



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: 50885/2021

1. Reportable: No	
2. Of interest to other judges: No	
3. Revised	
20 February 2025	
WRIGHT J	SIGNATURE

MANYELETI CONSULTING SA (PTY) LTD

Applicant

and

ESKOM HOLDINGS SOC LIMITED

Respondent

JUDGMENT

WRIGHT J

1. On 30 June 2014, Eskom appointed Manyeleti to provide cleaning services at Eskom's Matla power station. The NEC3 Term Service Contract governed the parties' rights and obligations.
2. Under option W1.1 of the contract, *"Any dispute arising under or in connection with this contract is referred to and decided by the Adjudicator."* Under W1.3(1) *"Disputes are notified and referred to the Adjudicator in accordance with the Adjudication Table."*
3. Under W1.3, an adjudication table sets out when and to whom disputes are to be referred. It is common cause that the present case falls under *"Any other matter"* as tabled. Either party may refer such matter to the adjudicator *"Between two and four weeks after notification of the dispute to the other Party and the Service Manager."*
4. Clause W1.3(2), provides for the times for referring of disputes to be extended by the Service Manager in certain circumstances. The clause continues *"If a disputed matter is not notified and referred within the times set out in this contract, neither Party may subsequently refer it to the Adjudicator or the tribunal."*
5. In due course, Manyeleti demanded money of Eskom. Eskom did not pay.
6. In October 2021, Manyeleti launched provisional sentence proceedings against Eskom. Manyeleti relied on written certifications of assessment by the Service Manager read with tax invoices sent by Manyeleti to Eskom. Numerous claims total over R2 million in capital. Interest and costs are sought.

7. Eskom filed an affidavit, dated 24 January 2022 opposing provisional sentence. Ms P Dlamini, a Senior Legal Advisor raises the point that Manyeleti never referred a dispute for adjudication. She says that Manyeleti is time barred. She says that Manyeleti, aware that it is time barred, simply launched the provisional sentence proceedings in an attempt to bypass clause W1.
8. Ms Dlamini also raises the defence that the documents supporting the provisional sentence claims do not accord with contractual requirements. Ms Dlamini also points to what she says are incorrect claims for interest.
9. In reply, Mr Lomola for Manyeleti says that there was never any dispute. He says the a mere failure to pay by Eskom does not amount to a dispute which could be referred to an adjudicator. He says that, at the latest, Eskom raised a dispute, if dispute it is, in the answering affidavit.
10. Mr Lomola effectively admits the non-alignment of documents annexed to the provisional sentence summons with contractual requirements. He refers to contract price adjustment documents, attached to the replying affidavit. Mr Lomola concedes that the claims for provisional sentence should exclude contract price adjustments and that “ *The remainder of the dispute could then be ventilated at the trial of the matter.* “
11. On 18 February 2022, Manyeleti’s attorney wrote to Adv B Leech SC, a person listed in the contract as a possible adjudicator, asking him if he would adjudicate. A statement of claim was attached. In effect, the provisional sentence claim was sent to Mr Leech. Mr Leech accepted on 22 February 2022.
12. On 30 June 2022, Eskom’s attorneys wrote to Manyeleti’s attorneys saying that Eskom was not indebted to Manyeleti and that “*our client is happy with Adv Leech as the adjudicator and therefore suggest that both parties finalise the necessary contract with the adjudicator and commence with the arbitration.*”
13. On 31 March 2023, Manyeleti launched an application to compel Eskom to file its heads of argument, practice note, chronology and list of authorities. This

application was set down for 29 May 2023, seemingly on the unopposed motion roll. Apparently, this was the provisional sentence case. On that day, the matter was removed from the roll as it had become opposed by Eskom.

14. On 25 May 2023, Eskom launched an application. It seeks that Manyeleti's provisional sentence summons be dismissed, alternatively that the provisional sentence proceedings be stayed pending the outcome of the adjudication proceedings before Mr Leech.
15. On 30 June 2023, Manyeleti launched an application. The precise wording in the notice of motion was clarified in argument by Mr D Hodge for Manyeleti. What Manyeleti seeks are orders, if the court is inclined to stay the provisional sentence proceedings pending adjudication, that the disputes raised by Eskom in the affidavit opposing provisional sentence be referred to adjudication by Mr Leech. Mr Hodge made it clear that if I was inclined to stay the entire claim, that the entire claim be sent to adjudication. Manyeleti seeks too, an order that Eskom do timeously all things necessary to have the adjudication, and any possible appeal by way of a tribunal hearing, disposed of timeously. Manyeleti seeks also an order that the referral of the dispute by Manyeleti's attorneys to Mr Leech on 18 February 2022 stands as a valid contractual referral under clause W1. Also sought are extensions of time periods relating to the adjudication and to a possible subsequent appeal by way of a tribunal hearing. It is also sought that in the event of Eskom defaulting on its obligations relating to the adjudication or appeal tribunal, Manyeleti would be entitled to enrol the provisional sentence proceedings on five days' notice. Manyeleti seeks also the costs of the application to compel heads of argument and related documents.
16. In my view, there was no dispute prior to the launching of the provisional sentence summons. Ms Dlamini, in her opposing affidavit raises, for the first time, defences to the provisional sentence summons. She does not suggest that any dispute had been articulated by Eskom prior to her affidavit.

17. There are in essence three main things before me now. Manyeleti's claims for provisional sentence, Eskom's request for a stay of the provisional sentence proceedings and Manyeleti's request that if there is to be a stay, Eskom gets on with the adjudication. Manyeleti also seeks the costs of the application to compel.
18. Manyeleti sent its claim to Mr Leech. Eskom has not yet filed its statement of defence in the adjudication. Manyeleti accuses Eskom of delaying the matter.
19. Both sides, in the correspondence referred to above, expressly agreed to Mr Leech's appointment. In so doing, they elected to go the adjudication route.
20. During argument before me, Mr N Mahlangu for Eskom said that the matter is properly before Mr Leech. Mr Mahlangu argued that what I should not hear are the main claims and those for interest.
21. Regarding costs, the question should be reserved in the three main applications and in the application to compel. After Mr Leech has adjudicated, either side may apply for such costs as they seek in the present High Court litigation.
22. My order below deals in composite manner with the disputes before me.

ORDER

1. The provisional sentence proceedings are stayed pending adjudication and any consequent tribunal hearing.
2. The adjudication referral by Manyeleti dated 18 February 2022 to Adv Leech SC stands as a referral to adjudication before Adv Leech SC.
3. Prayers 2 to 5 of Manyeleti's counter-application dated 30 June 2023 are granted.

4. Costs reserved, in all three main matters and in the application to compel heads of argument and related documents.

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GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 20 February 2025

DELIVERED : 20 February 2025

APPEARANCES :

Applicants Adv DS Hodge

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