REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: 2025-009998

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO

[redacted]

6 FEBRUARY 2026

DATE SIGNATURE

In the matter between:

MAANO CHEMICALS (PTY) LTD Applicant

and

RAND WATER SOC LTD 1st Respondent

AFRO-ZONKE PROJECTS (PTY) LTD 2nd Respondent

OWATHU TRADING (PTY) LTD

PROTEA CHEMICALS 3rd Respondent

DIVISION OF OMNIA GROUP (PTY) LTD 4th Respondent

EUGECHEM (PTY) LTD 5th Respondent

NDULAMISO AQUA SOLUTIONS (PTY) LTD 6th Respondent

IFALETHU TECHNOLOGIES (PTY) LTD 7th Respondent

ANXIOM CHEMICALS (PTY) LTD 8th Respondent

METSICHEM INTERNATIONAL (PTY) LTD 9th Respondent

WETSPEC (PTY) LTD 10th Respondent

JUDGMENT

MODIBA, J

[1] This application is delineated in two parts, A and B. In Part A, Maano Chemicals (Pty) Ltd (Maano) as the applicant seeks an order interdicting Rand Water SOC Ltd as the first respondent (Rand Water) from implementing a tender awarded to Afro-Zonke Projects (Pty) Ltd (Afro-Zonke) as the second respondent (the tender), pending the determination of Part B of the application. In Part A, Maano also seeks an order setting aside Rand Water's cancellation of and reinstating the month-to-month contract that was concluded between Rand Water and Maano. It also seeks other ancillary relief. In Part B, Maano seeks to review and set aside the tender. It relies on several grounds of review. Shortly, I will elaborate on the grounds of review that Maano relied on in this application.

[2] Before me is Part A of the application. Rand Water and Afro-Zonke (the respondents) oppose the application on largely the same grounds. They seek its dismissal. Rand Water has also raised several points in limine.

[3] Maano initially brought the application on an urgent basis. It was on the urgent roll of 18 February 2025. Although it was removed from the urgent roll by agreement between the parties, the removal was proposed by Maano. Its founding papers were voluminous, and it appears that it had not afforded the respondents reasonable time to file their opposing papers. It subsequently approached the Deputy Judge President for the application to be specially allocated. It is unclear when the approach was made and how the request was formulated. I deduce from the papers that the request for special enrolment must have been made promptly because the application was ready for hearing in the second week of March 2025 as the parties had exchanged practice notes and heads of arguments.

[4] However, it appears that the application was specially allocated in the ordinary course as it is only being accommodated on the special motion court roll almost a year later. It is unclear why it was not treated as a semi-urgent application. None of the parties could provide clarity on this. Be that as it may, Maano rightly did not persist with the urgent relief because the alleged urgency of the application was diffused by its allocation in the ordinary course. What remains to be determined in respect of the urgent relief is the wasted costs occasioned by the removal of the application from the roll of 18 February 2025.

[5] The background facts are largely common cause. On 31 October 2022, Rand Water invited bids for the tender described as Tender RW1039809022. It sought to procure disinfection chemicals for its various facilities for a period of five years. The closing date for bids was 28 November 2022. Maano, Afro-Zonke and 14 other bidders submitted bids. The bid made provision for a 180-day validity period. Rand Water did not adjudicate the bid during this period. As a result, it extended the bid validity period several times. Maano and Afro-Zonke were among the six shortlisted bidders. Ultimately the bid was awarded to Afro-Zonke in November 2024. It accepted the award during December 2024. On 6 January 2025, Rand Water published the award on the National Treasury website. Maano brought this application on 28 January 2025.

