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IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED

DATE: 22 May 2026

SIGNATURE:

Case No. 2026-093925

In the matter between:

PUTCO (PTY) LTD

APPLICANT

And

**HEAD OF DEPARTMENT OF THE GAUTENG
DEPARTMENT OF ROADS AND TRANSPORT**

FIRST RESPONDENT

**MEMBER OF THE EXECUTIVE COUNCIL OF
GAUTENG FOR ROADS AND TRANSPORT**

SECOND RESPONDENT

MEMBER OF THE EXECUTIVE COUNCIL OF

THIRD RESPONDENT

Coram: Millar J

Heard on: 13 May 2026

Order granted on: 13 May 2026

Reasons Requested 20 May 2026

Reasons Delivered: 22 May 2026 - These reasons were handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 09H45 on 22 May 2026.

JUDGMENT

MILLAR J

[1] On 13 May 2026 and in the urgent court, I granted the following order in favour of the applicant (Putco) against the first and second respondents (Gauteng Transport):

- “1. The rules, time limits, forms and procedures provided for in the Uniform Rules of Court, and this Court’s Practice Directives, are dispensed with in terms of Rule 6(12) of the Uniform Rules, to the extent necessary, and this application is heard as a matter of urgency.*
- 2. The first and second respondents are directed to make payment within 5 court days of this order of the outstanding amount due to the applicant for the applicant’s operated scheduled kilometres – as more fully set out in the founding affidavit – amounting to R154,400,171.87 (“the outstanding amount”).*
- 3. It is recorded that, following payment of the outstanding amount, nothing in this order detracts from the first respondent’s right to raise a dispute, by following the contractual dispute-resolution mechanisms provided for in clause 41 of the June 2023 contracts, and subject to any defences that the applicant may raise in any such dispute, regarding the computation raised in the supplementary affidavit regarding the number of buses used to render services, in terms of the Mpumalanga Negotiated Contract.*
- 4. The costs of this application, including the costs of two counsel, are to be paid by the first and second respondents, on the punitive attorney and own client scale, as well as by any of the other respondents, on the party and party scale on Scale C, in the event of opposition.”*

[2] Putco claimed payment from Gauteng Transport in terms of various contracts entered into by it with them on 30 June 2023. The contracts were for the provision of subsidized bus services in both Gauteng and Mpumalanga. In the present application, an order was sought for payment for services rendered during February and part of March 2026.

- [3] On 30 October 2024, this Court handed down a judgment in which the background relating to the conclusion of the underlying contracts for the provision of subsidized transport services was set out and in which it was ordered that pending the conclusion of arbitration proceedings relating thereto, the contracts would remain fully extant and enforceable.
- [4] The Court on 30 October 2024 also specifically ordered Gauteng Transport to comply with its “*obligations under the June 2023 contracts.*” It is not in dispute that this order is still in effect or that the arbitration proceedings referred to in it are still pending.
- [5] Putco has on at least two further occasions,¹ after 30 October 2024, approached this Court to enforce payment in terms of the June 2023 contracts. In each instance however, unlike the present, the orders that were sought and were made, were made by agreement. It suffices to say that the amounts to be paid in terms of the contracts are substantial running to many millions of Rands. It is also not in issue that Putco’s ability to provide the subsidized transport services in terms of the contracts on an uninterrupted basis is dependent upon timeous payment by Gauteng Transport of what is due in terms of the contracts.
- [6] After the issue of this application on 24 April 2026 and during the proceedings, Gauteng Transport asserted that certain payments had been made towards the outstanding amount. Putco, for its part, was only able (when the matter was heard) to confirm having received one of the payments. This payment was in the sum of R7 843,062.51 and once credited, resulted in the outstanding amount reducing from R162 243 234.38 to the R154 400 171.87. This is the

¹ On 19 May 2025 for an amount of R178,483,531.24 and on 25 November 2025 for an amount of R45,890,397.68.

amount that was ordered to be paid. In addition, the Court was informed there were said to be two further payments in the sum of approximately R52 959 169.00 which had been made by Gauteng Transport which it was expected would be received by Putco on Friday 16 May 2026.

