



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

Not Reportable

Case no: 2025/216771

In the matter between:

MONESA PROJECTS (PTY) LTD

APPLICANT

[Registration No. 2025/560708/07]

and

ABLON CONSTRUCTION CC

FIRST RESPONDENT

[Registration No. 1996/020922/23]

JUWI CONSTRUCTION ZA

SECOND RESPONDENT

[Registration No. 2023/976064/07]

Neutral citation: *Monesa Projects (Pty) Ltd v Ablon Construction CC and Another*
(2025/216771) [2026] ZAFSH 14 (19 January 2026)

Coram: Van Zyl J

Heard: 18 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by e-mail and released to SAFLII. The date and time for hand-down is deemed to be 14h30 on 19 January 2026.

Summary: Urgent application for specific performance of contract – principles regarding urgency – purported cancellation of contract without placing *in mora* in absence of agreed time frame for performance – constitutes repudiation, which was not accepted – claim for specific performance granted.

ORDER

1 The application is enrolled and heard in terms of Rule 6(12) of the Uniform Rules of Court as a matter of urgency and the time limits as set out in the Rules pertaining to form, service and filing are dispensed with.

2 The first respondent's purported termination of the subcontract agreement on 16 October 2025 is declared invalid.

3 The first respondent shall comply with its obligations under and in terms of the subcontract agreement.

4 The first respondent shall do all things necessary to allow the applicant to comply with its obligations under and in terms of the subcontract agreement including:

4.1 notifying all onsite security personnel to reinstate the applicant's access and possession of the premises; and

4.2 preventing any of the first respondent's agents from impeding the applicant's undisturbed access to, use and possession of the premises; and

4.3 preventing any of the first respondent's employees, agents or representatives from preventing the applicant from continuing the subcontract works in terms of the subcontract agreement.

5 The costs of the application are to be paid by the first respondent, including the costs of counsel on Scale C.

JUDGMENT

Van Zyl J

[1] This matter served before me as an urgent application in terms whereof the applicant sought the following relief:

'1. The application be enrolled and heard in terms of Rule 6(12) of the Uniform Rules of Court as a matter of urgency and that the time limits as set out in the Uniform Rules pertaining to forms, service and filing be dispensed with.

2. The dispute between the Applicant and the First Respondent regarding the First Respondent's purported termination of the Subcontract Agreement entered into between the Applicant and the First Respondent dated 23 July 2025 ("the Subcontract Agreement") shall not be referred to arbitration, as contemplated by Section 3(2)(b) of the Arbitration Act 42 of 1965.

3. The First Respondent's purported termination of the Subcontract Agreement on 16 October 2025 is declared invalid.

4. The First Respondent shall comply with its obligations under and in terms of the Subcontract Agreement.
5. The First Respondent shall do all things necessary to allow the Applicant to comply with its obligations under and in terms of the Subcontract Agreement, including:
 - 5.1 Notifying all on-site security personnel to reinstate the Applicant's access and possession of the Premises; and
 - 5.2 Preventing any of the First Respondent's agents from impeding the Applicant's undisturbed access to, use and possession of the Premises; and
 - 5.3 Preventing any of the First Respondent's employees, agents or representatives from preventing the Applicant from continuing the Subcontract works in terms of the Subcontract Agreement.
6. The costs of this application shall be paid by the First Respondent, including the costs of counsel on a "C" scale.'

[2] The applicant is no longer seeking an order in terms of prayer 2 of the notice of motion.

Background

[3] The applicant and the first respondent entered into a subcontract agreement in July 2025, in terms whereof the applicant was appointed as subcontractor to conduct various construction works at a designated premises in the district of Theunissen, Free State Province, and further in terms whereof the first respondent is the contractor in the subcontract agreement.

[4] The second respondent is cited as an interested party to the proceedings in as far as the second respondent is the holder of the main contract between the first respondent and the second respondent, which gives rise to the subcontract agreement between the applicant and the first respondent.