[6] This is not the first application that Maano brings in respect of the tender. In or about July 2023, Maano brought an urgent application for an order directing Rand Water to finalize the adjudication of the bids. The application was struck off the roll with costs on the attorney and client scale. Rand Water has conveniently styled this application Maano I. I adopt the same nomenclature. In the second application, conveniently styled Maano II, amongst other relief, Maano sought to compel Rand Water to use a volume-based method to evaluate pricing for the tender. Maano II culminated in an order and judgment of Goedhardt AJ on 6 August 2024. She dismissed Part A of Maano. She found that Maano failed to establish exceptional circumstances for the Court to intrude into the powers of the executive to procure goods on behalf of the State by way of an interim interdict. Part B of Maano II is still pending. There, Maano seeks an

order reviewing and setting aside the same tender it seeks to review and set aside in Part B of the present application.

[7] Rand Water's first point in limine is that of non-joinder of other bidders. These are bidders who, like Maano were unsuccessful. The test for non-joinder is trite. The joinder of a party is necessary if that party has a direct and substantial interest that may be prejudicially affected by the Court's judgment in the proceedings in which the proposed respondents are sought to be joined.[1] The substantial interest of the unsuccessful bidders in the relief Maano seeks in Part A was not established. Therefore, the test for non-joinder is not met.

[8] The second point in limine is that of *lis pendens*. It relates to Part B of Maano II. From Maano's submissions in response to this point in limine, it does not appear that it intends pursuing Part II of Maano B. However, it has not withdrawn it. In that application, Maano seeks the same relief it seeks in Part B of this application. It relies on grounds similar to some of those it raises in this application. Its argument that it did not pursue Part B of Maano II because Goedhart AJ found that Part A was brought pre-maturely as the tender had not been finalised; and that it brings the present application to raise all the issues that arise as the tender has since been finalized, is unpersuasive. Nothing prevented Maano from amending the notice of motion and filing supplementary affidavits to raise the additional grounds it raises in the present application and to seek the relief it seeks in Part A. Rand Water's *list pendens* point in limine stands to succeed and for this reason alone, the present application falls to be dismissed. However, I proceed to determine other issues that arise in Part A of the present application as they were ventilated before me.[2]

[9] This is the appropriate point to set out the applicable legal principles for interim relief. They are traced back to the well-known 1914 case of *Setlogelo v Setlogelo*[3] and have become trite. They are, the existence of a *prima facie* right

---

[1] *Johannesburg Society of Advocates v Nthai* 2021 (2) SA 343 (SCA) at [31].

[2] *Democratic Alliance and Others v Acting National Director of Public Prosecutions and Others* 2012 (3) SA 486 (SCA) ([2012] 2 All SA 345; 2012 (6) BCLR 613; [2012] ZASCA 15) para 49; *Louis Pasteur Holdings (Pty) Ltd and Others v ABSA Bank Ltd and Others* 2019 (3) SA 97 (SCA) para 33; *Theron and Another NNO v Loubser NO and Others* 2014 (3) SA 323 (SCA) para 21.

[3] *Setlogelo v Setlogelo* 1914 AD 221.

(even though open to doubt[4]), a well-grounded apprehension of irreparable harm if the interim relief is not granted (and the ultimate relief is granted), the balance of convenience favours the granting of the interdict and the absence of a suitable alternative remedy.

[10] In determining whether the applicant has satisfied the requirements for interim relief, I am also guided by the nuanced approach to this exercise articulated by Holmes J in Olympic *Passenger Services (Pty) Ltd v Ramlagan*[5] where the court stated as follows:

> "It thus appears that where the applicant's right is clear, and the other requisites are present, no difficulty presents itself about granting an interdict. At the other end of the scale, where his prospects of ultimate success are nil, obviously the court will refuse an interdict. Between these two extremes falls the intermediate cases in which, on the papers, the applicant's prospects of ultimate success may range all the way from strong to weak.
>
> The expression 'prima facie established though open to some doubt' seems to me a brilliantly apt classification of these cases. In such cases, upon the proof of a well-grounded apprehension of irreparable harm, and there being no ordinary alternative remedy, the court may grant an interdict.
>
> It has a discretion, to be exercised judicially upon a consideration of all the facts. Usually this will resolve itself into a nice consideration of all the prospects of success and the balance of convenience. The stronger the prospects of success, the less need for such a balance to favour the applicant: the weaker the prospects of success, the greater the need for the balance of convenience to favour him.

