IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, MAKHANDA

NOT REPORTABLE

Case No.: CA84/2025

In the matter between:

SNR ELECTRICAL CC Appellant

and

GEORGE LOCAL MUNICIPALITY First Respondent

COASTAL ARMATURE WINDERS & SUPPLIERS CC Second Respondent

LUKHOZI CONSULTING ENGINEERS (PTY) LTD Third Respondent

JUDGMENT

EKSTEEN J:

[1] The appellant, SNR Electrical CC (SNR), was a disappointed bidder in response to a tender invitation that had been issued by the George Local Municipality (the Municipality). It instituted proceedings to review and set aside the award of the tender to the second respondent, Coastal Armature Winders and Suppliers CC (Coastal). The notice of motion was structured in two parts. In Part A it sought an urgent temporary interdict, pending the finalisation of the review proceedings, to restrain the Municipality from 'implementing and/or executing any of the works contemplated in the award of the tender', or from taking any steps aimed at the implementation thereof pursuant to the contract that had been concluded with Coastal as a consequence of the award. In Part B, which was postponed and is still pending, it sought to set aside the award of the tender to Coastal and an order directing the Municipality to award the tender to it. The third respondent, Lukhozi Consulting Engineers (Pty) Ltd (Lukhozi), is a firm of consulting engineers that had been appointed to prepare the tender documentation and to advise the Municipality in respect thereof. Neither Coastal nor Lukhozi participated in the proceedings in respect of Part A. The urgent relief sought under Part A was dismissed in the East London Circuit of the High Court, Eastern Cape (the trial court) and the appeal is with leave of the trial court.

The nature of the tender

[2] The Municipality is the water services authority[1] and the water services provider for the area of its jurisdiction, the city of George. There are approximately 300 000 people living within this area. In discharging its obligations, it is required to maintain:

(a) 160 sewer pump stations along critical biodiverse areas and nature reserves;

(b) 5 wastewater treatment facilities that discharge into critical diverse river courses upon final treatments;

(c) 50 pump stations to ensure that water is supplied to all areas within the urban edge;

(d) 4 water treatment facilities to ensure the provision of safe, clean drinking water that conforms with health-based targets and water quality standards; and

(e) 2 raw water pump stations.

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[1] As defined in s 1 of the Water Services Act, 108 of 1997.

[3] Much of their equipment is old and requires regular maintenance and refurbishment, which places strain on the internal capacity of the Municipality. Accordingly, during 2024, the Municipality issued an invitation to tender for a mechanical and electrical maintenance contract for the provision of maintenance and upgrades to its critical water and sewer infrastructure, on an ad hoc basis, as and when required, for a period of three years. In its advisory report to the Municipality's Bid Evaluation Committee (BEC), Lukhozi explained that contractors are used on an ad hoc basis to assist in the execution of the maintenance and upgrading work where the department has inadequate capacity to perform the work internally. They are appointed on a rate-only basis and are used as and when required.

[4] The extent of the work that the successful tenderer would be called upon to perform, or the quantities of components that it will be required to deliver during the contract period are not defined and are dependent on the Municipality's requests, as it may arise from time to time. Agreements of this nature, usually referred to as *pacta de contrahendo*, are well known in our law.[2] *McIlrath's* case was demonstrative of the effect of such a contract. *McIlrath's* had entered into an agreement with Pretoria Municipality to perform certain cartage work at agreed prices whenever required by the Municipality. Where an agreement of this nature results in a firm offer, and is not too vague, it will be enforceable. In circumstances where the remuneration or the price is ascertainable, the contractual duties must be performed whenever demanded within limits fixed by the agreement (the *pactum*)[3]. Each demand or order initiates a separate definable contract containing some of its own terms and some of the terms imported by the *pactum*.