[5] Clause 6.3.1 of the subcontract agreement reads as follows:

'6.3 The Subcontractor shall insure against such risks as are stated in the provisions of the Main Contract and which may arise out of or in consequence of this Subcontract in respect of:

6.3.1 The Compensation for Occupational Injuries and Diseases Act (Act 130 of 1993) or any other statute in force for the time being or any other legal liability in respect of any accident or injury to any workman or other person in the employment of the Subcontractor;

6.3.2 . . .'

[6] Clause 15 of the subcontract agreement determines as follows:

'15.

SETTLEMENT OF DISPUTES

15.1 If any dispute or difference shall arise between the Subcontractor and the Contractor, either during the progress or after the completion of the Subcontract Works, or after the determination of the employment of the Subcontractor under this agreement, as to the construction of this agreement, or as to any manner or things arising thereunder, in the first instance an attempt shall be made to settle the dispute amicably. Should all attempts to settle the dispute or difference amicably fail, such dispute or difference shall be referred to the appointed representative of the Contractor, or the Contractor's site agent if no representative is appointed, for his determination by written decision to the Subcontractor. The said decision shall be delivered within 14 days of the date of request and shall be final and binding upon the parties unless the Subcontractor, within 14 days of receipt thereof, by written notice to the Contractor disputes the decision, in which case the matter shall be referred to an adjudicator. Should the Contractor's representative or site agent fail to deliver his decision within 14 days he shall be deemed to have given a decision rejecting the Subcontractor's contentions or claims. The adjudicator shall be appointed by agreement of the parties failing which by the President of the South African Federation of Civil Engineering Contractors upon request of the Subcontractor.

15.2 The opinion of the adjudicator shall be final and binding upon the parties for all disputes involving less than R500 000. For disputes involving amounts in excess of R500 000, should one of the parties, within 28 days of receipt of the opinion, express to the other in writing their dissatisfaction with the opinion, then that party may take the matter to arbitration and/or litigation, provided arbitration and/or litigation proceedings are instituted within a further 28 days. The opinion of the adjudicator shall take immediate effect and shall be maintained until such time as it may be overturned by arbitration and/or litigation.

15.3 If the matter is referred to arbitration, the arbitrator shall be a person . . .'

The chronology of events

[7] Following the conclusion of the subcontract agreement, the applicant was provided with access to the premises in order to commence conducting the subcontract works. The subcontract agreement did not contemplate a date on which the subcontract works were to commence, it only provided that the subcontract works were to be completed by 30 March 2026.

[8] From 11 August 2025 until 12 September 2025, the applicant began to commence with the subcontract works by establishing the premises as contemplated in terms of the subcontract agreement.

[9] On 12 September 2025, the first respondent verbally advised the applicant that the applicant would no longer be allowed access to the premises and therefore prevented the applicant to carry out the subcontract works.

[10] According to the applicant, the aforesaid conduct of the first respondent constituted spoliation and the applicant launched an urgent spoliation application which was served on the first respondent on 19 September 2025. The first respondent admits, in its answering affidavit, that it forced the applicant off-site.

[11] On 19 September 2025, and simultaneously with issuing the spoliation application, the applicant addressed an e-mail to the first respondent, which e-mail is annexed to the founding affidavit as annexure 'FA2'. In the said e-mail, the applicant recorded the spoliation and confirmed that it has issued a spoliation application. The applicant, however, also indicated that it would like to meet with the first respondent to resolve the issue amicably during the course of the following week.

[12] On 21 September 2025, the first respondent responded to annexure 'FA3' by means of an e-mail, annexure "FA3" to the founding affidavit, in which it, *inter alia*, stated the following:

' ...

Please see my comments based on:

1. The e-mail received from you on 19 Sept '25 at 11h17 (as below)
2. The Dept of Labour's Tender Letter received from you on 19 Sept '25 at 17h24 (attached)

...

