REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 2026-095093
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
DATE **2026-06-03**
SIGNATURE

In the matter between:

WIB INTELLITECH (PTY) LTD Applicant
(Registration number: 2014/101572/07)

and

THE SOUTH AFRICAN NATIONAL ROADS AGENCY SOC LIMITED First Respondent
(Registration number: 1998/009584/30)

ZIMELE ERP IT SERVICES (PTY) LTD Second Respondent
(Registration number: 2009/015825/07)

PROCEED GROUP AFRICA (PTY) LTD Third Respondent

(Registration number: 2019/294050/07)

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 3 June 2026.

JUDGMENT

POTTERILL J

Introduction

[1] The applicant, WIB Intellitech (Pty) Ltd [WIB] brought an urgent interim interdict to interdict and restrain the First Respondent, The South African National Roads Agency SOC Limited [SANRAL] and the Second Respondent, Zimele ERP IT Services (Pty) Ltd [Zimele] from continuing to implement and render services in terms of the contract awarded as RFP NO; NRA 2[...] [the Tender] to Zimele. This interim interdict is to be granted pending WIB's application to review the award of this Tender.

[2] The Third Respondent, Proceed Group Africa (Pty) Ltd [Proceed] is the South African entity of the Proceed Group with its holding company in the UK. WIB joined Proceed as an interested party "by virtue of its role as the consortium member in WIB's bid for this Tender." I find it necessary to quote what WIB stated under oath pertaining to Proceed:

> "11. The Third Respondent [Proceed] has indicated that it does not wish to actively participate as an Applicant in these proceedings. However, as the outcome of this application may affect the Third Respondent's direct and substantial interest, and therefore, that it has a direct and substantial interest in these proceedings, it is joined as a Respondent to ensure that it is afforded the opportunity to be heard, should it so wish."

[3] Both SANRAL and Zimele oppose the application. Counsel for Proceed attended to Court on a watching brief, pursuant to placing on record that it abandoned any participation in the hearing. It thus also abandoned its mis-joinder application.

[4] I found the matter to be urgent.

Point in limine – WIB has no locus standi

[5] On behalf of Zimele the point was raised that WIB did not have locus standi. SANRAL raised that WIB is non-suited because the bid was that of a joint venture and the joint venture is not before Court.

[6] It was argued that it is common cause that WIB's bid was with Proceed as a consortium with the vehicle used that of a joint venture. Proceed, with its rights to challenge the award of the Tender, had not elected to afford WIB its right to challenge the award. In fact, Proceed had abandoned its right.

[7] It was further submitted that this abandonment constituted a clear waiver by means of conduct. WIB did not aver in the founding papers that it was authorised to represent Proceed Africa.

[8] As the bid by WIB was a joint venture, WIB on its own is non-suited. A joint venture is to be treated as a partnership.[1] This is so because WIB and Proceed both bring something to the partnership whether it be money, skill or labour. The consortium tendered for the joint benefit of the partners with the object to make a profit.

[9] Accordingly, Proceed declared that it did not wish to actively participate in the litigation and wanted its name removed from the court records. Proceed could not assign its right to the tender bid without the consent of SANRAL. It was not averred that SANRAL had consented.

[10] In WIB's replying affidavit it addressed the point in limine by attaching the Consortium Agreement referring to Clause 12.6 of this agreement that provides for the Assignment of Rights.

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[1] *Bester v Van Niekerk* 1960 (2) SA 779 (AD) at 784

[11] Furthermore, on 13 May 2026, after the issuing of the application and the answering affidavits were filed, Proceed and WIB executed a resolution. This resolution provided that Proceed had assigned, transferred and made over to WIB all rights on title to litigate on any causes of action arising from the Tender. It authorised WIB to litigate as sole applicant in its own name in respect of the consortium. It expressly ratified and confirmed all legal actions already taken by WIB pertaining to this matter.

Finding on locus standi

[12] WIB does not distinguish between locus standi and the requirement for an interim interdict; locus standi is not a prima facie right though open to some doubt. Locus standi is the standing to institute proceedings.

[13] It is common cause that the consortium flows from a joint venture. It was not denied that a joint venture equates to a partnership. Both partners are not before the Court as applicants; as a respondent the one partner is not instituting proceedings. In fact, Proceed had abandoned its right to institute proceedings and wanted its name removed from the papers.

