IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO. 2025-046624

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: ***NO***
(2)	OF INTEREST TO OTHER JUDGES: ***NO***
(3)	REVISED.
(4)	Date: 12 February 2026
Signature: ___________________	

In the matter between:

PHUTADICHABA TRADING ENTERPRISE CC First Applicant

(Registration No. 2003/034074/23)

MAFOKO SECURITY PATROLS (PTY) LTD Second Applicant

(Registration No. 2004/035905/07)

INTENSE PROTECTION & TOURISM SERVICES CC Third Applicant

(Registration No. 2003/011665/23)

And

THE DEPARTMENT OF HOME AFFAIRS First Respondent

TIKEDI HOLDINGS (PTY) LTD Second Respondent

(Registration No. 2018/341225/07)

TLHOMPHANANG BUSINESS ENTERPRISES Third Respondent

(Registration No. 2018/341225/07)

JUDGMENT

NYATHI J

A. INTRODUCTION

[1] The applicants seek an urgent interim interdict restraining the Department of Home Affairs ("the Department") from implementing its appointment of the second and third respondents to render security services pending a review application.

[2] The applicants contend that the Department's appointment was **unconstitutional, procedurally unfair, and patently unlawful**, primarily because:

2.1 It was allegedly done under Tender DHA 05-2024, which the Department had already cancelled; or alternatively,

2.2 It was done via an improper closed request for quotations limited only to the new service providers.

[3] The Department and the private respondents oppose the application, raise challenges to urgency, dispute the existence of a prima facie right, and defend the procurement process followed.

B. FACTUAL BACKGROUND

[4] The applicants previously held security-services contracts with the Department until 31 March 2025, following several extensions due to financial constraints.

[5] On 31 March 2025, the applicants learned that the Department had appointed the second and third respondents as interim service providers.

[6] The applicants wrote to the Department on 1 and 2 April 2025 requesting undertakings not to proceed, but the Department did not respond.

[7] The applicants allege that:

i. Tender **D[…] 0[…]** was cancelled, yet purportedly used as the legal basis for the new awards;

ii. The Department misled the Court by asserting reliance on that tender; and

iii. The third respondent contradicts the Department by stating it was appointed under **TOR 21-2024/2025**, a request for quotations.

[8] The respondents argue that:

i. The original contracts expired and were not renewable by right;

ii. A short-term deviation procurement process was used due to lack of funds and failures in the applicants' performance; and

iii. Multiple theft incidents occurred under the applicants' watch, undermining their service quality.

C. URGENCY

[9] The applicants argue that failure to interdict will render the review moot and lead to retrenchments affecting 719 guards.

[10] The respondents contend the applicants failed to meet the standard for "extreme urgency" and that:

[11] Papers were served late and improperly;

[12] Urgency was self-created;

[13] The applicants did not show rights requiring immediate protection.

[14] The applicants acted immediately upon learning of the new appointments on 31 March 2025, wrote letters on 1–2 April, received no response, and launched

this application promptly. In procurement matters, urgency is accepted where immediate implementation threatens to render upcoming review proceedings futile.

Finding on Urgency:

[15] Given the imminent displacement of the applicants and the immediate implementation of the new security appointments, the matter is sufficiently urgent for hearing.

D. REQUIREMENTS FOR AN INTERIM INTERDICT

[16] The applicants must show:[1]

a. A prima facie right, though open to some doubt;

b. Reasonable apprehension of irreparable harm if relief is not granted;

c. A balance of convenience favouring them;

d. No adequate alternative remedy.

[1] As laid down in *Setlogelo v Setlogelo* 1914 AD 221 and refined in *Webster v Mitchell* 1948 (1) SA 1186 (W).

E. PRIMA FACIE RIGHT

Applicants' Case

[17] The Applicants argue that:

17.1 Their SLAs contained at least a tacit term that services would continue until proper competitive tendering occurred;

17.2 The Department acted unlawfully by appointing new providers through a non-competitive process;

17.3 Section 217 of the Constitution requires a fair, equitable, transparent, competitive and cost-effective procurement process.