Re 1. Your e-mail below:

- i) As per your second paragraph you are lodging a formal dispute.
- (a) Pursuant to the subcontract signed between Ablon and Monesa, clause 15 makes provision for dealing with disputes. You have not acted contractually, thus a non-conformance to the contract.

...

Re 2. Tender Letter from DOL:

- i) The letter is for Tender purposes, it merely states that you are registered ito COID,

- ii) Please provide proof that you have registered your site employees by name and ID within the seven days from appointment as stipulated in the Act,
- iii) Please provide proof or a copy of the ROE document you had to fill out for every employee and submit to DOL to ii) above with a date stamp from DOL,
- iv) Please provide proof as to at which DOL office this was submitted,
- v) Please explain why the letter emanates from the Nigel Labour Centre instead of the DOL applicable to your business address or the DOL Welkom, FS where the project is taking place
- vi) You do not understand that you have put Ablon in a serious predicament by having non-FEM/COID covered employees on site for a substantial period of time to which our client Juwi did not respond kindly to. Ablon was exposed to a non-conformance of contract with our client due to your non-conformance towards Ablon.

Re 3. Urgent application:

...

- iv) Remember your undertaking to myself and Ryno in his office that you will concede and step down with Ablon taking over the employees if you could not provide a FEM letter by 17h00 same afternoon.

...

[13] The applicant subsequently avers as follows pertaining to the spoliation application in its founding affidavit, at paragraph 22 thereof:

'Be that as it may, and in an attempt to resolve the matter amicably, the Applicant instructed the Applicant's attorneys of record to remove the matter from the urgent roll in order to allow the parties to engage meaningfully and mediate the matter, with the aim to resolve the spoliation, regain access to the Premises and continue with its construction services as per the Subcontract Agreement's terms.'

[14] The notice of removal from the roll was consequently filed on 30 September 2025.

[15] On 30 September 2025, the applicant contacted the first respondent via WhatsApp messenger to request a mutually beneficial time and date to discuss and negotiate the matter. The parties found it difficult to agree upon a date which suited both parties and the arranged date to meet and mediate the dispute between them, was postponed on numerous occasions due to the unavailability of both the applicant and the first respondent.

[16] With regard to the events that led up to the cancellation of the subcontract agreement, the applicant avers as follows in its founding affidavit:

'29. On 15 October 2025, the Applicant and First Respondent met in Welkom to discuss their dispute, wherein the Applicant was represented by myself and the First Respondent was represented by Charles Deacon and Junior Letaona.

30. At the meeting it became apparent to me through Charles' demeanour and aggression towards me that he had no intention to allow the Applicant to regain possession of the Premises of which I expressed the Applicant's clear intention and willingness to abide by the Subcontract agreement.

31. During the meeting, Charles repeatedly alleged that the Applicant was in breach of his obligations under and in terms of the Subcontract Agreement in that it had not obtained a "FEM" letter.

31.1 For the sake of clarity, "FEM" is a reference to the Federated Employers Mutual Assurance Company (RF) (Pty) Ltd.

31.2 FEM offers workmen compensation insurance for incidents contemplated by COIDA.

31.3 A 'FEM Letter' is a letter of good standing, which FEM issues confirming that an employer has obtained insurance cover.

31.4 However, an employer is not obligated to obtain insurance through FEM. It can, instead, obtain cover from the Department of Employment and Labour.

31.5 The Department of Employment and Labour also issues a Letter of Good Standing confirming compliance with COIDA, and thus coverage under and in terms of the Act.

32. The Applicant was, factually, in possession of a Letter of Good Standing from the Department of Labour and Employment. I annex a copy of the letter hereto as "FA8".

33. When I mentioned this to Charles he advised that this was "too little too late" and that the First Respondent would not accept my submission.