[14] In *Sandton Civic Precinct (Pty) Ltd v City of Johannesburg and Another* (458/2007) [2008] ZASCA 104 (22 September 2008) the Supreme Court of Appeal found as follows:

> "While the question of legal standing is in a sense procedural, it also bears on substance. It concerns the sufficiency and directness of a litigant's interest in proceedings which warrants his or her title to prosecute the claim asserted. This case illustrates the point. The applicant must establish the legal lineage between itself and the rights-acquiring entity the resolution mentions. That it has not done. While in a sense this is technical, and procedural, it also goes to the substance of the applicant's entitlement to come to court."[2]
>
> And

[2] Par [19]

> "WIB must thus show that it is the rights-bearing entity, or is acting on the authority of the entity, or has acquired its right."[3]

[15] The question is what rights, if any arose from the resolution. The resolution, to facilitate the effective prosecution of the litigation "assigned all of its rights and title in respect of the ability to litigate on any causes of action or claims whatsoever arising from the Bid to its consortium partner, WIB Intellitech (Pty) Ltd in the interests of the consortium." Moreover, the resolution authorised WIB to litigate in its own name; as the sole Applicant, for the purposes of challenging and setting aside the award made by SANRAL …"

[16] The resolution also ratified and confirmed all actions already taken by WIB in relation to this litigation relating to the Consortium's interests in the bid.

[17] This resolution did authorise WIB to institute these proceedings and does give it legal standing. It also ratified the proceedings. I am satisfied that WIB has locus standi.

WIB's contentions on the interim interdict

The prima facie right

[18] In the founding affidavit WIB set out that it has a "prima facie right case" in terms of bringing a review. It then relied on the fact that the decisions of SANRAL amounted to administrative action and that its action adversely affected the rights of WIB, because the decisions were procedurally unfair, unreasonable, unconstitutional, unlawful and/or irrational.

The irreparable harm

[19] The irreparable harm raised by WIB is that SANRAL has allowed Zimele to commence work in terms of the contract despite the award not having been made viewable on the website of SANRAL.

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[3] Par [19]

[20] Zimele is on site and whittling away the budget of the Tender. Should the review ultimately succeed, WIB will have a “hollow victory” because it would have exhausted the project’s financial allocation.

[21] The implementation of the contract was awarded contrary to cost effectiveness requirements with SANRAL to pay a premium of over R337 million above WIB’s price while a review is pending; a waste of public resources that could not be recovered.

[22] In the founding affidavit the main ground for review was that awarding a contract for R438,264,236.11. “When a proven service provider with institutional knowledge tendered R101,233,535.62 for the same scope is a prima facie violation of the cost-effective requirement.” This likely constituted wasteful expenditure.

SANRAL’S submissions

[23] SANRAL in answer set out that the publication of the award was on SANRAL’s website and attached a copy of the publication.

[24] It set out that WIB did not submit a transition plan, a mandatory document, before a bidder can execute its contractual obligations in terms of the award letter. In reply, WIB denied that it did not submit a transition plan.

[25] SANRAL acknowledged that WIB’s price was the lowest, but that clause 1.7 (section 2) informed the bidder that SANRAL reserved the right not to award to the lowest bidder. But, in any event, WIB was disqualified before price came into question.

Zimele’s argument

[26] On behalf of Zimele it was submitted that from WIB’s own affidavit it was relying on incorrect bid specifications when submitting its bid or had made vast errors in calculating the costs. It set out that WIB did not attach Addendum No 1 which altered the scope and affected the price upwards.

[27] Zimele has been performing the work required under the tender since 17 November 2025 successfully. This is a period of 6 months.

Balance of convenience

[28] It was argued by WIB that the balance of convenience favoured it because WIB will suffer damages which will be unquantifiable or difficult to quantify. Conversely allowing Zimele to continue at an exorbitant cost to the public fiscus far outweighs any temporary inconvenience caused by a pause in operations.

[29] The unanswered request for internal remedies tilted the balance of convenience due to SANRAL's deliberate lack of transparency.

[30] There will be no disruption of services because WIB was already familiar with the environment and was performing the service as a sub-contractor to Tech Mahindra. In reply it admitted that Afrocentric IP was on site before Zimele was awarded the tender.

[31] Both SANRAL and Zimele argued that the balance of convenience did not favour WIB because Zimele was on site and has rendered services for 6 months.

No other satisfactory remedy

[32] WIB argued it had not other satisfactory remedy whereas SANRAL and Zimele both agreed WIB could still proceed with a review without the interdict being granted.

Reasons for decision

Does WIB have a prima facie right

[33] It is trite that WIB has to establish it has a prima facie right warranting interim relief pending the review of the tender award. Furthermore, a well-grounded apprehension of irreparable harm if the interim relief is not granted, where the balance of convenience lies, the absence of any other satisfactory remedy and the separation of powers harm.

