

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2025 - 227501

1. REPORTABLE: ~~YES~~/ NO
2. OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
3. REVISED: YES / NO

DATE: 28-11-2025 :15H15

SIGNATURE OF JUDGES:



In the matter between:

QUATRO CLEANING SERVICES

Applicant

and

**GROWTHPOINT STUDENT ACCOMMODATIONS
HOLDINGS (RF) LTD**

First Respondent

HATFIELD STUDIOS (TY) LTD

Second Respondent

This Judgment was handed down electronically by circulation to the parties and/or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be on this 28th day of November 2025

JUDGMENT

T. STRYDOM AJ:

Introduction

- [1] The applicant seeks an interim order, on an urgent basis, to the effect that the contracts that were entered into between the applicant and the respondents must remain *in esse*, with full force and effect, pending the applicant exercising its rights to declare and/or to proceed with arbitration.
- [2] During the hearing I indicated that the parties should address me on the merits, rather than the urgency. Urgency thus fell on the wayside.
- [3] The contracts were entered into between the applicant and the first and second respondents on 22 September 2025.
- [4] Clause 23 of the agreements read as follows:

"23.1 The Company may elect to terminate this Agreement without cause, by providing the Supplier with 30 (thirty) days prior written notice stating the Company's election to terminate the effective date of such termination;

23.2 In the event that this Agreement is terminated pursuant to clause 23.1, the Company shall pay to the Supplier, as the Supplier's sole remedy in relation to such termination all Service Fees due and unpaid for Services which have been performed as at the date of termination in terms of this clause 21. For the avoidance of doubt, no early termination fee of any kind shall be payable by the

Company to the Supplier or the early termination of this Agreement for any reason whatsoever.”

- [5] On 30 October 2025, a termination notice was sent, informing the applicant that the contracts are cancelled with 30 days prior written notice.
- [6] In the letter, the applicant informed that the termination notice was issued in terms of clause 23.1 of the agreements, which clause allows such termination for any cause, subject to 30 days written notice having been given.
- [7] The applicant argued in the founding affidavit that the said notice in terms of clause 23(1) received was a repudiation of the agreements, and argued that the default clause, clause 24.1.1, did not allow for such cancellation if there was no breach.
- [8] Before me, during the hearing, the applicant’s argument was slightly different, and I was referred by the applicant to two cases being ***KH Mining & Engineering Projects (Pty) Ltd***, case number 2024-130458, in the above-mentioned division, Pretoria (unreported) and ***Phambili Enviromental Services v Pikitup Johannesburg Society Limited*** case number 2018-39499 in the above-mentioned division, Johannesburg (unreported)
- [9] The argument presented, in a nutshell, based on the two cases, was that this Court should not venture on an interpretation exercise. The right that is claimed as a *prima facie* right, for purpose of the interdict sought, is the right to refer the dispute (relating to interpretation) to arbitration.
- [10] In the cases referred to, so the argument went, similar clauses were branded “convenience “clauses, and the argument is that the factual issues of convenience should be dealt with on arbitration.
- [11] In the ***Phambili*** matter the clause reads:

“Notwithstanding any other provision of this agreement and subject to clause 9.1.2 below, Pikitup may at any time and at its sole discretion terminate this agreement by giving 30 days written notice to the Service Provider”

[12] it must be noted that the clause does not refer to convenience at all. The clause refers to Pikitup’s sole discretion.

[13] In the **KH Mining** matter, there were two clauses, which read as follows:

“12.1 Evander Gold may terminate this agreement for its convenience by providing MPC and KH mining with a thirty (30) days prior written notice informing them of its decision to terminate for its convenience at the effective date of such termination.”

and

“8.1.2 EGM may in its sole discretion, without cause or reason, terminate this agreement by giving 30(thirty) calendar days prior written notice to the Contractor, without being in breach of the Agreement. Contractor may in its sole discretion, without cause or reason, terminate this Agreement by giving 60(sixty) calendar days prior written notice to EGM, without being in breach of Agreement”

[14] It must be noted that clause 12.1 refers to termination *“for its convenience”*, but clause 8.1.2 does not mention convenience at all.

[15] Despite the aforesaid, the learned judge, in the KH Mining matter, concluded that both clauses conferred the right of the first respondent to cancel the agreements for convenience.

[16] In conclusion, in the **KH Mining** matter, the learned judge relied on the judgement in the **Phambili** matter.

[17] Although **Phambili** created the tag of convenience, that clause cannot be interpreted to refer to convenience as a factor at all.