34. I, on behalf of the Applicant, made it very clear to the First Respondent's representatives that the Applicant had complied fully with its requirements in terms of the Subcontract Agreement and placed on record that the First Respondent had not once placed the Applicant in breach for the lack of a letter of good standing. Despite this explanation, Charles advised that regardless of what happens, the Second Respondent no longer wanted to work with the Applicant and neither the First Respondent and that the First Respondent would be cancelling its contract with the Applicant.

35. Charles further stated that the First Respondent had also received written notification from the Second Respondent stating that the First Respondent is to remove the Applicant from the premises. I informed Charles that I had never seen such letter, of which Charles confirmed that I was never given a copy and advised that he would provide me with a copy of such.

36. Accordingly, the dispute was not resolved and on 16 October 2025, the First Respondent sent a letter to me on behalf of the Applicant, a copy of this letter is annexed hereto as annexure "FA9".

[17] The aforesaid annexure 'FA9' is titled 'Termination of Subcontract' and, *inter alia*, states the following:

'Following several discussions and a meeting held, the latest being 15 October 2025, it is confirmed that you have failed to provide valid proof of FEM (Federated Employers Mutual) coverage within the prescribed period as required under clause 6.3.1 (Insurances) of the Subcontract and the Occupational Health and Safety Act (Act 85 of 1993).

...

Accordingly, and in terms of the Subcontract Agreement (Clauses 6.3.1 and 17), Ablon Construction hereby terminates your Subcontract with immediate effect. ...'

[18] On Monday, 20 November 2025, the applicant urgently consulted with its attorney of first instance.

[19] On 22 October 2025, the applicant's attorney of first instance addressed a letter of demand to the first respondent in which it was, *inter alia*, stated that the purported termination of the subcontract agreement constitutes a repudiation of the agreement, which repudiation the applicant rejects. It was demanded that the first respondent complies with its obligations in terms of the subcontract agreement and that it provides an undertaking to this effect, absent which, an urgent application will be sought in the high court, seeking specific performance.

[20] On 22 October 2025, the first respondent's attorney of record responded to the applicant's letter of demand, in which response it denied the repudiation of the subcontract agreement and further stating that the applicant did not follow the dispute resolution process as set out in the agreement.

[21] On 23 October 2025, Ms Rachael Chalmers of the applicant's attorneys of first instance, commenced drafting the application.

[22] The draft was finalised on 25 October 2025 and sent to counsel to be settled, which counsel did on 27 October 2025, and reverted with one or two queries.

[23] The application was issued on 29 October 2025. The notice of motion was signed on 28 October 2025, but was apparently filed electronically on 29 October 2025. In terms of the notice of motion, the answering affidavit was to be filed on 4 November 2025, which

affidavit was duly filed on the said date. The replying affidavit was filed on 10 November 2025.

[24] The urgent application was initially issued out of the Northern Cape Division, Kimberley, and enrolled for 11 November 2025. On the said date, it was enrolled and heard in terms of rule 6(12) of the Uniform Rules of Court, but was transferred to the Free State Division of the High Court in Bloemfontein in terms of s 27 of the Superior Courts Act 10 of 2013, for hearing on 18 November 2025.

Applicable legal principles on urgency

[25] The first respondent is contesting the urgency of the application.

[26] The point of departure in urgent applications is the provisions of rule 6(12). In this regard, more particularly rule 6(12)(b), provides as follows:

'In every affidavit filed in support of any application under paragraph (a) of this sub-rule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at the hearing in due course.'

[27] The following well-known principles were set out in *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* [2011] ZAGPJHC 196 at paras 6-9:

'The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in due course but it may not be substantial. Whether an applicant will not be able obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his cases in that regard.

In my view the delay in instituting proceedings is not, on its own a ground, for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the Court to believe. On the other hand a delay may have been caused by the fact that the Applicant was attempting to settle the matter or collect more facts with regard thereto.

