



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 4689/2023

In the matter between:

BLOEMWATER (now Vaal Central Water)

APPLICANT

and

SILVER LAKE TRADING 305 (PTY) LIMITED

t/a OPULENTA FINANCIAL SERVICES

FIRST RESPONDENT

SANKOFA INSURANCE BROKERS (PTY) LTD

SECOND RESPONDENT

Neutral citation: *Bloemwater (now Vaal Central Water) v Silver Lake Trading 305 (Pty) Limited t/a Opulentia Financial Services and Another* (4689/2023) [2025] ZAFSHC 304 (19 September 2025)

Coram: Naidoo et Molitsoane JJ

Heard: 4 June 2025

Delivered: 19 September 2025

Summary: Application for leave to appeal – s 17 of the Superior Courts Act 10 of 2013 – success in showing that another court would come to a different finding from that of the court *a quo*.

ORDER

The application for leave to appeal is dismissed with costs, such costs shall include the costs of counsel on scale B.

JUDGMENT

Molitssoane J (Naidoo J concurring)

[1] The applicant seeks leave to appeal to the Supreme Court of Appeal, the judgment and order handed down by us on 12 April 2024. The application is opposed by the first respondent. The basis for the opposition is that the applicant seeks to rehash all the arguments which were rejected by us in the main application. The attack on our judgment is grounded on nine inter-related grounds of appeal. The applicant contends that it has reasonable prospects of success and further that the appeal will dispose of all the issues raised in the main application.

[2] The test for an application for leave to appeal is trite. In terms of s 17 of The Superior Courts Act 10 of 2013, leave to appeal may only be given where the judges concerned are of the opinion that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.

[3] As a starting point, it is submitted that this court erred in finding that the tender data did not confer upon the applicant a power to correct any arithmetical errors on the bids submitted to it. The contention of the applicant is based on clause 1.6 of the SBD-1 which was part of the documentary evidence in the main application. The clause provides:

'The organ of state reserves the right to require a tender, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.'

In this regard, the first respondent contended that it had reserved itself the right to seek all information that would enable it to effectively evaluate a tender. We dealt fully with this contention. The respondent contended that reference to 'preferences' refers to categories that the bids would be allocated preferential points, namely, price and specific

goals. In dealing with this submission, we said the following:

'The contention that "preference" points in this regard also includes "price" is incorrect. The words "preference" and "price" are used disjunctively at the third stage of the evaluation process. I agree with the contention by the applicant that SBD 6.1 could not have intended that a bidder be afforded an opportunity to *ex post facto* correct the price it submitted.'

[4] We further made the point that, according to us, the first respondent did not reserve to itself the right to correct errors in the bids. The undisputed evidence is that both the first page of the tender as well as the price schedule indicated that the respondent had submitted a tender for a yearly premium of R9 247 536.38. We made the point that there was no inconsistency or arithmetical error on the first page of the bid of the first respondent and its offer and acceptance. It was not up to the applicant to recalculate the tender and invite the first respondent to agree with its recalculation. In this case, the applicant made a recalculation and came to an amount of R8 6 55 172.72, which calculation was less by R592 363.66. This recalculation was impermissible. It was thus not correct for the applicant to substantially reduce the tender document of first respondent by over R500 000. In our view, it is unnecessary to rehash the arguments which are raised in this application for leave to appeal as same were fully dealt with during the main judgment.

[5] In the application for leave to appeal, the applicant persists with the argument that the tender data conferred upon the first respondent, Bloemwater, the power to correct any arithmetical error. In this regard, it refers to clause 1.3 of the SBD 1 form which provides that:

'[Preference] Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.'

It cannot be argued otherwise that price and preference are used disjunctively in the data as we found. During argument, much was made about the applicability of regulation 3(1) of the Preferential Procurement Regulations 2011. This is misplaced as the true reason for setting aside the tender was the correction of the arithmetical error in circumstances where Bloemwater was not empowered so to do by the data. There is no evidence that after the correction, another evaluation process was embarked upon. The applicant has failed to satisfy us that another court would come to a different finding. The application

must accordingly fail.

Order

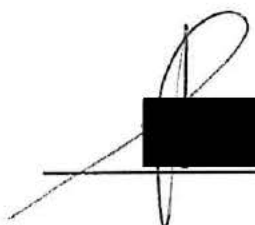
[6] In the circumstances, I propose the following order:

The application for leave to appeal is dismissed with costs, such costs shall include the costs of counsel on scale B.



P E MOLITSOANE
JUDGE OF THE HIGH COURT

I agree and it is so ordered.



S NAIDOO
JUDGE OF THE HIGH COURT

Appearances

For the applicant: N Mahlangu

Instructed by: Cliffe Dekker Hofmeyr Inc, Johannesburg
c/o Phatshoane Henney Attorneys, Bloemfontein

For the first respondent: S Grobler SC

Instructed by: Peyper Attorneys, Bloemfontein.