[5] The constitutional era has changed the procurement procedure where organs of state participate in requisitioning tenders. Persons dealing with organs of state are now

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[2] See *Montrose Diamond Mining Co. v Dyer* 1912 TPD 1 at 5; *McIlrath's v Pretoria Municipality* 2012 TPD 1027 at 1037; *Lugtenborg v Nichols* 1936 TPD 76 at 79; *Hirschowitz v Moolman and Others* 1985 (3) SA 739 (A) at 765I; *Wessels: Law of Contract* (2nd ed) para 217.

[3] See *H Merks & Co. (Pty) Ltd v The B-M Group (Pty) Ltd and Another* 1996 (2) SA 225 (SCA) 233D-235G.

in a different position to what they would have been in had they been dealing with non-state bodies that are subject only to the common law. There are now constitutional, and other legislative provisions, which bind organs of state in the way tenders are invited, considered, and awarded. However, once a tender has been awarded the contract which has been formed falls to be interpreted in the same manner as any other contract. The only peculiarity that arises is that a tender in the form of a standing offer requires a tenderer to perform work, or to supply goods of a specified type, at the quoted price, as and when required. The acceptance of such a tender results in a *pactum de contrahendo*[4]. Contracts of this kind vary in the extent of the obligations imposed by each party. It is perfectly acceptable for a successful tenderer to supply the goods as and when required, and for an organ of state, in turn, to commit itself to order all the goods exclusively from the contractor as and when needed.[5] There is nothing new in this principle.[6] However, in the absence of sufficient indications to the contrary, it will not be implied that the contractor will be entitled to receive any work under the contract,[7] nor that work will not be given to another contractor, subject of course, to lawful procurement processes.[8] In the present matter the successful bidder's rights and expectations would be dependent upon the proper interpretation of the tender documents and the contract that resulted from the award of the tender. The tender was advertised on 1 July 2024, but neither the invitation to tender nor the tender documents, nor the contract eventually concluded with Coastal were included in the papers before us. There is accordingly insufficient information before us to determine whether the tender intended that all, or any, maintenance work required during the contract period would necessarily be performed by the successful bidder. I shall revert to the nature of the contract to the extent material to the adjudication of the matter.

The material disputes

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[4] *Christie's Law of Contract in South Africa* (8th ed) at p. 60.

[5] *Phoebe Bolton: The Law of Government Procurement in South Africa* (2007) B26 at para 3.2.2; and *Premier, Free State, and Others v Firechem Free State (Pty) Ltd* 2000 (4) SA 413 (SCA).

[6] See *Union Government v Vianini Ferro-Concrete Pipes Ltd* 1938 AD 560.

[7] *Christie's Law of Contract* at p. 51.

[8] See *Beka (Pty) Ltd v Nelson Mandela Bay Metropolitan Municipality and Another* (unreported judgment of the High Court, Port Elizabeth, delivered on 30 August 2011 (case no. 768/2011).

[6] Before I consider the legal position, it is necessary to refer briefly to the material disputes in the matter. As I have said, SNR was a disappointed bidder that sought a temporary interdict pending the resolution of Part B of the notice of motion. I have alluded earlier to the fact that the complete tender documentation was not before us, and Mr *Nyangiwe,* on behalf of SNR, acknowledged that it did not serve before the trial court. However, in essence, SNR contended that the BEC had abdicated its functions in favour of Lukhozi[9] who had unlawfully participated in the evaluation of the bids, and, secondly, that they ought to have scored higher than Coastal in respect of both price and functionality. They said that Lukhozi was biased against them and had provided the BEC with a misrepresentation of the rates contained in their bid when considering the reasonableness of their tender and had unlawfully altered the amount of their bid. Thus, they contended that the tender ought to have been awarded to them.

