

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 061917/2025

DATE: 15-05-2025

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE

SIGNATURE

02/06/2025

10 In the matter between

MOUNTAIN REACH TECHNOLOGIES (PTY) LTD

Applicant

and

MAMPUDIMA COMMUNITYCOMPANY NPC

First Respondent

AFRICAN RAINBOW MINERALS LIMITED

Second Respondent

J U D G M E N T

20 YACOUB, J:

The applicant in this matter seeks an urgent application compelling the respondents to return to it a proposal and associated documentation which the applicant provided in the course of what it characterises as the conclusion of an

agreement between the parties. The proposal was provided to the respondents in August 2023. The documentation was provided without first obtaining any undertakings with regard to the confidentiality of the documentation.

The applicant sent numerous agreements to the respondents requesting them to be signed. These were never signed. The agreements for which signatures were unsuccessfully requested include a confidentiality agreement. In the course
10 of the year-and-a-half since the documents were provided to the respondents, there has been interaction between the parties, characterised primarily by the applicant asking for an update and asking for the respondents to sign the agreements, and the respondents asking for more time and essentially fobbing off the applicant.

In January this year, after the last written interaction being in March 2024, the applicant received an email recalling a meet and greet request from the second respondent, in
20 response to which the applicant then asked for a meeting on 17 January. The applicant received no response to that. The applicant did nothing for a month and then imposed an ultimatum that the respondents must respond to them by 1 March, failing which they would consider their position.

In all of this correspondence, the applicant never asked for its documentation to be returned. It was asking for the implementation of the agreement which the applicant claims has been concluded between the parties. When there was no response by 1 March, the applicant still did nothing and a month after the applicant's request for a meeting by 1 March, on 16 April, the respondents published a tender requesting services for training which was part of the proposal provided by the applicants.

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The applicants then sent further correspondence to the respondents to the effect that they considered themselves to be the service provider and that the respondents must finalise these agreements, failing which the applicant would take its steps. In none of this correspondence and in none of these demands did the applicant refer to the documentation and ask for its return.

20 The applicants then initiated these proceedings in which the first relief sought after the order regarding urgency, is the interdict of the use of the applicant's intellectual property contained in those documents; the return of the documents, and the deletion thereof from the respondents' electronic devices. This was the first time that that relief was sought.

There is absolutely nothing in the facts before me which indicate why in those circumstances that relief is urgent. There is no indication that the first and second respondents have used improperly or in any other way the intellectual property and that they have an intention of disseminating it. There is therefore no threat to that intellectual property. The applicant contends that it is entitled to the relief, because the respondents did not tender the return of the documents in response to this application.

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It is true that if the respondents are not using the documents, it would have been better for them to simply tender the return of the documents and leave it at that. However, the applicant cannot dictate how the respondent must respond to an application and there is more than one legitimate course of action for a respondent to take. It is entirely within the rights of the first and second respondents to simply deny that they have done anything with that documentation and to oppose the contentions of urgency.

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For these reasons, I do not find that the matter is urgent. The respondents have used two counsel. I tend to agree with the submission of Ms Martin for the applicant that the matter did not require the use of two counsel and therefore I do not include that in the costs order. For these reasons, I make

the following order:

ORDER

THE APPLICATION IS STRUCK FOR WANT OF URGENCY
AND THE APPLICANT IS TO PAY THE COSTS ON SCALE C.

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YACOOB, J

JUDGE OF THE HIGH COURT

DATE: 02/06/2025

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