[4] *Webster v Mitchell* 1948 (1) SA 1186 (W) at 1189.
[5] *Olympic Passenger Services (Pty) Ltd v Ramlagan* 1957 (2) SA 382 C – G.

I need hardly add that by balance of convenience is meant the prejudice to the applicant if the interdict be refused, weighed against the prejudice to the respondent if it be granted."

[11] Lastly, I draw from the Constitutional Court judgment in *OUTA*[6] where the apex court guides judicial officers on how to apply the Setlogelo test for interim interdicts cognisant of constitutional principles. From that judgment, I distil the following principles: when exercising its discretion to grant an interim interdict, the Court must do so in a way that promotes the objects, spirit and purport of the Constitution. If a constitutional right is implicated, it is not necessary to enquire into whether the right exists. When weighing up where the balance of convenience lies, the court ought to consider the probable impact of the interim interdict on the constitutional and statutory powers and duties of the organ of state against which the interim order is sought. The balance of convenience enquiry must determine the extent to which the restraining order might intrude into the powers of another arm of State. Intrusion into the terrain of another arm of State is only justified (a) in the clearest of cases, (b) after a careful consideration of the extent of the intrusion and (c) should serve to prevent the alleged breach of the implicated constitutional right.

[12] I also draw from the *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others*[7] where the Constitutional Court applied the OUTA principle. It enjoined courts to carefully scrutinise whether granting an interdict will disrupt executive or legislative functions, thus implicating the separation and distribution of powers as envisaged by law.

[13] The right which Maano seeks to protect by way of an interim interdict is the right to supply goods to the state in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.[8] This right is provided for in s 217 of the Constitution.[9] The principle in OUTA that the Court does not need to enquire into the existence of the right does not apply as the right Maano seeks protected

---

[6] *Organisation Undoing Tax Abuse v Minister of Transport and Others* 2024 (1) SA 21 (CC).
[7] *Economic Freedom Fighters v Gordhan and Others; Public Protector and Another v Gordhan and Others* 2020 (6) SA 325 (CC), [2020] ZACC 10, 2020 (8) BCLR 916 (CC).
[8] *Marce Projects (Pty) Ltd v City of Johannesburg Metropolitan Municipality* 2021 JDR 1914 (GJ).
[9] Act 108 of 1996.

is not entrenched in the Bill of Rights. It is therefore necessary to enquire into the nature of the right Maano seeks to protect. The grounds of review relied on by Maano are relevant in this enquiry as Maano relies on them in its contention that its rights in terms of s 217 of the Constitution are under threat. At this stage, all it needs to demonstrate is that it enjoys prospects of success in establishing its grounds of review in Part B.

[14] Although, as already mentioned, in Part B, Maano relies on several grounds of review, it elected not to rely on all of them for the purpose of Part A and took the view that most of the grounds would only be relevant to Part B. Maano stands to succeed or fail on this election. Below I only set out the grounds that are relevant to this judgment.

[15] The first ground of review is that the tender box was vandalized, and the bid documents were disturbed. Rand Water had advised Manno that it intended cancelling the bid as its integrity was impeached by the vandalization of the tender box. However, further contended Maano, in the end, Rand Water did not cancel the bid and proceeded to adjudicate it as if its integrity had not been impeached. I conveniently refer to this ground as the vandalism ground.

[16] The second ground is that the 80:20 weighting system was applied as the value of the bid was below R50 million. However, the bid advert referred to a 90:10 weighting system as the value of the bid would exceed R50 million. According to Maano, if the former system was used, it does not accord with the bid advert. If the latter system was used, it was inapplicable to the bid due to its value. Therefore, either way, further contended Maano, the bid was not fairly evaluated. I refer to this ground as the bid-weighting ground.

[17] Third, Maano contended that Rand Water extended the bid validity period several times without obtaining the consent of all the tenderers. I refer to this ground as the bid validity period ground.

