETA all keys and other means of access to any CETA premises;

22.1.4 Return all other of CETA's property which may be in the possession of the company to CETA;

22.1.5 *Immediately remove all property belonging to it from any premises; and*

22.1.6 *Shall deliver a certificate to CETA within 5 days of termination of this agreement in terms of which the company certifies that it has complied with its obligations in terms of clause 22.1.”*

[10] At the time of the hearing of this application it was common cause that a new service provider (Kyxis), appointed during December 2024, was in possession of most of the listed property in the Notice of Motion and the handover document of 24 January 2025. The only outstanding issue related to the migration of the applicant's data and information stored on the internet. Kyxis is in possession of the backup records which it retrieved from a third-party service provider, Redstor. Such backups are currently in the possession, by arrangement of Kyxis, of DataPro.

[11] The issue of migration of data was raised by the first respondent in the middle of 2024 and the applicant was advised that such migration takes three to four months. At that stage it was suggested that the applicant acquire the Azure program to facilitate the migration of data from one host to the next.

[12] On 30 December 2024 a handover meeting took place. It was recorded by Mr Nel on behalf of V2 Digital and Molebogeng Taje, Executive Manager Strategic Support of CETA that the following had been handed over:

12.1 *A “USB stick enclosed in an envelope containing the service account details, passwords and the handover document as discussed and presented during the meeting between Kyxis, CETA and V2”.*

The applicant contends that the first respondent has been holding over on the issue of migration and has been raising invoices in respect of hosting costs incurred by it.

12.2 The first respondent contends that the applicant did not heed its warning of timeously acquiring the Azure program, which was only ordered during December or January 2025.

12.3 The applicant complains that the first respondent has appointed itself as an overseer of the migration process to Kyxis and is using

its control over the applicant's management systems to extort payments which are not due as the contract has come to an end.

[13] The first respondent denies the aforesaid. The first invoice about which is the complaint, is an invoice that was delivered on 15 December 2024 for 1 month's services, i.e. until 15 January 2025. This was conceded as being a mistake as the contract expired at the end of December 2024.

[14] The first respondent contends that, because the applicant did not timeously make arrangements for the migration of the information being stored on the internet, it has been held liable for hosting services by a third party in an amount of R75 000.00 per month.

[15] Upon an enquiry by the Court, counsel for the applicant disclosed that the services for hosting are being rendered by V2 Tech Holdings (Pty) Ltd. Upon further instructions being obtained, he conveyed to me that V2 Tech Holdings is a third-party company unrelated to the first respondent and that the similarity in names was not significant.

[16] As a result of the aforesaid interaction the applicant did a company search and uploaded the results of the search onto CaseLines. I also requested the the first respondent to respond to the contentions advanced by the first respondent.

[17] In a letter of 19 February 2025, the same attorney who is on record for the first respondent wrote a letter on behalf of V2 Tech Holdings (Pty) Ltd. The letter contains the following:

"We hereby confirm that all services managed by V2 Tech Holdings (Pty) Ltd, including those within its infrastructure that CETA has utilised, will be enabled and fully operational without interruptions once payment has been received and cleared in our trust bank account, as per the attached bank confirmation letter. Kindly also find attached the pro forma invoice for your reference, as requested and communicated extensively between you and Mr Nel."

[18] Mr Otto Nel is the deponent for the first respondent. He is the Chief Operating Officer of the first respondent. The letter indicates that he also represents V2Tech Holdings.

[19] In the supplementary affidavit filed by Mr Nel, in response to the CIPRO records uploaded by the applicant after the interaction and disclosures referred to above, he contends that he is neither an employee of the first respondent nor of V2 Tech Holdings.

[20] In his affidavit he states the following:

“6.4 I further confirm that I have never held any shareholding in V2 Digital (Pty) Ltd and/or in V2 Tech Holdings (Pty) Ltd, or have directly or indirectly exercised control over V2 Tech Holdings (Pty) Ltd.

6.5 Further, I confirm that neither of the two companies directly or indirectly control the other, or the business of the other, as being a subsidiary of the other or that either party have the ability to materially influence the currency or management or decision making of either company, specifically V2 Tech Holdings (Pty) Ltd.”

[21] The aforesaid statements are made to confirm that the invoice for hosting by V2 Tech Holdings (Pty) Ltd and payable by V2 Digital (Pty) Ltd is an arm's length transaction.

[22] I have difficulties accepting the aforesaid contention by Mr Nel. The reasons are the following:

22.1 In a letter of 22 August 2023 (i.e. in the period before the applicant entered into a contract with V2 Digital (Pty) Ltd), Mr Nel wrote a letter to H Shangase of the applicant, which bears the heading: *“Confirmation of divisional relationship – V2 Digital (Pty) Ltd, a division of V2 Tech Holdings (Pty) Ltd”*.

22.2 In the letter Mr Nel states:

“I trust this message finds you well. I am writing to formally confirm the existing divisional relationship between V2 Digital (Pty) Ltd and V2 Tech

Holdings (Pty) Ltd, as well as to provide the relevant identifying details for our records.