[7] The Municipality denied any unlawful involvement by Lukhozi and contended that Lukhozi had been appointed as the consultant and technical specialist, in an advisory capacity, to the Municipality, and performed their functions in compliance with the Municipality's Supply Chain Management Policy.[10] It also said stated that SNR was not evaluated for price, because their bid was eliminated from consideration due to the unrealistically low rates quoted, which created a risk that it would not be able to perform the required work adequately at the quoted rates. The Municipality said that SNR's tender contained numerous arithmetical errors, mainly relating to the overall total for the various bills of quantity, which were not in accordance with the actual sum of the line totals. The net result was that SNR's overall tender, correctly calculated, in fact amounted to R25 096 954,78, excluding VAT, higher than the quoted figure. The BEC, acting on the advice of Lukhozi, concluded that many of the rates quoted were unrealistic and non-market related, which, due to their out of balance nature, artificially affected the received tender price, making it unfair for same to be used as a competitive base on which to evaluate the tender.

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[9] The BEC adopted the advice provided by Lukhozi and, in their minutes they repeated exactly the formulation of Lukhozi's advisory bid evaluation report.
[10] The Municipality Supply Chain Management Policy was also not included in the papers.

[8] Thus, Lukhozi, on behalf of the Municipality, requested SNR to clarify their pricing as set out in its bid. SNR responded, but the BEC, again acting on advice from Lukhozi, found their explanation to be less than convincing. They opined that the explanation merely exacerbated the problem arising from the unrealistic prices that amplified the commercial risk to the Municipality. Accordingly, SNR was eliminated from the process and was not considered further.[11] The issue relating to the unrealistic pricing and the commercial risk that it may pose to the Municipality raises a material dispute of fact. As I have said, Lukhozi did not participate in the proceedings under Part A of the notice of motion, but they have entered an appearance to oppose Part B. Accordingly, further evidence may still be received which may have a material impact on the resolution of the dispute.

The temporary interdict

[9] I turn to the requirement for a temporary interdict. To succeed in Part A of the notice of motion SNR was required to establish

(a) a prima facie right, even if it is open to some doubt;

(b) a reasonable apprehension of irreparable and imminent harm to the right if an interdict is not granted;

(c) that the balance of convenience favours the grant of the interdict; and

(d) that it has no other remedy.[12]

SNR clearly had no other suitable remedy, so the latter requirement is easily met.

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[11] It was at all times common cause that the Construction Industry Development Board (CIDB) Act, 38 of 2000, applied in respect of the tender. The 'Best Practice Guideline #A3: Evaluating tender offers', Fifth Edition, of the CIDB document 1003, published in February 2008 in terms of s 5(2)(b) of the CIDB Act provides for the process of evaluation. It enjoins the BEC to assess the reasonableness of all offers before the award of points for the financial offers. In the assessment of the reasonableness the guideline provides:
'It is important that the offer receiving the highest number of points for price is realistically priced. Unrealistic financial offers (i.e., where it is not economically possible to execute the contract at that price) distort the scoring of price. In cases where a tenderer has tendered a favourable unrealistic financial offer, the evaluator should ascertain as to whether or not there is a valid reason for the tender price being unrealistic. This may necessitate that the tenderer be interviewed. If there is no valid reason, the tender offer must be eliminated from further consideration.'

[12] *National Treasury and Others v Opposition of Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) at para 41.

[10] Mr *Nyangiwe* argued, both in the trial court and in this court, that SNR had a clear right to the relief sought. The trial court in dismissing the relief sought in Part A of the notice of motion, held that SNR had failed to satisfy the requirements for an interim interdict, in particular that it had failed to establish that it had a clear right or that there was a reasonable apprehension of harm. However, it is not clear from its reasons whether it considered that SNR had established a prima facie right, albeit open to some doubt, or whether it considered that they had failed to establish any right at all. Hence the appeal.

[11] In developing his argument, Mr *Nyangiwe* contended that SNR had a clear right to:

(a) fair, equitable, competitive, and transparent tender processes;

(b) the evaluation of its tender in terms of the framework established in terms of national legislation;

(c) administrative action that is lawful from a reasonable and procedurally fair;

(d) treatment and conduct that complies with the Constitution and applicable law; and

(e) the evaluator is scored for price and preference.