[18] Lastly, Maano alleged that the bid document did not require the bidders to consider the volume of the products when stating their prices. According to Maano, this omission produced skewed results as a bidder could reduce its price dramatically on a low-volume product and increase it marginally on a high-

volume product. Therefore, an opportunistic bidder would bid at a far lower price than a realistic bidder who formulated its bid price based on realistic volumes. According to Maano, this renders the bid process irrational. I refer to this ground as the product volumes ground.

[19] For Part A, Maano only placed reliance on the bid validity period ground. Given that the vandalism ground was fully ventilated in the papers, as a result of my urging, this ground was also ventilated during oral argument. Maano tried to weave in the product volumes ground to come out of a tight conundrum it placed itself in during oral argument when it relied on a ground of review that it did not plead.

[20] During oral argument, a submission was made on Maano's behalf that it had offered to supply chemicals to Rand Water at a mark-up of 4,85% while Afro-Zonke offered the products at R73,000 per ton, which Rand Water accepted. This translated to a mark-up of 233% and amounts to a waste of public resources and on the authority in *Marce Projects (Pty) Ltd v City of Johannesburg Metropolitan Municipality*,[10] it has a reasonable apprehension of harm that if the interdict is not granted, state resources would be wasted. It is unclear how the alleged waste of state resources imperils Maano's rights to public procurement that is fair, competitive, and equitable. Price is only one of many factors considered when evaluating tenders. The fact that Maano's bid at a lower price than Afro-Zonke does not, in and of itself mean Maano ought to have been awarded the bid as a lower price is not the only requirement for the bid.

[21] But, Maano had a more daunting challenge. When pressed to indicated where in its founding affidavit this issue is pleaded, reference was made to pricing schedules and the orders which are annexed to the founding affidavit. It is trite that this is not how a case is pleaded. When pressed further, it referred to the paragraph where the product volumes ground is pleaded. When pressed furthermore, it rebounded to the allegation about Maano and Afro-Zonke's price mark-ups which, as already stated, is not pleaded. I therefore do not consider the case advanced on Maano's behalf only in oral argument as a proper factual

[10] Footnote 8 above.

basis for it was not made in the founding papers to afford the respondents to answer thereto.

[22] Maano has not established that since the tender box was vandalized, it was denied the right to a fair, equitable, transparent, competitive and cost-effective procurement. Its case is that Rand Water was not responsible for vandalizing the bid box and the incident remains under investigation. Beyond baldly alleging that Rand Water should have cancelled the bid as its integrity was impeached, Maano did not plead in what respect the vandalism impeached the bid process. At best, at this stage, whether the vandalization of the bid box indeed occurred and impeached the integrity of the bid process amounts to speculation. No particularity regarding how the integrity of the tender process was impeached, was pleaded.

[23] Therefore, ultimately, for the purpose of Part A, reliance was placed on the extension validity ground of review. Maano alleged that Rand Water extended the bid validity period seven times. Initially, it sent an extension request to all the bidders. After several bidders were disqualified, it only sent the extension request to the shortlisted bidders. Maano and Afro-Zonke are among the latter. According to Maano, this is procedurally incorrect. An extension request had to be sent to bidders who did not make the shortlist as the Bid Evaluation Committee could direct the Bid Adjudication Committee to reconsider their disqualification. Failure to send the extension request to these bidders, Maano further contended, is a procedural flaw that violates the common law and s 217 of the Constitution and invalidates the award of the tender.

[24] In its heads of argument, Maano seeks to hold Rand Water to the requirements for the extension of bid validity periods as set out in the Treasury Regulations.[11] It contended that failure to comply with these requirements invalidated the bid. It was contended on its behalf that in terms of the Treasury Regulations, Rand Water had to obtain the consent from all bidders. According to Maano, this is a mandatory requirement. Since Rand Water failed to comply with this

[11] National Treasury's Supply Chain Management: A Guide for Accounting Officers/Authorities https://www.treasury.gov.za/legislation/pfma/guidelines/accounting%20officers%20guide%20to%20the%20pfma.pdf

requirement, the tender validity period lapsed. As a result, when the award was made, the bid had expired. Therefore, further contended Maano, the tender was invalidly and unlawfully awarded. Again, this is an entirely new case not made out in its founding papers. I only deal with it as it was fully ventilated in written and oral submissions before me.

