REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1) REPORTABLE: No
(2) OF INTEREST TO OTHER JUDGES: No
(3) REVISED:

25/6/25 [redacted]

DATE SIGNATURE

Case Number: 2023-112430

In the matter between:

WORKING ON FIRE	APPLICANT
and	
MINISTER OF THE DEPARTMENT OF FORESTRY, FISHERIES AND ENVIRONMENT	FIRST RESPONDENT
THE DIRECTOR- GENERAL: THE DEPARTMENT, OF FORESTRY, FISHERIES AND ENVIRONMENT	SECOND RESPONDENT

JUDGMENT

Ramawele AJ

[1] This is an application for leave to appeal against my judgement delivered on the 12 March 2025. The application was heard on 28 November 2024 and judgement was reserved.

[2] This was an application in terms of which the Applicant sought payment of an amount of R29 482 325,92 (Twenty - Nine Million, Four Hundred and Eighty- Two Thousand, Three Hundred and Twenty Five Rand, Ninety Two Cents) and other ancillary relief by way notice of motion, which amount constituted Value Added Tax (VAT) allegedly due / owing and payable to the Applicant.

[3] I do not intend to detail the nature of the claim and the obligations of the respective parties arising from the agreement concluded between the Applicant and the Respondents. The background to the dispute and other material facts germane to this application are contained in my judgement.

[4] It is common cause that the Applicant rendered services to the Respondents in terms of the Memorandum of Agreement concluded between the parties. It is further common cause that some invoices of the Applicant did not include VAT. Upon realising its mistake, the Applicant revised its invoices and included VAT, but the Respondent refused to pay on the basis that it was agreed between the parties that any invoice issued is inclusive of VAT.

[5] In this application for leave to appeal, the Applicant raises two issues upon which it submits that there are reasonable prospects of success on appeal. First, that the price mentioned in Section 64(1) of the VAT Act[1] refers to the price in the contract concluded between the parties and not the amount stated in the invoice issued by the Applicant.

[6] The Applicant submits that Section 64(1) read with section 21 (1), (2) and (3) of the VAT Act entitles a vendor who has made a mistake in the invoice to rectify such a mistake. This argument is further expanded that the effect of the aforesaid

[1] Act 89 of 1991

rectification of the invoice means that it is not the amount in the invoice which section 64(1)[2] refers to but the price in the contractual agreement.

[7] The second issue raised is that Dr Marais, Chief Director Natural Resource, Management of the Respondents, had advised them in an email dated 19 April 2021 that the budgeted amount excludes VAT. The Applicant contends that it was prejudiced by the misrepresentation of Dr Marais. Because of the conclusion that I have arrived at, it is unnecessary to consider this second issue.

[8] Simply put, the Applicant contends that it has rendered services to the Respondent and is entitled to payment. The omission of VAT in its invoices, so says the Applicant, was a mistake which does not absolve the Respondents from its liability.

[9] The Respondents submit that "*price*" in Section 64(1) of the Vat Act refers to the amount stated in the invoice and consequently, the Applicant is not entitled to any payment because "*any price charged by a vendor in respect of any taxable supply of goods or service, shall for purposes of VAT Act, be deemed to include VAT*". The Respondents contend therefore that whatever mistake that the Applicant may have made in generating its invoices, Section 64(1) provides that such invoices are deemed to include VAT.

[10] The interpretation and applicability of section 64(1) is at issue in this application. The Applicant contends that it does not apply. The Respondents disagree.

[11] Upon further reflection and after hearing submissions by the parties, I do find the Applicant's argument persuasive that where a party has rendered services to another party without any dispute on performance, such a party should not be made to suffer non-payment because of its mistake in generating an invoice.

[12] Section 17(a) (1) of the Superior Court Act[3], provides "*that leave to appeal may only be given where the judge or judges concerned are of the opinion that (i) the appeal would have a reasonable prospects of success; or (ii) there is some*

[2] Section 64(1) provides that "*any price charged by any vendor in respect of any taxable supply of goods or services shall for the purposes of this Act be deemed to include any tax payable in terms of section 7(1)*"
[3] Act 10 of 2013

compelling reason why the appeal should be heard, including conflicting judgements on the matter under consideration".

[13] It has been held by the Supreme Court of Appeal that for leave to appeal to be granted, there must be sound, rational basis for the conclusion that there are reasonable prospects on appeal[4].

[14] I am of the view that there are reasonable prospects of success on appeal. Further, the appeal does raise an important point of law as contemplated in Section 17(6)(a) (i) of the Superior Court Act.

[15] In the premises I make the following order:

(a) Leave of Appeal is granted;

(b) Appeal to be heard by the Supreme Court of Appeal; and

(c) Costs to be costs in the appeal.

[redacted]

RATHAGA RAMAWELE

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Date of hearing: 24 June 2025

Date of judgement: 25 June 2025

[4] Four Wheel Drive Accessory Distributors CC v Rattan NO 2019 (3) SA 451 (SCA) at 463F

Appearances:

For the Applicant: M Dewrance SC with Mark Smith instructed by Cliffe Dekker Hofmeyr

For the Respondent: V Notshe SC with Mandla Mkhatswa instructed by The State Attorney, Pretoria