



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED
30 June 2025	
DATE	SIGNATURE

Date: 30 June 2025

Case number: 075722-2025

In the matter between:

TRANSNET SOC LIMITED

Applicant

and

GIJIMA HOLDINGS (PTY) KIMITED

Respondent

JUDGMENT

MINNAAR AJ:

[1] In this application, the applicant is seeking the following urgent relief:

1.1 The Respondent is directed to:

- a. complete all "*Disengagement Services*" as that phrase is defined in the Master Services Agreement concluded between the

Applicant and the Respondent attached to the founding affidavit as “FA1” (“the MSA”);

- b. take all steps necessary to migrate to the Applicant the “*Data Centre Services*” as that phrase is defined in the MSA, including the Respondent’s disengagement from the Active Directory; and
- c. complete all the items listed in the annexure to this Order marked “NOM1” by 30 June 2025.

1.2 The Respondent is interdicted from engaging in any conduct that disrupts or interrupts the provision of “*Services*” as that term is defined in the MSA pending the completion of the Disengagement Services, steps, and items referred to in paragraph 1 of this Order.

1.3 The Respondent is ordered to pay the Applicant’s costs, including the costs of two counsel, one being Senior Counsel, on Scale C.

[2] Listed in “NOM1” are the items that had to be completed by June 30, 2025. These items are:

2.1 Successfully disengaging and migrating the Active Directory (“AD”) from Gijima’s network to the Transnet owned and managed network, including undertaking the following key tasks:

- a. preparing the on-premises AD to decommission unused domain and disable unnecessary services;
- b. reviewing the disengagement and migration steps prepared by Gijima, Transnet and Microsoft;
- c. developing a high-level strategy on implementation of the AD migration - ensuring security and integrity of the on-premises AD;

- d. granting Transnet and Microsoft administrative access to T0, T1, T2 systems currently under Gijima's management;
- e. conducting an evaluation of the current AD infrastructure, including domain controllers, forests and trusts;
- f. finalising password reset and control mechanisms.

2.2 Successfully disengaging and migrating the Data Centre and Hosting Services ("DCHS"), which includes the following tasks and key deliverables:

- a. Developing a list of Terminated Services that may need to be reinstated, on an as and when basis;
- b. granting Transnet administrative access to the Azure AD to migrate the DCHS from the on-premises AD;
- c. delivering to Transnet and Microsoft the design or architectural documentation in respect of the mainframe for purposes of migrating data to Transnet's new environment.

2.3 Successfully disengaging and migrating the SAP Workloads, which includes the following tasks and key deliverables:

- a. granting Transnet and Microsoft access to the SAP environment firewall;
- b. delivering to Transnet and Microsoft the integration points and special configurations of

the SAP environment;

- c. conducting an assessment of the SAP environment;
- d. providing Transnet and Microsoft with on-premises AD domain controllers and DNS resolution and forwarding between the on-premises AD and Azure AD;
- e. providing additional capacity during the migration, when required by Transnet.

2.4 Successfully disengaging and migrating the Help and Service and Desk.

[3] In June 2020, the parties entered into the MSA. In this regard, the respondent agreed to provide information technology ("IT") services to the applicant for a period of five years, from December 1, 2019, to November 30, 2024. Regarding the addendum to the MSA, the termination date was extended from November 30, 2024, to February 28, 2025.

[4] Part and parcel of the MSA was a Disengagement Plan ("disengagement") that was to be implemented from the commencement of the MSA. It is a complex procedure to ensure the smooth transfer of IT services on the termination date.

[5] Following the extended termination date of 28 February 2025, the parties continued to have further engagements with each other, and disengagement workshops were held. The applicant successfully obtained approval for payment of the respondent's services up to June 30, 2025.

[6] The IT services being rendered are of a highly intricate and technical nature. The obligations related to disengagement are equally complicated and technical. The papers exchanged are voluminous. It is not the kind of application that should be entertained in a congested, urgent court.

[7] The nature of the services rendered is critical, not only to the applicant but to the country as a whole. It involves the entire country's rail network, running container and wagon services over thousands of kilometres of rail with hundreds of depots and shunting yards. It further has a profound impact on the public purse. To strike the application from the urgent roll because of the technical nature and volume of papers would not be in the interest of justice.

[8] The answering affidavit is extensive in the details provided. The matter involves an interpretation of a historically charged and technically complex agreement. The history and the technology involved require context and proper understanding. It is not a matter, as is stated in the applicant's heads of argument, that it is as simple as asking a single question: should the respondent be ordered to comply with its clear

contractual obligation? On my reading of the papers, it would appear (and no definite finding is made at this stage of the proceedings) that there are reciprocal obligations resting with both the applicant and the respondent.