- [18] The learned judges, in the **Phambili** and **KH Mining** matters, inadvertently applied an interpretation to the clauses that they considered, which is evidenced by the simple fact that they concluded that the clauses are convenience clauses. The courts then conflated the issues, whether the interpretation or factual enquiry regarding convenience should be dealt with by way of arbitration.
- [19] I do not agree with the judgements. I do not accept that clauses 23.1 and 23.2 can be interpreted as convenience clauses and do not accept that the interpretation of the clauses or for that matter the factual enquiry (which is not to be applicable at all), should be subject to arbitration.
- [20] I am of opinion that each case should be considered with its own merits. I am furthermore of opinion that the wording of the current two agreements, especially with reference to clauses 23.1 and 23.2, should be considered in the context of the said agreements under consideration. The current clauses 23.1 and 23.2 make no mention of convenience whatsoever and give the respondents the unfettered right to terminate even without cause.
- [21] Considering the content of the agreements and applying **Natal Joint Pension Fund v Endumeni** 2012(4) SA 593 SCA at para [18], with reference to the text, context and purpose, there can be no doubt, considering the meaning of the words in the agreements that the intention of the parties were that the agreements could be cancelled by election, without showing any cause, with 30 days written notice by the respondents.
- [22] This clause, allowing the cancellation by election, is unconnected to the clause allowing cancellation in the event of breach.

- [23] I cannot see why the court should allow interim relief, if there are no prospects of success in the event of the matter eventually being considered by the court or arbitrator.
- [24] In this case, if the matter will ever come before a court or arbitrator, the interpretation attached to clauses 23.1 and 23.2 would be the same as my conclusion, being that there is a right given to terminate the contract without any cause. The two clauses should be read together, and a reading of clause 23.2 assists in showing and confirms what the intentions of the parties were when they entered into clause 23.1, being that such termination should be allowed without cause.
- [25] In ***Eskom Holdings SOC v Vaal River Development Ass*** 2023 (4) SA 325 (CC) at [251], it was decided that if there are legal questions that are capable of easy resolution any judge should decide it.
- [26] Considering this finding, the applicant does not have any prospect of success in showing any right to continue with the agreements. The applicant therefore also does not have any prospect of success with any arbitration as contemplated.
- [27] The fact that clause 28 of the agreements, allow for a reference to arbitration, is not disputed, and appears to be correct. The applicant can still proceed with arbitration, if it deems it appropriate. This is subject to showing a dispute capable of being arbitrated.
- [28] However, the applicant seeking an interim interdict from this court, the relief claimed falls within the discretion of the court to allow it or not.
- [29] Factors such as *prima facie* right, irreparable harm, balance of convenience and other satisfactory remedies should be considered.

[30] The simple right to refer the dispute to arbitration is not enough. Surely the court should consider the interpretation of the agreements, as a matter of law, and take into consideration the prospects of success in arbitration.

[31] I find that no *prima facie* right, allowing an interim interdict, has been demonstrated.

[32] The consequence is that there is also no irreparable harm to be suffered by the applicant (in fact it is rather the respondents will suffer irreparable harm if they are forced to continue with a contract against their will), and the balance of convenience also does not favour the applicant.

[33] A party can never be forced to comply to a contract or to carry on with it, if it was cancelled. It will be at odds what the parties have agreed upon.¹

[34] A cancellation clause, such as Clause 23.1 and 23.2, cannot be said to be unfair, and is generally found to be acceptable.²

Order

Accordingly, I make the following order:

[1] The applicant's application is dismissed;

[2] The applicant is ordered to pay the costs of the application on a party and party scale, two counsel, scale C for senior counsel for and scale B for junior counsel.

¹ See **Multichoice Support Services (Pty) Ltd v Calvin Electronics and Another** 2021 JDR 2529 (SCA) para [18].

² See **Bredenkamp and Others v Standard Bank of South Africa and Another** 2009(6) SA 277 (GSJ) para [27], and [30]; **Bredenkamp and Others v Standard Bank of South Africa and Another** 2010 (4) SA 468 (SCA)



**T. STRYDOM AJ
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Appearances

For the Applicants:

Adv J Sullivan
Adv Van Gas

Instructed by:

Janse van Rensburg & Partners

For the Respondents:

KW Luderitz SC
Adv K Harding- Moerdyk

Instructed by:

Adams and Adams

Date of Hearing:

28 November 2025 10H00-11H20

Date of Judgment:

28 November 2025