- [7] For all intents and purposes, the debate in Court concerned the amount which would be outstanding after those two further payments – approximately R101 441 002.90.
- [8] Two main defences were put forward by Gauteng Transport.
- [9] The first was that it was unable to pay due to budgetary limitations and the insufficiency of the discretionary grants which it used to supplement its budgetary shortfall. This is of no assistance to Gauteng Transport. The contract between it and Putco is extant, and it is to be held to it for so long as it remains so.² Liability in terms of the contract is separate and distinct from execution.
- [10] The alleged inability of Gauteng Transport to pay is not a matter which this Court, approached to order payment in terms of a valid contract, needs concern itself. Whether or not in fact Gauteng Transport is actually unable to pay, is something more properly to be determined consequent upon execution in the event of non-compliance with the order of this Court. There mere say so of Gauteng Transport that it cannot pay, when it has pending proceedings, which it has elected not to prosecute diligently and which may have offered it succour, cannot be accepted.

² See *Mohamed's Leisure Holdings (Pty) Ltd v Southern Sun Hotel Interests (Pty) Ltd* 2018 (2) SA 314 (SCA) at para [23] in which it was held “*The privity and sanctity of contract entails that contractual obligations must be honoured when the parties have entered into the contractual agreement freely and voluntarily . . .*”

- [11] The second was that there was a question mark over whether the R101 441 002.90 was indeed due in terms of the contract. Before dealing with this defence, it is apposite to record that in terms of the June 2023 contracts, Putco is required to submit its invoices for the number of kilometres it has operated and once the invoice has been verified, payment is to be made within 30 days. It is not in issue that the invoices for the R162 243,234.38 had been submitted and accepted. It is also not in issue that payment was not made within the 30-day period it should have been.
- [12] The defence in this regard was predicated on the fact that while Gauteng Transport had in its records a list of 490 busses (which were operated by Putco on the Moloto Route), the claims that had been submitted and which were accepted were for 526 busses. It is this alleged discrepancy which was put up as a justification for querying and non-payment.
- [13] The implication was that Putco had charged for busses that had not been utilized and in so doing had cast a pall upon the veracity of the entire invoice. On this premise it was contended that there should be no order in respect of what was due in respect of the Moloto route until the alleged discrepancy had been resolved.
- [14] I am not persuaded that there is any merit to the suggestion that Putco had incorrectly invoiced or done so in respect of the incorrect number of busses for the following reasons:
- [14.1] The invoices were assessed and confirmed to be in order as of 31 March 2026, before the present proceedings were instituted.
- [14.2] The list of the busses which Gauteng Transport has for the respective bus companies with whom it contracts for subsidized

services indeed does reflect that Putco had 490 busses listed with it which would be utilized.

[14.3] This list which was prepared by MTM Management and Services, who electronically monitor the busses and the routes. It is dated 31 March 2026, by when the veracity of the Putco claims were established.

[14.4] The same report records in summary that for the Moloto Route, Putco had a verified fleet of 490 busses, an installed fleet of 490 busses and an “average operated fleet” of 513 busses. This was all known on 31 March 2026.

[14.5] The first and only mention of the fact that there were 528 busses used is contained in a letter from MTN Management and Services dated 4 May 2026. The heading of this letter was “*Payment Certificate for February 2026 – 4[...] – Putco Moloto (TAM)*”. This letter does not record that claims were submitted in respect of 528 busses when Putco ostensibly only had 490 busses. The letter pertinently states that:

“We confirm that the Operator operated 99.96% of the scheduled trips for the reporting period”

and that

“The services were operated using an average fleet of 528 busses, all of which were compliant in (sic) during the month under review.”