17.4 The applicants further contend that a contract cannot legally flow from a cancelled bid and that the Department's contradictory explanations show unlawfulness.

Respondents' Case

[18] The Department argues that:

18.1 The contracts had expired;

18.2 No renewal was guaranteed;

18.3 The deviation and RFQ process was lawful in terms of PFMA SCM instruction 3 of 2021/2022 due to lack of funds and emergency security needs.

[19] The respondents also argue that the applicants' **right to review** is not itself a protectable right for interim interdict purposes (relying on *National Treasury v Opposition to Urban Tolling Alliance* 2012 (6) SA 223 (CC) AT 231 A-C).

Finding on Prima Facie Right

[20] On the papers, it is common cause that:

20.1 Tender DHA 05-2024 was cancelled;

20.2 The Department initially claimed the new appointments flowed from that tender;

20.3 The third respondent contradicted that assertion; The Department did not follow an open competitive bid despite the contract value exceeding R2 million per month.

20.4 Section 217 of the Constitution and PFMA procurement rules create an objective legal obligation not to appoint service providers through closed, selective, or contradictory processes for high-value contracts.

[21] These facts create a prima facie right to lawful, fair, and transparent procurement, which is threatened by the Department's conduct.

[22] This right exists **independently** of the applicants' right to review; it flows from the constitutional procurement framework. [emphasis added].

[23] The prima facie right requirement is accordingly satisfied.

F. IRREPARABLE HARM

[24] The applicants employ 719 guards whose jobs depend on active security contracts. Immediate displacement would result in mass retrenchments.

[25] They also risk losing their ability to meaningfully pursue the review application if the interim appointments become entrenched.

[26] The respondents argue the harm is speculative and that the applicants' contracts simply expired.

Finding on Harm

[27] The immediate loss of operational sites and workforce constitutes clear material, non-speculative harm.

[28] Constitutional rights to fair administrative action (section 33) are implicated, reinforcing the seriousness of the harm.

[29] Irreparable harm is established.

G. BALANCE OF CONVENIENCE

[30] The applicants remain onsite (as at the hearing of the application) and can continue providing security without disruption.

[31] The Department would suffer no prejudice from a temporary interdict; security continues uninterrupted.

[32] The respondents argue the Department needs flexibility to appoint new providers and that courts must avoid intruding on executive procurement discretion.

Finding

[33] Given:

33.1 the applicants’ continued presence,

33.2 the questionable legality of the appointments, and

33.3 the severe consequences of displacement,

[34] the balance of convenience favours the applicants.

H. ALTERNATIVE REMEDY

[35] A damages claim is not viable without fraud and would not provide immediate security of employment or restoration of transparent procurement.

[36] No alternative remedy is adequate.

I. CONCLUSION

[37] On the facts before this Court, the applicants have met all four requirements for interim relief.

[38] Serious questions are raised regarding:

38.1 the legality of the procurement method,

38.2 contradictory explanations by the respondents, and

38.3 compliance with constitutional procurement obligations.

[39] Pending judicial review, it is in the interests of justice to preserve the status quo.

J. ORDER

IT IS ORDERED THAT:

[40] The application is heard **as a matter of urgency**.

[41] The first respondent is **interdicted and restrained** from implementing the appointment of the second and third respondents to render security services to its offices **pending final determination of the applicants' review application**.

[42] The applicants shall continue rendering security services in terms of the **existing extended SLAs**, pending final adjudication of the review.

[43] The review application shall be **enrolled on an expedited basis**.

[44] Costs of this application, including costs of two counsel where applicable, shall be **costs in the review**.

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of hearing: 15 April 2025

Date of Judgment: 12 February 2026

On behalf of the Applicant: Adv N.G. Louw

Attorneys for the Applicants: Albert Hibbert Attorneys.

On behalf of the 1st Respondent: Adv. Dube

Attorneys for the Respondents: State Attorney Pretoria.

On behalf of the 2nd Respondent: Mr. M.R. Mashamaite (Watching brief)

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Delivery: This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 12 February 2026.