He proceeded to assert that, whereas SNR had a clear right it was not required to establish the existence of the further requirements for an interim interdict, being a reasonable apprehension of harm, and that the balance of convenience favours them.

[12] It is settled that where a clear right has been established, as opposed to a prima facie right, a well-grounded apprehension of irreparable harm need not be established.[13] However, it does not follow that an interdict would be granted in the absence of a reasonable apprehension of harm. In *Setlogelo*[14] De Villiers CJ explained:

'The argument as to irreparable injury being a condition precedent to the grant of an interdict is derived probably from a loose reading in the well-known passage in Van der Linden's *Institutes* where he enumerates the essentials for such an application. The first, he

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[13] *Setlogelo v Setlogelo* 1914 AD 22 at 227*; LF Boshoff Investments (Pty) Ltd v Cape Town Municipality; Cape Town Municipality v LF Boshoff Investments (Pty) Ltd* 1969 (2) SA 256 (C).
[14] At 227.

says, is a clear right; the second is injury. But he does not say that where the right is clear the injury feared must be irreparable. That element is only introduced by him in cases where the right asserted by the applicant, though *prima facie* established, is open to some doubt'.

An interdict, whether temporary or permanent, is directed at preventing injury, and even where a clear right has been established an injury, actually committed or reasonably apprehended, remains a necessary element which must be established in order to entitle an applicant to an interdict.

The right established

[13] In *Webster*[15] it was said:

'In the grant of a temporary interdict, apart from prejudice involved, the first question for the court … is whether, if interim protection is given, the applicant could ever obtain the right he seeks to protect. Prima facie that has to be shown.'

Accordingly, the right in issue, generally, is the right to succeed in the review proceedings.[16] Whether an applicant has a right is a matter of substantive law, but whether it is clear is a matter for evidence.[17] So, where an applicant asserts a right protected by the Bill of Rights in the Constitution, as SNR sought to do in this case, the existence of the right is indisputable.[18] But that is not enough. An applicant for an interdict must go further and demonstrate, on a balance of probability, an invasion of that right, alternatively, a well-grounded apprehension of an infringement thereof, if the interdict is not granted. The Constitution provides, after all, that everyone has a right to fair administrative action, but whether there has been an invasion of that right , which, if not protected by an interdict, would cause harm, is a matter that is in dispute.[19] It seems to me therefore that where the authorities refer to a clear right, it is reference rather to a right clearly established.

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[15] *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.
[16] See also *Economic Freedom Fighters v Gordhan and Others* 2020 (6) SA 325 (CC) at para 42.
[17] See *Law of South Africa* 1st reissue vol 11 para 310 at p. 288.
[18] See *National Treasury* at para 46 and *Eskom Holdings SOC Limited v Vaal River Development Association (Pty) Ltd and Others* [2022] ZACC 44 at para 192.
[19] See *National Treasury* at para 50; and *Free State Gold Areas Ltd v Merriespruit (Orange Free State) Gold Mining Co. Ltd and Another* 1961 (2) SA 505 (W) at 524.

[14] Thus, whether a right is clearly established depends largely upon the circumstances of the particular case. Where the facts alleged to establish an invasion of the right are admitted or not disputed, the right may be said to be clearly established.[20] But where there is a material dispute of fact, as I have found that there is in this case, there can be no question of a 'clear right'.[21] However, there may yet be an established prima facie right to the relief claimed in the main suit. In deciding whether a prima facie right has been established a court should not, at the interim stage, seek to prejudge the matter, although it may, 'peek into the grounds of review raised in the main review application and assess their strength'.[22] It is only if the court is convinced that the review is likely to succeed that it may appropriately grant a temporary interdict. For these reasons I consider that the trial court was correct that a 'clear right' has not been established. By virtue of the conclusion that I have come to I shall assume, without making a finding in that regard, that SNR has established a prima facie right to the relief in the main application.