It means that if there is some delay in instituting the proceedings an Applicant has to explain the reasons for the delay and why despite the delay he claims that he cannot be afforded substantial redress at a hearing in due course. I must also mention that the fact the Applicant wants to have the matter resolved urgently does not render the matter urgent. The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. If he cannot be afforded substantial redress at a hearing in due course then the matter qualifies to be enrolled and heard as an urgent application. If however despite the anxiety of an Applicant he can be afforded a substantial redress in an application in due course the application does not qualify to be enrolled and heard as an urgent application.'

[28] In *Transnet Limited v Rubenstein* [2005] ZASCA 60; [2005] 3 All SA 425 (SCA); 2006 (1) SA 591 (SCA) at para 33, the Supreme Court of Appeal endorsed the approach that an applicant cannot legitimately be criticised for attempting to settle a matter before resorting to litigation and that such conduct would not detract from urgency.

[29] In *Luna Meubelvervaardigers (Edms) Bpk v Makin and Another* 1977 (4) SA 135 (W) (*Luna Meubelvervaardigers*), the court determined as follows at 137:

'Practitioners should carefully analyse the facts of each case to determine, for the purposes of setting the case down for hearing, whether a greater or lesser degree of relaxation of the Rules of the ordinary practice of the Court is required. The degree of relaxation should not be greater than the exigency of the case demands. It must be commensurate therewith. Mere lip service to the requirements of rule 6(12)(b) will not do and an applicant must make out a case in the founding affidavit to justify the particular extent of the departure from the norm, which is involved in the time and day for which the matter be set down.'

[30] If an applicant is responsible for its own urgency, the court will not come to his aid. This is the principle of self-created urgency (see *Schweizer Reneke Vleis Mkpy (Edms) Bpk v Die Minister van Landbou en Andere* 1971 (1) PH F11 (T) at paras 11 to 12).

Further averments in support of urgency

[31] In addition to the chronological set out of events by the applicant which led up to the institution of the urgent application, the applicant also made the following allegations in the founding affidavit in respect of urgency:

'53. From what is set out above, it is abundantly clear that this matter is of the utmost urgency.

54. The applicant has been denied the ability to continue its Subcontract Works as per the Subcontract Agreement, which income the Applicant relies on to pay its employees and as a livelihood to those who are employed by the Applicant.

55. In light of the spoliation and the repudiation of the First Respondent, the Applicant is suffering irreparable harm due to not being able to comply with its obligations due to the First Respondent's conduct. If the Applicant is not granted the necessary relief, it will suffer penalties and consequently could end up becoming insolvent as a result of the First Respondent's conduct.

56. The Applicant is under strict time pressures to finish its works by 30 March 2026. These time limits were already tight, but given the First Respondent's spoliation (referred to above), they have become increasingly so.

57. The Applicant needs to commence the Subcontract Works as a matter of extreme urgency in order to ensure that it is able to meet this contractual deadline date.

58. ...

59. Should the Applicant not receive the necessary relief on an urgent basis, and should the matter be determined in the ordinary course, the period within which the Applicant is to complete the works will have come and gone. In such an event, the relief sought by the Applicant will become moot, resulting in further prejudice to the Applicant and an inability to continue with the contract that were, which specific performance will become unenforceable.

60. I must also point out that the implementation of the Subcontract Agreement is a matter of existential concern for the Applicant. It has dedicated significant resources, time, and effort into performing the contract works. This includes expending substantial amounts for equipment, labour and other assets necessary to complete the works.

61. If the Applicant is not granted the relief sought, it will invariably have to shut down its business, and place itself into voluntarily winding-up.

62. For this reason, a damages claim is not satisfactory alternative relief for the Applicant – as Applicant will, in all likelihood, not be in a position to pursue a damages claim.

63. Accordingly, the Applicant cannot and will not obtain redress (substantial or otherwise) in the ordinary course. The inability to access the Premises and carry out the Sub-contracted services is currently being hampered. There is no relief which could be sought in the ordinary course to make up for this harm which First Respondent inflicts on the Applicant.'