[34] Everybody's right to lawful, reasonable and procedurally fair administrative action is entrenched in our Constitution.[4] But, to invoke this right by means of an interim interdict, something more is required, this right can only be prima facie if

[4] Section 33

irreparable harm would follow if this right is not protected.[5] WIB has no prima facie right because it has a "prima facie case" as a bidder to review. Its two submissions that because of a right in terms of PAJA and its prima facie right as a bidder is sustaining a prima facie right is simply bad in law.

[35] WIB has not shown that it will suffer irreparable harm if the interdict is not granted. It was a sub-contractor, not on site, supported by the fact that from another source it ascertained that Zimele was on site. It is in any event common cause that Afrocentric IP was on site, prior to Zimele being on site, pursuant to being awarded the Tender. Zimele has been on site for 6 months and it is not denied that Afrocentric IP was absorbed by Zimele. It is also common cause that SANRAL and Zimele had signed the service level agreement [SLA] and Zimele commenced with its contractual obligations on 7 November 2025.

[36] WIB set out its irreparable harm as that the tender was not published on the website. This is not irreparable harm flowing from the interdict not being granted and to say the least, is non-sensical. It relates to procedure; when it could have and should have known of the award of the tender and time-frames relevant thereto.

[37] Furthermore it raised that Zimele would whittle away the budget and should the review succeed WIB would have a hollow victory. WIB has no right to any monies until it is declared to be the successful bidder, alternatively it could claim loss of profit if it should be the successful bidder. The monies now paid to Zimele is in terms of the Tender award, it is not whittled away under a different procedure. But, in any event, it is a 5 year contract and a review will most certainly be heard within a year, there is no irreparable harm to WIB if the interdict is not granted. WIB has not proven a prima facie right, even open to some doubt.

[38] The court can take note of the prospects of success on review without deciding the merits thereof. In applying *Plascon-Evans*[6] the Court would have to accept that there was publication of the Tender and that Addendum A did affect the costs of the project.

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[5] *National Treasury and Others v Opposition to Urban Tolling Alliance and Others* 2012 (6) SA 223 (CC) par [50]

[6] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A); *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA)

[39] This urgent application was brought on mere speculation pertaining to the reviewability of the award. WIB blamed SANRAL for not answering their letters for this, yet it had a remedy provided for in the Tender, to ask for reasons why it was not a successful bidder. It did not utilise this. In reply it stated that it did provide a transition plan, although called by another name. This prejudiced the respondents because at urgent court further affidavits from the respondents to react thereto cannot be delivered, except by leave of the Court. This is not the function of an urgent court; to initiate proceedings on "should the reasons evidence, when received, that the award of the contract to ZIMELE is challengeable, then the Applicant shall launch an application to review and set aside the decision of SANRAL" and then proceed to litigate by means of instalment.

[40] Even if this Court should find that there are prospects of success, which it prima facie does not, the lack of a prima facie right has only one outcome; the dismissal of the interim interdict.

[41] The balance of convenience does not favour WIB. It has no right to review; it was not on site prior to the award, while Zimele has been doing the work for six months. Granting the interdict will prevent Zimele from continuing and leaving the project unattended to. No Court will appoint WIB to take over pending the review, as it avers, it has no vested right. The Court will have to resort to the remedy of appointing a service provider pending review. This could only be Zimele leaving the status quo as it is. The difficulty of quantifying the damages does not outweigh the prejudice SANRAL and Zimele will suffer.

[42] WIB has the alternative remedy to pursue a review, if it so wishes.

Costs

[43] I can see no reason why the costs should not follow the result.

[44] The following order is made:

The application is dismissed.

The applicant is to pay the first and second respondents' costs, including costs of two counsel each on Scale C.

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S. POTTERILL

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

CASE NO: 2026-095093

HEARD ON: 21 May 2026

FOR THE APPLICANT: ADV. B.D. STEVENS

INSTRUCTED BY: Morgan Law

FOR THE 1ST RESPONDENT: ADV. E. MOKUTU SC

ADV. L. MNQANDI

INSTRUCTED BY: Gildenhuys Malatji Inc.

FOR THE 2nd RESPONDENT: ADV. N.A. CASSIM SC

ADV. S. FREESE

INSTRUCTED BY: LM Attorneys

FOR THE THIRD RESPONDENT (WATCHING BRIEF): ADV. P. LEBEA

DATE OF JUDGMENT: 3 June 2026