Harm

[15] That brings me to the question of harm. Once a prima facie right was established SNR had to show a reasonable apprehension of irreparable harm, if the interim relief were refused and the ultimate relief granted. I have dealt earlier with the nature of the tender and the contract with Coastal to the extent that it can be gleaned from the papers before us. I have recorded that SNR has not established that, had the contract been concluded with them, they would have enjoyed any entitlement to receive maintenance or refurbishment work. Thus, I am bound to accept that they were committed to perform such maintenance or refurbishment work as the Municipality may, in its discretion, request from them from time to time. However, I am alive to the fact that SNR was not required to establish actual harm, a reasonable apprehension of harm would suffice. I recognise that it is the Municipality's case that it is unable to perform the

[20] See *Setlogelo* at 225; and *Boiler Efficiency Services CC v Coalcor (Cape)(Pty) Ltd and Others* 1989 (3) SA 460 (C) at 465I-J.
[21] See *Johan Meyer: Interdict and Related Orders* at p. 67*; Moroko Swallows Football Club Ltd v The Birds Football Club and Others* 1987 (2) SA 511 (W) at 521D-E.
[22] *Economic Freedom Fighters* at para 42.

maintenance and refurbishment of its infrastructure that is required to provide water to the community within its boundaries and, irrespective of what the terms of the tender may be, the Municipality said that it had outsourced the day-to-day maintenance of its water infrastructure to Coastal. Thus, in its own case the Municipality said that it would, in the period before Part B is finalised, have to engage the successful tenderer to perform maintenance work.

[16] Proceeding from this premise it was argued on behalf of SNR that, if the interim interdict were not granted, the impugned contract may be implemented to finality, thereby unavailing a substitution order as one of the remedies that will be available to it. Indeed, a refusal of a temporary interdict pending the finalisation of litigation is said to be appealable, not on the grounds that its refusal will cause irreparable loss to the applicant, but because the interdict is sought to preserve the subject matter pending the main suit. The refusal of such an interdict may ordinarily result in the plaintiff being unable, if successful in the review, to obtain the relief it seeks. In other words, it will preclude some of the relief which might have been granted at the hearing.[23] This will ordinarily be so where an organ of state has awarded the tender for the supply of a circumscribed consignment of goods, or the construction of defined works. Where, in such an instance, a portion of the consignment of goods is delivered before the review proceedings are heard, or the works are partially constructed during this period, a significant part of the original tender would no longer be available. The failure to issue an interim interdict in such circumstances would necessarily give rise to harm.[24]

[17] This is not such a case. The tender is for maintenance and refurbishment work that may arise, from time to time, over the period of three years, calculated from the date of the award. It is time bound. In the event that the three-year period is calculated from the date of the award to Coastal, the Municipality would, if the interdict is granted,

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[23] *Davis v Press & Co.* 1944 CPD 108.

[24] SNR placed much reliance on the decisions in *Marce' Projects (Pty) Ltd and Others v City of Johannesburg Metropolitan Municipality and Others* (2019/33291) [2021] ZAGPJHC 137 (29 March 2021); and *Down Touch Investments (Pty) Ltd and Another v South African National Roads Agency SOC Ltd and Another* (2064/2020) [2020] ZAECGHC 120 (29 October 2020). These cases demonstrate the principle.

