



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

Not reportable

Case number: 3440/2025

In the matter between:

KET CIVILS CC

APPLICANT

and

**MEC: COMMUNITY SAFETY, ROADS AND TRANSPORT
IN THE FREE STATE PROVINCIAL GOVERNMENT**

FIRST RESPONDENT

**HOD: FREE STATE DEPARTMENT OF COMMUNITY
SAFETY, ROADS AND TRANSPORT**

SECOND RESPONDENT

Neutral Citation: *Ket Civils CC v MEC: Community Safety, Roads and Transport in the Free State Provincial Government & 1 Other* (3440/2025) [2026] ZAFSHC 53 (12 February 2026)

Coram: Loubser J

Heard: 6 November 2025

Delivered: 12 February 2026

Summary: Application for order directing respondents to give effect to awards made by adjudicator in respect of road construction contracts – counter application for declarator that applicant is not entitled to enforce the awards pending review proceedings to be instituted.

ORDER

1 The respondent's failure to comply with the rules of court and time periods in the counter application is condoned, and the counter application is heard on a semi-urgent basis together with the main application.

2 It is declared that the applicant in the main application is not entitled to enforce the decisions of the adjudicator relating to contracts numbers C60/2019, C25/2019 and C26/2019 between the parties pending a review to be instituted by the respondents in the main application to have the said decisions declared invalid.

3 The review application shall be instituted by the respondents in the main application within 30 calendar days of date of this order.

4 Costs of the main application will be costs in the review proceedings.

5 The applicant in the main application is to pay the costs of the counter application on the party and party scale, including the fees of counsel on scale C.

JUDGMENT

Loubser J

[1] In this opposed application, the applicant moves for the following orders in its notice of motion:

'1 The first respondent is directed to forthwith give effect to the decisions of the adjudicator, Peter D Davies in respect of:

1.1 Contract No.: C60/2019 - Special Maintenance of the P6/2 and P6/1 road between Wepener, Dewetsdorp and Bloemfontein, dated 26 April 2025 and annexed to the founding affidavit as "FA4".

1.2 Contract No.: C25/2019 - Special Maintenance of the P41/2 road between Frankfort and Tweeling, dated 8 May 2025 and annexed to the founding affidavit as "FA6".

1.3 Contract No.: C26/2019 - Special Maintenance of the P41/3 road between Reitz and Tweeling, dated 8 May 2025 and annexed to the founding affidavit as "FA7".

2 Pursuant to the adjudication decisions set out in par 1 above, the first respondent is directed to pay the applicant the following sums:

2.1 In respect of Contract No.: C60/2019, the sum of R18, 015, 202.38.

2.2 In respect of Contract No.: C25/2019, the sum of R19, 825, 186.54.

2.3 In respect of Contract No.: C26/2019, the sum of R20, 542, 009.49.

- 3 The first respondent is directed to pay the applicant interest on each of the sums set out in par 2 above at the rate of 11.75% *a tempore morae* to date of payment, both dates inclusive.
- 4 The first respondent is directed to pay the costs of this application on the scale as between attorney and client.'

[2] In the founding affidavit, Mr Lekoatsa Mohapi, the sole member of the applicant, sets out the history of the matter and the basis for the amounts now claimed from the first respondent. In his affidavit he explains that the applicant is in the business of road construction. In the course of 2019, the applicant entered into the three construction agreements mentioned in the notice of motion with the first and second respondents' department. These agreements were concluded pursuant to the department's appointment of the applicant on the panel of contractors constituted together with others for the upgrading and special maintenance of all roads in the Free State.

[3] While the construction agreements were already being carried out, however, the auditor-general found that the panel had been irregularly constituted. The department then terminated the contracts with the applicant. After litigation in this Division and in the Supreme Court of Appeal, the last-mentioned court ordered the following, *inter alia*: (1) reviewing and setting aside the decision of the department in appointing the applicant and other panelists, and (2) the review and setting aside shall not affect the applicant's rights to pursue any claims for payment emanating from its contracts, and the dispute resolution mechanisms under the contracts shall endure post any termination of the contracts.