- [14.6] Additionally, a meeting was held on 7 May 2026, by representatives of Gauteng Transport together with representatives from MTM Management and Services. These were Mr. Tshidi Moraka and Mr. Thabang Moraka. Mr. Tshidi Moraka was the person who had signed off on the Management Report dated 31 March 2026 as well as the letter of 4 May 2026.
- [14.7] From the transcript of the meeting, it is readily apparent that it did not relate to any matters raised in respect of the February Payment Certificate or in respect of the content of the letter of 4 May 2026. The transcript pertinently reflects Mr. Tshidi Moraka stating:
- “We will just be going through the compliance of operators in terms of the month of March. So this is the monitoring report for the month of March.”*
- [14.8] The report was extremely detailed and demonstrates the care with which MTM Management Services examines the invoices and their verification function.
- [14.9] Some 35 minutes into the meeting, Mr. Thabang Moraka joined and raised an issue relating to operating licenses and proposed re-examination of the contracts that had been negotiated.
- [15] What is readily apparent is that at no stage were the invoices in question disputed or otherwise placed in issue, even after the present application had been instituted. The invoices in the present matter relate specifically to services rendered during February and the first part of March 2026, payable by 16 and 17 April 2026.

- [16] These invoices were authorised and approved on 1 April 2026 and the suggestion that the number of busses utilized, because it differed from the verified fleet of busses is of no moment in the present matter. The claim stands unimpeached on the undisputed finding by MTM Management and Services that Putco had travelled 99.96% of the scheduled trips which it was contracted to do.
- [17] Whether the busses utilized by Putco were characterized as registered, installed or utilized is of no moment and a red herring. Putco delivered that which it had contracted to deliver, and it is in respect of this that an order was sought for Gauteng Transport to pay it.
- [18] What is dispositive of this issue, is the finding by MTM Management and Services that Putco had in fact travelled 99.96% of its subsidized trips and that its invoices for those trips had been approved.
- [19] It is for these reasons that I was persuaded that Putco was entitled to the order for payment sought by it and I was unpersuaded that Gauteng Transport had any defence in law, which would entitle it to an order dismissing the claim for payment made by Putco.
- [20] However, I accept that the right of Gauteng Transport to properly manage the contract between it and Putco, in terms of the contract, since the contract is extant, must also be given effect to. It is for this reason that I included the qualification that the order did not preclude Gauteng Transport from exercising any of its rights in terms of the contract should there be a genuine and proper basis for doing so.
- [21] Regarding costs, this is a matter within the discretion of the Court. The contracts between Putco and Gauteng Transport are for the provision of

subsidized transport to some 130 000 persons daily. The people making use of this subsidized transport do so to make their way to work, to schools, to hospitals and to attend to their daily lives. The consequence of a disruption, besides being financial for Putco, would likely be devastating to those dependent on the transport provided.

- [22] In the present matter, Gauteng Transport has made much of the fact that its budget and discretionary transport allocations were insufficient to meet its obligations to Putco. The contracts were concluded in June 2023 – almost 3 years ago. Budgets are negotiated annually. The contention may well have been meritorious in 2023 but there is no explanation why, in the subsequent 2 budget cycles no provision has been made so that the budget and the discretionary transport allocations were sufficient to meet the extant obligations of Gauteng Transport to both Putco and the 130 000 persons dependent on the service.
- [23] The papers are silent on this aspect. Instead, Putco has been forced repeatedly to approach this Court to compel compliance by Gauteng Transport with its obligations. Every time they have approached this Court, Putco has been forced to do so where if, Gauteng Transport had complied, it would have been obviated. So too the costs that Putco have been forced to incur. It is simply unacceptable that Gauteng Transport adopts the supine attitude that it has with regards to its budget, despite being aware of its obligations to Putco.
- [24] None of the reasons proffered by Gauteng Transport for failing to comply with its obligations are meritorious and there is no reason that Putco should bear any of the costs associated with the present application. It is for this reason that I granted the punitive order for costs against Gauteng Transport.

JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON: 13 MAY 2026

ORDER GRANTED: 13 MAY 2026

REASONS REQUESTED: 20 MAY 2026

REASONS DELIVERED ON: 22 MAY 2026

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NO APPEARANCE FOR THE THIRD OR FOURTH RESPONDENTS