be obliged, as best it can, to perform maintenance work that is required before the finalisation of the review process itself to give effect to its constitutional and legislative mandate. SNR, if successful in the review, would then be bound, if called upon, to perform such work for the remaining part of the contract period. A substitution order can hold no benefit for SNR in respect of the portion of the contract period that has lapsed before the finalisation of the review. I shall revert to this issue in considering the balance of convenience. If, however, the three-year period is calculated from the date of the award of the contract to SNR, as a result of a substitution order, its entitlement, to the extent that there is any, will persist for a period of three years thereafter in respect of all maintenance and refurbishment work arising during that period, as the Municipality may assign to it. There is no evidence to suggest that there would be less maintenance work during the three-year period commencing from the finalisation of the review, than would be the case if the three-year period were calculated from the award of the contract to Coastal. Accordingly, I consider that the trial judge correctly held that SNR has not established a reasonable apprehension of irreparable harm if the interdict were not granted, and the relief in Part B is obtained. Even if I err in the conclusion that I have come to in respect of harm, Mr *van Rhyn* argued that the trial court ought, in any event, to have refused the interdict on the ground that the balance of convenience favours the refusal of the temporary interdict. I shall, accordingly, consider the balance of convenience, a matter that the trial court did not address.

Balance of convenience

[18] In assessing the balance of convenience, a court weighs up the likely prejudice to an applicant if the interim relief is refused, and the refusal is later shown to have been wrong, against the likely prejudice to the respondent if the interim interdict is granted and the grant of the interdict is later shown to have been wrong.[25]

[19] As I have said, the Municipality is the water services authority and water services provider for the city of George. The extent of the infrastructure is recorded earlier. The

[25] See *Shoprite Checkers Ltd v Blue Root Property Managers (Pty) Ltd and Others* 1994 (2) SA 172 (C) at 184E; and *Troskie en 'n ander v Van der Walt* 1994 (3) SA 545 (O) at 561C-D.

Municipality said that it constituted the critical water and sanitation infrastructure to provide water services as a basic human right. Some of the sewer pump stations are situated within the catchment area and drain into the main drinking water source, being the Garden Route Dam, and the wastewater treatment facilities discharge into critical diverse river courses. Most of the infrastructure subject to the tender is past its life expectancy and requires daily maintenance as failures occur. A failure to attend to it expeditiously may be catastrophic and result in sewer spillages, contamination, and water outages, which may cause major health risks to the larger George community, and visitors to George and the surrounding areas.

[20] The Municipality said that it feared that an interruption in these critical services could result in the city of George coming to a standstill, with the potential for public unrest, vandalism and riots. Thus, they contended that the interruption in water supply, even for a single day, could have catastrophic consequences for the Municipality's constitutional duty to provide critical services to, and the needs of, its constituency. The Municipality's fears regarding potential public unrest, vandalism and riots are, in my view, well-founded. These events have become regular occurrences in South Africa where communities protest against service delivery failures, and they are a matter of public record.

[21] The Constitution provides that everyone has the right to an environment that is not harmful to their health or well-being and to have it protected through legislative and other measures.[26] The National Environmental Management Act, 107 of 1998, was promulgated to give effect to the constitutional imperative. It defines the environment as being made up of land, water, and the atmosphere of the earth, and imposes substantial obligations on the Municipality concerning the control of incidents. A failure to comply with the legislation constitutes offences punishable, in certain circumstances, with a fine of up to R10 million.

[26] Section 24 of the Constitution.

[22] The Constitution also confers on everyone the right to have access to water, and it imposes on the state the obligation to pass reasonable legislative measures to achieve the progressive realisation of these rights.[27] It is one of the objects of local government circumscribed in the Constitution, to ensure the provision of services to its community in a sustainable manner.[28] In doing so, the Municipality is enjoined to give priority to the basic needs of the local community, and to ensure that all members of the community have access to at least the minimum level of basic municipal services, which must be environmentally sustainable.[29] The Water Services Act, promulgated pursuant to the provisions of s 27 of the Constitution, states that one of its main objects is to provide for the right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water, and an environment not harmful to human health and well-being.[30] As adumbrated earlier, the Municipality is the water services authority in terms of the legislation. Accordingly, the obligation to provide clean drinking water and to protect the environment are constitutional duties imposed on the Municipality for the benefit of the people who live within its area.

