IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: A2024-053317

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
2025/11/17	[redacted]
DATE	SIGNATURE

In the matter between:

AFRIRENT (Pty) LTD APPELLANT

and

RAND WEST CITY LOCAL MUNICIPALITY FIRST RESPONDENT

FLEET HORIZON SOLUTIONS (Pty) LTD SECOND RESPONDENT

THE ORDER

(1) The appeal succeeds.

(2) The order of the court below is set aside and replaced with one reading:

"1. *The award of the tender by Rand West to Fleet is declared to be unconstitutional and unlawful. It is reviewed and set aside.*

2. The service level agreement between Rand West and Fleet is set aside from inception.

3. Rand West and Fleet are jointly and severally to pay the costs of Afrirent. These include those of senior counsel."

(3) Rand West may, at a time of its choosing, if it so wishes, call for tenders afresh, relating to subject matter, length of contract and other details as specified by Rand West.

(4) Rand West may contract with any suitable supplier or suppliers, on an emergency but fair and transparent basis, for the supply of vehicles necessary to keep the municipality functioning, pending the conclusion of a fresh tender process.

(5) Rand West and Fleet are jointly and severally to pay Afrirent's costs of the appeal. These include those of senior counsel. Scale C applies.

(6). Regarding all applications relating to condonation and lapsing of the appeal which the parties abandoned at the beginning of the hearing, each side is to carry its own costs.

JUDGMENT

The Court (Coram: Sutherland DJP, Wright J and Carrim AJ):

Introduction

1. The first respondent, a municipality (Rand West) called for tenders. It wished to hire a fleet of vehicles and have them maintained. Among others, the appellant (Afrirent) and the second respondent, Fleet Horizon (Fleet), tendered.

2. Afrirent's bid was for R153 million. Fleet's bid was for R244 million.

3. Fleet's tender was accepted and a three-year service level agreement was concluded between Rand West and Fleet. That was in May 2023. The agreement expires in May 2026, some seven months from the date of this judgment.

4. Afrirent, unhappy at not being awarded the tender launched an application seeking to review the decision to award the tender to Fleet. Afrirent sought an order too, that the tender be awarded to it. Afrirent later abandoned the latter relief.

5. Afrirent's review application was dismissed. Also dismissed was an application for leave to appeal. Afrirent now appeals with the leave of the Supreme Court of Appeal.

6. At its heart, Afrirent's case has three points.

The provision of a SARS statement issue

7. First, it says that it was wrongly excluded by Rand West for not having provided a SARS statement when called upon by Rand West to do so. In short, Afrirent, Fleet and at least one other bidder had all included SARS clearance certificates with their bids. Arising out of queries by SARS to Rand West, raised by SARS after close of bids that suggested that Afrirent's tax affairs were not in order, Rand West became concerned that Afrirent's bid might need to be excluded for want of compliance with regulatory requirements relating to its tax affairs. Rand West then required from the bidders their SARS statements, not just clearance certificates. These statements were immediately provided by Fleet and by the other bidder. Afrirent did not provide with a SARS statement.

8. A clearance certificate is in effect a bland statement that the taxpayer is in good standing, that its tax is up to date or that the taxpayer has made arrangements, satisfactory to SARS at least on an interim basis, to pay outstanding tax. A statement, on the other hand is a setting out of the state of the account between SARS and the taxpayer.

9. Despite a reminder by Rand West that Afrirent provide its SARS statement, Afrirent did not. This compounded Rand West's concerns about the ability of Afrirent, particularly from a cash flow point of view, if not from a technical regulatory point of view, to deliver on a three-year contract if Afrirent was successful.

10. In our view, Rand West was reasonably concerned about compliance and about the ability on the part of Afrirent to deliver fully over a three-year period. Rand West was accordingly justified to exclude Afrirent on both these grounds.

11. It does not follow from this that Afrirent lost standing to launch its review. Afrirent, in the event of a repeat of the tender process would be entitled to bid and to have its bid considered. It therefore has sufficient direct legal interest in its review application.

The three years audited accounts requirement

12. The second point is that Fleet's bid should have been excluded for failure by Fleet to submit three years' audited financial statements with its bid. It is common cause that Fleet did not do so; it submitted two years' audited accounts and one year unaudited.

13. Under paragraph 21.1(d) of Rand West's Supply Chain Policy, where an envisaged contract is to be for more than R10 million, as is the contract now in question, a bidder who is is "*required by law*" to have its financial statements audited, must submit three years of such accounts.

14. In Fleet's answering papers it makes out the case that it is not "*required by law*" to have its financial statements audited as it is a private limited company, it holds no assets in a fiduciary capacity, does not compile its statements internally but retains an external entity to compile them and it is thus not required to have its financial statements audited in the public interest. These allegations are confirmed in an affidavit by an external accountant. These being motion proceedings, Fleet's allegations must be accepted, leading to the conclusion that the failure by Fleet to provide the three years' of audited accounts was not an irregularity.