[25] Afro-Zonke contended that it consented to all extension requests and had no knowledge that the other bidders did not consent to any of the extension requests. Rand Water contended that it duly extended the bid validly period in accordance with the terms and conditions of the bid and its internal Supply Chain Management (SCM) policy. It complied with the bid validity period extension requirements as set out in clause 8.11.2 its Supply Chain Management (SCM) policy which provides as follows:

> "8.11.2.1 Rand Water's validity period for all bids, except emergency procurement, is 180 calendar days from the closing date.
>
> 8.11.2.2 Rand Water reserves the right to extend the validity period for a period reasonable for business requirements. Where a further extension of bid validity is required, the evaluation conducted on the original submissions from the market, however the price to be awarded or considered inclusion of the applicable escalations affecting the bid.
>
> 8.11.2.3 Communication regarding the extension of bid validity must be published before the validity period expiry date. Failure to adhere to these policy provisions shall result in a bid cancellation."

[26] According to Rand Water, in terms of its SCM policy, it reserved the right to unilaterally extend the tender bid validity period, provided this is done before the expiry of the tender validity date and for purposes of reasonable business requirements, as outlined below. Further, its SCM policy requires it to publish communication regarding the extension of bid validity. The SCM Policy does not provide for the requirement Maano alleged Rand Water failed to comply with.

[27] Rand Water further contended that in the bid invitation document, it also reserved the right to extend the bid validity period. The bid document does not require

Rand Water to obtain the consent of the bidders prior to extending the validity period. Part T1 thereof provides as follows:

> "Bid Validity
> To be valid for 180 days after closing date.
> Rand Water reserves the right to extend the validity period for a period reasonable for business requirements."

[28] Maano's contention that Rand Water ought to have complied with the Treasury Regulations lacks merit. In terms of s38 (1)(a)(iii) of the Public Finance Management Act (PFMA)[12], accounting officers are required to ensure that a public trading entity has an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective. The National Treasury document Maano places reliance on was published to guide accounting officers to implement the PMFA. Therefore, Maano's contention that the requirement to obtain the consent of all bidders when extending the bid validity period is mandatory lacks merit. Rand Water acted in terms of its own SCM Policy. Maano did not establish why it should not have implemented its own policy when extending the validity period. Maano also did not impugn Rand Water's SCM policy in these proceedings. The terms of the bid, including the bid validity period extension requirements, accords with Rand Water's SCM policy.

[29] Further, it is unclear how Rand Water's failure to obtain the consent of all the bidders harmed Maano's right to a fair, equitable, transparent, competitive and cost-effective procurement process. Its consent was obtained. The basis on which it contended that the consent of all bidders must have been obtained, as they could re-enter the bid evaluation process did not even materialize. It is not its case that the Bid Evaluation Committee directed the Bid Adjudicating Committee to reconsider any of the bidders who had not been shortlisted. Even if it had done so, this is not a point for Maano to take, unless it can show that the purported procedural flow impaired its right to a fair, equitable, transparent, competitive and cost-effective procurement process. This reasoning is consistent with that adopted by the Supreme Court of Appeal (SCA) in *Aurecon South Africa*

[12] 1 of 1999.

(Pty) Ltd v Cape Town City [13], on which Rand Water relies. There, the SCA held that:

> "…And the complaint relating to the other tenderers has no merit whatsoever for the simple reason that they had already been found ineligible at that stage and were out of the picture…"

[30] Invariably, by seeking its restoration, Maano also asserts rights arising from its month-to-month contract with Rand Water. That contract was duly terminated. Maano enjoys no legal right to its restoration. It did not point to a clause in the contract, a statutory or regulatory provision or a common law principle that gives it such a right. For the above reasons, I must find that Maano has not established prospects of success in the review. Therefore, it has not established a prima facie right to the interdict, even one that is open to doubt.