Consideration of the urgency

[32] The applicant set out in detail the chronology of events that led to the letter of termination and the time frames within which the applicant took further action in reaction to the letter of termination. There was no inordinate delay before the applicant approached Court on an urgent basis. The applicant gave a full and proper explanation of each relevant time period.

[33] With regard to the settlement negotiations between the parties before the applicant reverted to litigation, it is evident from the relevant case law that it does not detract from the urgency of the matter.

[34] In its answering affidavit, the first respondent avers that the discussions between the applicant and the first respondent did not involve settlement negotiations 'to resolve the matter' as alleged by the applicant. According to the first respondent all that was discussed was more and more chances that were given to the applicant 'to bring its COIDA registration and insurance up to date'. In my view, this averment and explanation by the first respondent does not hold water. The negotiations referred to by the applicant commenced after the first respondent spoliated the applicant. It is obvious from the papers that the spoliation, which is admitted by the first respondent, occurred as a result of the applicant's failure to register with COIDA (or FEM). That issue, in my view, therefore constituted the relevant dispute between the parties and their discussions in relation thereto, cannot be construed to have been anything else than settlement negotiations between the parties.

[35] Furthermore, the applicant has set out explicitly the circumstances which it avers makes the application urgent and the reasons why it claims it will not be afforded substantial redress at a hearing in due course. It was submitted on behalf of the first respondent that the applicant made mere sweeping statements in this regard without any evidence to underpin the allegations. I cannot agree with this submission. The applicant dealt extensively with the relevant facts and circumstances on which he relies.

[36] It was further argued on behalf of the first respondent that the extend of deviation from the usual time frames by the applicant does not commensurate with the degree of urgency. Reference was made to relevant case law in this regard, such as *Luna*

Meubelvervaardigers dealt with above. All that is averred in this regard, in the answering affidavit, is the following at paragraph 12 of the answering affidavit:

'... And lest there be no doubt, Ablon is prejudiced by the short time-period afforded to file papers. I did not have time to source documents like minutes of meetings held etc.'

In my view, the last-mentioned averment is a mere sweeping statement *par excellence*. The first respondent failed to substantiate the statement in any manner whatsoever.

[37] When all the relevant facts, circumstances and legal principles are considered, I am of the view that the applicant made out a proper case for urgency and that the application is to be enrolled and heard as an urgent application.

The termination of the subcontract agreement

[38] The applicant, in its founding affidavit read with its replying affidavit, fully explained what FEM insurance is and that insurance can be obtained either through FEM or COIDA. In the founding affidavit, at paragraph 31 thereof, the applicant averred that, during the meeting with the first respondent on 15 October 2025, the first respondent repeatedly alleged that the applicant was in breach of the subcontract agreement in that it had not obtained a FEM letter. This allegation is admitted in the answering affidavit. In the termination letter of the first respondent, it is also alleged that the applicant 'failed to provide proof of FEM coverage' which 'requirement' constitutes a 'contractual obligation'. However, it is evident from clause 6.3.1 of the subcontract agreement, quoted earlier herein, that FEM registration or obtaining of a FEM letter is not a contractual requirement. It therefore did not constitute a valid ground for the termination of the subcontract agreement.

[39] Clause 6.3.1 of the subcontract agreement does not contain a specific time frame within which the insurance registration by the applicant should have taken place or within which a letter of registration should have been provided by the applicant to the first respondent. It is trite that when a contract does not fix a time for performance, a demand by the creditor is necessary in order to place the debtor *in mora* (see *Breytenbach v Van Wijk* 1923 AD 541 at 549). In *Crookes Brothers Ltd v Regional Land Claims Commission, Mpumalanga, and Others* [2012] ZASCA 128; 2013 (2) SA 259 (SCA); [2013] 2 All SA 1 (SCA) at para 17, this principle is explained as follows:

'The term *mora* simply means delay or default. When the contract fixes the time for performance, *mora (mora ex re)* arises from the contract itself and no demand (*interpellatio*) is necessary to

place the debtor in *mora*. In contrast, where the contract does not contain an express or tacit stipulation in regard to the date when performance is due, a demand (*interpellatio*) becomes necessary to put the debtor in *mora*. This is referred to as *mora ex persona*. (See *Scoin Trading (Pty) Ltd v Bernstein NO G* 2011 (2) SA 118 (SCA) paras 11 and 12.)'