The Condition imposed on the acceptance of Fleet's Tender

15. The third point relates to the service level agreement concluded between Rand West and Fleet. Despite Afrirent's bid being some R90 million lower than that of Fleet, Fleet

was awarded the tender. Rand West, understandably alert to this significant difference, included in its letter to Fleet when awarding the tender the clause "*The appointment is subject to a negotiation of decreasing an original amount of R244 820 693,77 to an affordable amount for Three (3) years inclusive of VAT and contingencies.*"

16. There are two aspects to weigh. First, the case advanced by Rand West and Fleet was that all this condition required was a negotiation. This is untenable. Were that to be all that was contemplated then Fleet could simply hold out for the price stipulated and on the grounds that the condition was met, compel an agreement. The meaning to be attributed to the condition has to mean what it plainly states, i.e., there had to be a price reduction in respect of the work specified in the tender. What did happen, as dealt with hereafter, was a re-jig of the services to be rendered which albeit affecting the overall cost to the municipality, in a degree not properly revealed, did not fulfil the condition. In our view, the condition failed and the subsequent service level agreement fails too. The review succeeds on this ground alone.

17. Second, despite an allegation that no negotiations occurred, Rand West says that there were negotiations, and as a result, it would order vehicles from Fleet "*on a needs basis. The price will depend on the needs of Rand West and the availability of funds. Rand West has reduced the number of vehicles needed.*" This averment by Rand West must be accepted on the *Plascon Evans* Rule.

18. Nevertheless, the award of the tender was irregular. Awarding a tender to a bidder with a price so much higher than that of a competing bidder is startling. Rand West was clearly alive to the suspicion that naturally arises from that fact. That is why it tried to soften the impression of the award by the condition about negotiation to reduce the price to an 'affordable' amount. Plainly, the reference to "*an affordable amount*" is an admission by Rand West that it could not afford to pay the R244 million.

19. The result of the award, with its vague condition, is that it leaves the award completely open ended. Neither the price nor what is to be delivered by Fleet is determined or even determinable. Only agreement can fasten the loose strings. It is hardly surprising that negotiations did not lead to a definite agreement, as appears to be the case. It is plain that the award is tainted.

20. Fleet had no motive to negotiate very much, seeing that it had an award and that negotiation would lead only to a reduction of the price or an increase in what Fleet had to deliver, or both. In these circumstances, the negotiation as alluded to in the award would be more apparent than real. A comparison of prices has meaning only if what the bidders have to deliver is the same. What Rand West did is to render meaningless the critical price comparison.

21. Accordingly, there can be no shying away from the need to declare the award bad in law.

The Remedy

22. The question is, what to do now? The agreement has run for about two and a half years and has about six months to run. Apparently, the vehicles are necessary to keep Rand West functioning. Some of the vehicles are used for important tasks like collection of refuse.

23. An important consideration is that it would encourage non-compliance with the strict and necessary procurement laws simply to do nothing other than to declare the award irregular. It would allow municipalities and those who contract with them to think that the game was worth the candle. The service level agreement must be set aside from inception.

24. That said, the municipality cannot be hamstrung in performing its necessary tasks, for example collecting refuse.

25. In our view, the best way out of this impasse is to allow Rand West to call for tenders afresh. In the interim, Rand West may, on an emergency but fair and transparent basis contract with any suitable party or parties for the supply of necessary vehicles pending the outcome of the fresh tender process.

26. We would not order Rand West to call for specific kinds of tenders within a specific time. Rand West runs the municipality, not the court.

27. At the commencement of the hearing, counsel for all parties sensibly agreed that the appeal simply proceed and that the parties pay their own costs in certain condonation and lapsing applications.

THE ORDER

(1) The appeal succeeds.

(2) The order of the court below is set aside and replaced with one reading:

"1. *The award of the tender by Rand West to Fleet is declared to be unconstitutional and unlawful. It is reviewed and set aside.*

2. *The service level agreement between Rand West and Fleet is set aside from inception.*

3. *Rand West and Fleet are jointly and severally to pay the costs of Afrirent. These include those of senior counsel.* "

(3) Rand West may, at a time of its choosing, if it so wishes, call for tenders afresh, relating to subject matter, length of contract and other details as specified by Rand West.

(4) Rand West may contract with any suitable supplier or suppliers, on an emergency but fair and transparent basis, for the supply of vehicles necessary to keep the municipality functioning, pending the conclusion of a fresh tender process.

(5) Rand West and Fleet are jointly and severally to pay Afrirent's costs of the appeal. These include those of senior counsel. Scale C applies.

(6). Regarding all applications relating to condonation and lapsing of the appeal which issues the parties abandoned at the beginning of the hearing, each side is to carry its own costs.

[redacted]

The Court

HEARD	:	12 November 2025
DELIVERED	:	17 November 2025

APPEARANCES :

APPELLANT	Adv PG Cilliers SC
Instructed by	Albert Hibbert Attorneys
	jaco@hibbertlaw.co.za

FIRST RESPONDENT	Adv V Maleka SC
	Adv M Salukazana
Instructed by	Strauss Daly Inc
	akhoza@straussdaly.co.za
SECOND RESPONDENT	Adv AC Botha SC
	Adv CJ Bresler
Instructed by	Bouwer and Olivier Attorneys
	mb@law.co.za