[4] Following these orders of the Supreme Court of Appeal, the parties herein agreed to refer the disputes between them regarding all three contracts to adjudication by a panelist chosen from the SAICE President's list, who turned out to be Mr Peter Davies (Mr Davies), a civil engineer and adjudicator. Between 26 April 2025 and 13 May 2025, Mr Davies then adjudicated the disputes and handed down his decisions on the three contracts. He found that the termination of the contracts by the department was invalid, and he ordered the department to pay the applicant the amounts mentioned in the notice of motion within 28 days of the decision on each of the contracts.

[5] According to the applicant's deponent, the applicant then promptly issued three invoices to the department on 13 May 2025, reflecting the amounts awarded by the adjudicator on each of the three contracts, but now including VAT on the different

amounts. On the same date, the department responded by informing that the adjudicator's decisions in favour of the applicant were referred to senior counsel for an opinion. The department also undertook to advise in relation to payment of the amounts upon receipts of counsel's opinion. Following further enquiries by the applicant about a month later, the department informed the applicant that the adjudicator's decisions have been formally referred to all internal stakeholders for review, and that the applicant would be notified of the outcome of its review and intended action within a reasonable time. When nothing further happened worth mentioning, the applicant launched this application.

[6] In the founding affidavit, the deponent further points out that the parties have agreed in their contracts that disputes between them would be referred to an adjudicator for a decision. The contracts further provide that the adjudicator's decision is binding on the parties unless and until revised by the tribunal and is enforceable as a matter of contractual obligation between the parties and not as an arbitral award. The adjudicator's decision would be final and binding if neither party has notified the other within the times required in the contract that he is dissatisfied with a decision of the adjudicator and intends to refer the matter to the tribunal. If no such notice of dissatisfaction was given, or given timeously, then the decision becomes final and binding and so too does the obligation to give effect to the decision promptly.

[7] In terms of clause 10.6.1 of the agreements, a party is allowed to disagree with the decision of the adjudicator and to refer the matter to arbitration or court proceedings within 56 days from receipt of the decision, provided that the decision shall be binding on both parties unless and until it is revised by an arbitration award or court judgment, whichever is applicable in terms of the contract.

[8] The applicant then alleges in the founding affidavit that the department has not given notice of dissatisfaction with the adjudicator's decisions at all. The decisions are final and binding, and must be given effect to. Neither has the department referred the decisions to arbitration or court proceedings within 56 days from receipt of the decisions. Payment in terms of the decisions is therefore now due, the applicant says.

[9] In its answering affidavit the department submits that the decisions of the adjudicator are not only irrational but also so flawed that they cannot be enforced. As a result, the respondents intend reviewing and setting aside the three decisions of the adjudicator. In such a process, the adjudicator would have to be joined as a respondent and the records pertaining to these decisions would have to be produced, the department says.

[10] The respondents allege, *inter alia*, that the applicant was de-registered with the CIPC at the time of the referral to the adjudicator, that the papers before the adjudicator clearly showed that the applicant had abandoned the works under the contracts and that the contracts were lawfully terminated, that the claims before the adjudicator had already become prescribed, and the applicant was not tax compliant and the respondents could therefore not be ordered by the adjudicator to pay substantial amounts to the applicant. Because the works had been abandoned by the applicant, the department suffered a loss of approximately R32 million, it is said. In addition, the adjudicator erred and misdirected himself in determining the amounts that had to be paid by the respondents.

[11] Furthermore, the respondents contend that they have made it clear in correspondence with the applicant right from the beginning that the department did not accept that it was liable to pay the applicant in accordance with the adjudicator's decisions. The department has therefore made its dissatisfaction with the decisions clear. It is further stated that the fact that a decision is binding unless and until it is revised by an arbitration award or court order, as stipulated in the contracts, does not mean that the decision is implementable. The department therefore denies that the decisions of the adjudicator had to be complied with in the circumstances.

[12] Lastly, the department moved for condonation for the late filing of its answering affidavit. In a nutshell, it alleges that its senior counsel did not produce the answering affidavit as requested, and new senior counsel had to be appointed. This caused a delay of approximately one month in the filing of the affidavit.

[13] In its replying affidavit, the applicant persists in the relief that it seeks, and points out that it was in fact re-registered with the CIPC on 2 September 2025. In any event, the records of the CIPC show that the de-registration process was commenced with, but not

brought to finality. It was never issued with a final de-registration letter. It further says that the allegations of non-tax compliant are irrelevant to the relief sought in the application. The applicant also informs that it is not opposing condonation for the late filing of the respondent's answering affidavit.