[9] The respondent is submitting that there is a dispute of fact regarding what the applicants want the respondent to do and what the respondent can do. The respondent states that it would be impossible for the respondent to do what the applicant wants it to do. There is also a dispute of fact raised regarding whose responsibility it is to perform the transition.

[10] A further dispute which is raised is what would be 'reasonable assistance and information' as defined by the disengagement services dealt with in prayer 2.1 of the notice of motion.

[11] Of primary concern is whether the applicant has the necessary infrastructure to take over the IT services rendered by the respondent abruptly.

[12] The respondent further pleads that there is a tacit term in the MSA to provide for uninterrupted services, as was the case when the respondent took over from its predecessor. The respondent further raised *the exception of non adimpleti contractus*, as it is alleged that the obligations under the MSA are reciprocal regarding the disengagement services.

[13] The above-stated grounds are examples of disputes of fact on the papers before this court. There are competing versions of what is required from whom and when compliance is expected. There is also a conflict over whether the performance required by the applicant is feasible. Without the benefit of oral evidence, this court cannot decide which version is more probable. The court can also not rule that the respondent's version is so far-fetched or clearly untenable that the court is justified in rejecting it merely on the papers.

[14] I am of the view that the respondent is justified in its approach to have requested a referral of the matter to oral evidence.

[15] Having reached the above conclusion, and premised on the urgent nature of the application, I approached ADJP Davis for guidance. ADJP Davis provided me with the dates on which the oral evidence may be heard. I was further advised to convene an urgent meeting with counsel to discuss time frames for the exchange of statements and discovery.

[16] The meeting was held on short notice on Friday, 27 June 2025, and the court is grateful to counsel for having made themselves available. During the meeting, it was agreed that the application would be postponed to the week of July 21, 2025, and timeframes were discussed and agreed upon. Apart from the issues mentioned in the draft order provided by the respondent's counsel, the respondent's counsel requested that the issue of *exceptio non adimpleti contractus* should also

be included in the referral order. The counsel for the applicant was invited to suggest any issue that the applicant would like to include in the referral order, but counsel indicated that the applicant did not wish to include anything.

ORDER:

Consequently, I make the following order:

1. The application is postponed to Monday, 21 July 2025 and is referred for the hearing of oral evidence, before me or any other Judge of this Division, to determine the following issues:
 - 1.1 Whether, as at the date of the launch of the applicant's application, it was impossible for the respondent to perform its obligations under the Master Services Agreement;
 - 1.2 Whether, on a proper interpretation of the Master Services Agreement, to keep the services from being interrupted, whatever the incoming service provider had to do when coming into the contract with the applicant in 2020, the next incoming service provider would have to do when taking over from the respondent; alternatively,
 - 1.3 Whether there is a tacit term in the Master Services Agreement that keeps the services from being interrupted, whatever the incoming service provider had to do when coming into the contract with the applicant in 2020, the next incoming service provider would have to do when taking over from the respondent.

- 1.4 Whether the *exceptio non adimpleti contractus* finds application herein.
 - 1.5 Whether annexure “FA12” to the founding affidavit constitutes an agreement between the parties.
 - 1.6 Whether the applicant has the technical ability and infrastructure to take over the IT services from the respondent.
2. The evidence shall be that of any witness whom the parties or either of them may elect to call, provided that neither party shall be entitled to call any witness unless that witness is a deponent to an affidavit in these proceedings, or:
 - (a) It has served on the other party on Thursday, 10 July 2025, at 16h00 a statement wherein the evidence to be given in chief by such person is set out; or
 - (b) The court, at the hearing, permits such a person to be called even though no such statement has been so served in respect of his evidence.
 3. Either party may subpoena any person to give evidence at the hearing, whether such person has consented to furnish a statement or not.
 4. The fact that a party has served a statement in terms of paragraph 3 hereof, or has subpoenaed a witness, shall not oblige such party to call the witness concerned.
 5. By Thursday, 17 July 2025 at 16h00, each of the parties shall make discovery, on oath, of all documents relating to the issues referred to in paragraph 1 of this Order, which are or have at any time been in the

possession or under control of such party. Such discovery shall be made in accordance with Rule of Court 35 and the provisions of that Rule with regard to the inspection and production of documents discovered shall be operative.

6. The incidence of the costs incurred up to now shall be determined after the hearing of oral evidence.



Minnaar AJ
Acting Judge of the High Court

Gauteng Division, Pretoria

Heard on	: 19 June 2025
For the Applicant	: Adv. I V Maleka SC with Adv J Mitchell
Instructed by	: Mkhabela Huntly Attorneys Incorporated
For the Respondent	: Adv L J Morison SC with Adv M Phukubje
Instructed by:	: Nicqui Galaktiou Incorporated
Date of Judgment	: 30 June 2025