[23] The tender constitutes a measure employed by the Municipality to discharge its constitutional obligations and those imposed upon it by legislation. In *National Treasury*[31] the Constitutional Court noted that:

'The *Setlogelo* test, as adapted by case law, continues to be a handy and ready guide to the bench and practitioners alike in the grant of interdicts … .However, now the test must be applied cognisant of the normative scheme and democratic principles that underpin our Constitution. This means that when a court considers whether to grant an interim interdict it must do so in a way that promotes the objects, spirit and purport of the Constitution.'

[24] In *AllPay (1)*[32] and *AllPay (2)*[33] the Constitutional Court explained that:

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[27] Section 27 of the Constitution.
[28] Section 152 of the Constitution.
[29] Section 73 of the Local Government: Municipal Systems Act, 32 of 2000.
[30] Section 2(a).
[31] At para 45.
[32] *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency, and Others* 2014 (1) SA 604 (CC) at para 56.

‘Any contract that flows from the constitutional and statutory procurement framework is concluded not on the state entity's behalf, but on the public's behalf. The interests of those most closely associated with the benefits of that contract must be given due weight. Here it will be the imperative interests of grant beneficiaries and particularly child grant recipients in an uninterrupted grant system that will play a major role. The rights or expectations of an unsuccessful bidder will have to be assessed in that context.’

[25] These remarks are of equal application in the present matter where the Constitutional rights of citizens, and in particular vulnerable people, to the uninterrupted supply of clean drinking water and sanitation must play a major role in evaluating where the balance of convenience rests.[34] In a case of this nature I am obliged to recognise that I am invited by SNR to restrain the Municipality from effectively maintaining essential infrastructure, which has the very real potential of interrupting basic municipal services, which it is constitutionally obliged to provide.[35] By virtue of its Constitutional obligation, if the interdict were to be granted, the Municipality would be obliged, to the best of its ability, to attend to any maintenance and refurbishment that may be required pending the hearing of the review, in-house. It cannot be interdicted from doing so itself. If it succeeds in doing so, then, for the reasons set out earlier, there can be no harm to SNR if the interdict is not granted. On the other hand, if it is unable to do so, and it has said that it does not have the capacity to do so, the consequences for the people of George, on whose behalf the contract with Coastal was concluded, may be grave.

[26] Thus, as against the very substantial potential prejudice to the Municipality, and to the people of George, there is, at best for SNR, a limited prospect of some financial prejudice. I consider that the balance of convenience is heavily in favour of the refusal of the interim interdict.

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[33] *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency and Others* 2014 (4) SA 179 (CC) at para 31.
[34] *National Treasury* at para 46.
[35] Section 152(1)(b) of the Constitution.

[27] Finally, and in any event, even where all the requirements for an interdict have been established, the court has a discretion to refuse an interdict.[36] For all the reasons set out above, I would have exercised my discretion against SNR in respect of Part A of the notice of motion.

Costs

[28] Mr *Nyangiwe* argued that in the event that we dismiss the appeal there should be no order as to costs. In support of this submission, he relies on the principle in *Biowatch*[37]. Mr *van Rhyn* did not contend otherwise. It seems to me that the principle does apply and I make no order for costs.

[29] In the result, the following order is made:

1. The appeal is dismissed.

J W EKSTEEN
JUDGE OF THE HIGH COURT

BROOKS J:

I agree.

R W N BROOKS

[36] LAWSA, vol II at para 321.
[37] *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC).

JUDGE OF THE HIGH COURT

RUSI J:

I agree.

L RUSI

JUDGE OF THE HIGH COURT

Appearances:

For Appellant:	Adv X S Nyangiwe
Instructed by:	Moletsane PN Attorneys Inc c/o Shenxane Inc MAKHANDA
For 1st Respondent:	Adv G van Rhyn
Instructed by:	Goussard Attorneys c/o Nolte Smit Attorneys MAKHANDA
Date Heard:	22 July 2025
Date Delivered:	23 September 2025