[14] Together with the filing of its answering affidavit on 17 September 2025, the department filed a conditional counter-application on a semi-urgent basis. In this counter application it is pleaded that, in the event that the main application is not dismissed, the department seeks a declarator that the applicant in the main application is not entitled to enforce the decisions of the adjudicator pending a review of those decisions to declare the decisions invalid. The reasons for such a declaration of invalidity are that the adjudicator was not properly appointed, the matter was beyond his jurisdiction, he was biased in favour of the applicant in the main application, he did not apply his mind to the matter, his decisions were irrational, he failed to take the department's submissions into account, and he failed to comply with the department's right to be heard. The department furthermore prays that it be ordered to institute the review application within 30 days.

[15] In its founding affidavit filed in support of the counter- application, the department states that it should not be required to pay the applicant in the main application, because the awards were wrongly made. The payments should be held in abeyance pending the outcome of the review application, it says. Should these payments now be made, it is unlikely that the department will be able to recover it if it is successful in the review. The counter-application is opposed on the same grounds as relied on by the applicant in the main application.

[16] This then is a general overview of the applications and the papers that served before the Court for adjudication. It can all be summed up as follows: on the one hand the applicant is seeking to enforce compliance with the three decisions of the adjudicator because of its contractual right to do so. On the other hand, the department seeks a declarator that the applicant is not entitled to enforce the decisions before a court of law has not reviewed those decisions.

[17] Now, the contractual rights on which the applicant relies, clearly concerns the alleged failure of the department to give notice of its dissatisfaction with the adjudicator's

decision timeously, or at all. This failure, the applicant submits, made the decisions of the adjudicator final and binding on the parties. It indeed appears that the department has not given such formal notice timeously or at all, in terms of the contracts between the parties. However, it cannot be denied that the department has expressed its misgivings regarding the decisions right from the beginning, albeit in a different manner than the one envisaged by the contracts. It is clear from correspondence between the parties at the time that the department has not accepted the awards made by the adjudicator. In the process, it has sought assistance from different senior counsel to oppose the decisions of the adjudicator by way of referring the matter to court. It is also clear that the matter became delayed because the department's counsel had not provided the answering affidavit in time.

[18] In such circumstances this court is not inclined to grant the relief sought by the applicant, simply because the terms of the contracts relating to dissatisfaction have not been strictly complied with by the department. At the same time, there appears to be reasonable prospects of success on a review of the adjudicator's decision. I am mindful of the fact that the adjudicator was not a party to this application, and this Court is therefore not privy to his views on the matter. In review proceedings, he will have full opportunity to put his side of the story, so to speak, on the table. I am also mindful of the fact that should the department now be ordered to pay the applicant; such payment would be made from the public purse in circumstances where the last word on the adjudicator's awards has not been spoken yet. The counter-application must therefore succeed.

[19] On the other hand, should the department's review application not be successful, it speaks for itself that the adjudicator's decision will stand, and the department will be obliged to pay the applicant in terms of the awards made by the adjudicator. The effect hereof is that it would be premature at this moment to either grant or dismiss the main application, because the application is dependent on the outcome of the pending review. The application will therefore not be dismissed, and the condition stated in the counter-application has therefore been fulfilled.

[20] As for costs, it speaks for itself that only the review court will be in a position to finally determine the issue of costs in the main application. The applicant in the main application, however, will be liable for the costs of the counter application.

[21] The following order is made:

- 1 The respondent's failure to comply with the rules of court and time periods in the counter application is condoned, and the counter application is heard on a semi-urgent basis together with the main application.
- 2 It is declared that the applicant in the main application is not entitled to enforce the decisions of the adjudicator relating to contract numbers: C60/2019, C25/2019 and C26/2019 between the parties pending a review to be instituted by the respondents in the main application to have the said decisions declared invalid.
- 3 The review application shall be instituted by the respondents in the main application within 30 calendar days of date of this order.
- 4 Costs of the main application will be costs in the review proceedings.
- 5 The applicant in the main application is to pay the costs of the counter application on the party and party scale, including the fees of counsel on scale C.



P J LOUBSER

JUDGE OF THE HIGH COURT

Appearances

For the applicant (main application):

N Luthuli

Instructed by:

Moeti Kanyane Inc., Centurion
c/o Honey Attorneys,
Bloemfontein

For the respondents (main application):

R Williams SC

Instructed by:

Office of the State Attorney,
Bloemfontein.