I, Mr Otto Nel, hold the position of COO at V2 Tech Holdings (Pty) Ltd. My Identification Number is: 7[...]. I would like to confirm that V2 Digital (Pty) Ltd is indeed a division of V2 Tech Holdings (Pty) Ltd. The registration number for V2 Digital (Pty) Ltd is 2017/535298/07, and for V2 Tech Holdings (Pty) Ltd it is 2018/041070/07.

Furthermore, we kindly request that CETA facilitate the cession of all existing agreements and appointment letters from V2 Tech Holdings (Pty) Ltd to V2 Digital (Pty) Ltd.”

22.3 Mr Nel is much more in control of V2 Digital and V2 Tech Holdings than he is willing to disclose. This is apparent from the claim for payment by V2 Tech Holdings (Pty) Ltd on 19 February 2025 for payment, in exchange for which V2 Tech Holdings would provide the applicant with access to the information hosted by V2 Tech Holdings. It is this claim to payment that is the basis for the first respondent's defence that it is compelled to continue hosting and to pay for such hosting during the migration process.

[23] As Chief Operating Officer, Mr Nel is acting in an authoritative capacity in respect of both V2 Digital (Pty) Ltd and V2 Tech Holdings (Pty) Ltd.

[24] However, the records of the CIPC reflect that V2 Tech Holdings (Pty) Ltd is in final deregistration for failure to submit annual returns. As a deregistered company, it is effectively non-existent. Mr Nel, in his affidavit filed on 28 February 2025, contends that V2 Tech Holdings (Pty) Ltd was unaware of its own deregistration and blames the auditors who have emigrated to New Zealand. V2 Tech Holdings (Pty) Ltd is apparently taking steps to be reinstated on the register. The fact is, however, that at the present the company is deregistered. Insofar as it has a residual interest or a business, Mr Nel speaks for it.

[25] Clause 22.1 of the agreement between the applicant and the first respondent provided that the first respondent would cease providing services upon termination (see clause 22.1).

[26] Further, during the notice period the first respondent was obliged to return to CETA all CETA's property and to retrieve its own property from the premises of CETA. The term "property" is not defined, but it would include the applicant's property rights to private information and data hosted in terms of its agreement with the first respondent.

[27] As the first respondent was contractually obliged to provide all the services pertaining to ICT to the applicant, including hosting, its alleged current difficulties in returning the private information and to restore access for purposes of migration is contrived. In this instance, Mr Nel is ostensibly directing the actions of both the first respondent and V2 Tech Holdings (Pty) Ltd. To suggest that V2 Digital is powerless to do anything about the relief sought by the applicant is not accepted. Insofar as Mr Nel purports to act on behalf of a company not existing on the register at the moment, he, in his capacity as Chief Operation Officer of the first respondent and a directing mind of V2 Tech Holdings, is in a position to give effect to the obligations of the first respondent in terms of clause 22 of the agreement between the applicant and the first respondent. I accept the submission by counsel for the applicant that V2 Tech Holdings is ostensibly the alter ego of V2 Digital.

[28] In its founding affidavit the applicant contends that the applicant has already compensated the first respondent for the migration and reconfiguration into CETA Cloud Environment, which it made available to the first respondent from 6 January 2025. That notwithstanding, the CETA Cloud Environment remains empty as the first respondent continues to host all of the applicant's data and charges the applicant for it.

[29] As the obligation to return the applicant's property lay on the first respondent, it cannot avoid its obligations in this regard.

[30] In the premises the applicant's contention that it has been rendered dysfunctional due to its inability to access its own management systems and information, constitutes sufficient grounds for urgency.

[31] Further, the applicant has established a clear right to return of its property in terms of clause 22 of its service level agreement with the first respondent upon termination on 30 December 2024.

[32] It has a reasonable apprehension of irreparable harm. The chaos created by the applicant's inability to access its managements systems and data, has resulted in the applicant being unable to pay even salaries. The first respondent, save for its contrived liability for the hosting by V2 Tech Holdings (Pty) Ltd, will suffer no apparent harm if directed to comply with its contract.

[33] There is clearly no alternative remedy available to the applicant. Attempts to negotiate a solution to this matter has not resulted in resolution of the dispute.

[34] In the premises the applicant has established the elements for interim relief as sought in Part A.

[35] In light of the second respondent being in possession of all relevant data, access keys etc., and in light thereof that only the cloud function (storage of data on the internet) is outstanding, and subject to migration, the applicant has limited the relief it seeks to paragraph 2 of the notice of motion.

[36] In the premises I make an order in the following terms

1. The matter is heard on the basis of urgency.
2. The first respondent is ordered to immediately take all necessary steps to restore and reinstate to the applicant the full and effective functionality of all CETA systems and data that are currently being hosted, managed, controlled and/or retained by the first respondent.
3. The first respondent is ordered to pay the costs of the application, including the costs of senior counsel, on Scale C.

LABUSCHAGNE J