[31] For the same reasons set out above, Maano has failed to establish that it has a well-grounded apprehension of harm. Therefore, the balance of convenience is sharply tilted against it. Having found that its rights in terms of s217 of the Constitution are not at peril and it has not established the right to the restoration of its month-to-month contract, there is no basis on which to find that it stands to suffer prejudice if the interim interdict is refused.

[32] On the other hand, the prejudice to the respondents if the interim interdict is granted would be substantial. Afro-Zonke has made a substantial investment and incurred obligations towards implementing the tender which would be brought to naught. This includes employing 6 staff members for a fix period of 5 years at a cost of R12.4 million, site visits to Rand Water sites to understand its requirements for the tender and sourcing the chemicals it requires to meet its obligations in terms of the tender.

[33] It was at Maano's peril that the application was not prosecuted on a semi-urgent basis to prevent Maano from taking all these measures and to ameliorate the prejudice Afro-Zonke would suffer if the interim interdict were granted. It appears that the peril was self-created as Maano does not seem to have requested that

---

[13] *Aurecon South Africa (Pty) Ltd V Cape Town City* 2016 (2) SA 199 (SCA).

the application is enrolled as a semi-urgent matter. As contended on behalf of Rand Water and Afro-Zonke, granting the interdict would also interrupt the supply of disinfectant chemicals which Rand Water requires to purify water and provide millions of residents in the provinces of Gauteng, Northwest, Free State and Mpumalanga with safe water. It poses the risk of water insecurity which would adversely impact employment and livelihoods, destabilize the economy and create a public health crisis.

[34] On the authority of *Olympic Services*, Maano's failure to establish that it has prospects of success in the review warrants the exercise of the court's discretion to refuse the interim interdict. On the authority in *OUTA*, it has failed to meet the 'clearest of cases' threshold for this Court to interfere with the powers of the executive to procure goods on behalf of the state and to provide the services for which the relevant goods were procured. For all the above reasons, its application for interim relief must fail.

[35] What remains is a determination of costs. There is no reason why costs should not follow the course. The respondents requested costs on a punitive scale because this is the third application that Maano is bringing in respect of the same tender. I am not persuaded that this warrants punitive costs against Maano. The respondents have not established that Maano has litigated frivolously or vexatiously. Costs were determined in respect of the previous applications. As far as Part B of Maano II is concerned, the respondents' hands are not tied by Maano's failure to prosecute that application. They are entitled to enrol it for hearing to recover its costs in that application if they establish that they are entitled to them.

[36] Although Part A was removed from the urgent roll at Maano's instance, the removal was agreed to. And, it was for the respondents' convenience, to afford them more time to file opposing papers. Under these circumstances, I am not persuaded that those wasted costs should attract a punitive scale.

[37] Given the importance of the matter to the parties, the value of the tender, the investments made to implement it and the important public service to which it relates, awarding the respondents costs on scale C is warranted. The

respondents are also entitled to recover the wasted costs occasioned by the removal of the matter from the urgent roll of 18 February 2025.

[38] In the premises, I make the following order:

Order

1. Part A of this application is dismissed.

2. The applicant shall pay the first and second respondent's wasted costs occasioned by the removal of the matter from the urgent roll-on 18 February 2025, on scale C including the costs of two counsel where so employed.

3. The applicant shall pay the first and second respondent's costs of Part A of the application on scale C, including the costs of two counsel where so employed.

[redacted]

L.T. MODIBA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Applicants: Adv K Tsatsawane SC

Instructed: Khanyile MB Attorneys Inc

For the 1st Respondent: Adv Mogagabe SC

Instructed: Raborifi Inc Attorneys

For the 2nd Respondent: Adv B Lekokotla

Instructed: Mahlare Attorneys

Date of hearing: 21 January 2026

Date of Judgement: 6 February 2026

This judgment is handed down electronically by circulation to the parties' legal representatives by email and publication on Case Lines and SAFLII. The date for the handing down is deemed 10:00am on 6 February 2026.