[40] The first respondent was consequently not entitled to have cancelled the contract. The purported cancellation of the contract constituted a repudiation of the contract by the first respondent, which repudiation the applicant did not accept.

[41] The applicant is consequently entitled to its claim for specific performance, subject to the Court's discretion, which discretion is to be exercised judicially on a consideration of all the relevant facts (see GB Bradfield *Christie's The Law of Contract in South Africa*, 8 ed (2022) at 655-656).

[42] In the present matter, the first respondent merely makes the allegation that it cannot continue to work with the applicant as the applicant cannot be trusted any further. According to the first respondent the second respondent holds a similar view. However, it is evident from annexure 'RA29' to the replying affidavit that the first respondent was well the aware that the applicant was experiencing a delay in obtaining confirmation of insurance from the Department of Employment and Labour. Objectively considered, there is, in my view, no valid reason why an order of specific performance should not be granted in favour of the applicant.

[43] In view of my findings above, it is not necessary to make a determination regarding the status of the Letter of Good Standing, annexure 'FA8' to the founding affidavit.

The arbitration clause

[44] In the founding affidavit, the following allegations are made in respect of the arbitration clause:

'64. It is also for this reason that a referral of the dispute to arbitration is neither just nor equitable.

65. The Subcontract Agreement contemplates an extended and lengthy process whereby the dispute must first be determined by the First Respondent's site agent and thereafter be referred to arbitration.

66. By the time this process is ventilated, the contractual period within which the Applicant is to render the Subcontract Works would have come and gone, and any arbitration award would be entirely moot.'

[45] It was argued, on behalf of the applicant, that the arbitration clause is not mandatory in that it specifically also provides for litigation. It is a dispute resolution procedure which makes arbitration optional. It was further submitted that this is also the reason why the first respondent itself did not refer the dispute to arbitration, but merely purported to cancel the subcontract agreement.

[46] In my view, and based on the case made out by the applicant in the founding affidavit, the arbitration clause cannot be interpreted to have ousted the jurisdiction of the Court for purposes of obtaining urgent relief.

Order

[47] The following order is made:

- 1 The application is enrolled and heard in terms of Rule 6(12) of the Uniform Rules of Court as a matter of urgency and the time limits as set out in the Rules pertaining to form, service and filing are dispensed with.
- 2 The first respondent's purported termination of the subcontract agreement on 16 October 2025 is declared invalid.
- 3 The first respondent shall comply with its obligations under and in terms of the subcontract agreement.
- 4 The first respondent shall do all things necessary to allow the applicant to comply with its obligations under and in terms of the subcontract agreement including:
 - 4.1 notifying all onsite security personnel to reinstate the applicant's access and possession of the premises; and
 - 4.2 preventing any of the first respondent's agents from impeding the applicant's undisturbed access to, use and possession of the premises; and
 - 4.3 preventing any of the first respondent's employees, agents or representatives from preventing the applicant from continuing the subcontract works in terms of the subcontract agreement.
- 5 The costs of the application are to be paid by the first respondent, including the costs of counsel on Scale C.


C VAN ZYL
JUDGE OF THE HIGH COURT

Appearances

For the applicant:

L Franck

Instructed by:

Symington & De Kock, Bloemfontein

For the first respondent:

N Snellenburg SC

Instructed by:

Kramer Weihmann Attorneys Inc, Bloemfontein.