IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION)

Not Reportable

Case No: **2026 - 165882**

In the matter between:

WORLD FOCUS 226 CC t/a WF CONSTRUCTIONS	Applicant

and

THE CITY OF CAPE TOWN	First Respondent
THE CITY MANAGER OF THE CITY OF CAPE TOWN	Second Respondent
JJ DYERS CONSTRUCTION (PTY) LTD	Third Respondent
NEJENI CONSTRUCTION AND PROJECT MANAGEMENT (PTY) LTD	Fourth Respondent
MARTIN AND EAST (PTY) LTD	Fifth Respondent

Coram: Norton AJ

Heard: 30 July 2026

Order granted: 31 July 2026

Reasons given: 11 August 2026 (electronically)

ORDER

---

1. The applicant's non-compliance with the forms, time periods and service requirements in the Uniform Rules of Court is condoned and the matter is heard as one of urgency.

2. The application under Part A of the applicant's Notice of Motion is dismissed.

3. The applicant shall pay the costs of the application, such costs to include the costs of two counsel on scale C.

REASONS

Norton AJ

[1] On 30 July 2026 the applicant's application for a final interdict against the first and second respondents came before me on the urgent roll. I handed

down an order on 31 July 2026, indicating that my reasons would follow. These are my reasons.

Background

[2] The applicant, after a successful tender, concluded a contract with the first respondent (the City) under Tender 1[...] (Tender 111Q) on 12 June 2023 in terms of which it would provide emergency repairs and maintenance of water infrastructure for a period of 36 months from 1 July 2023 to 30 June 2026 (the Contract).

[3] On 23 May 2025 the City advertised Tender 2[...] (Tender 273Q) for the provision of emergency repairs and maintenance of water infrastructure for the period of 36 months from 1 July 2026 to 30 June 2029. Tender 273Q was a 'replacement tender' for Tender 11Q. The applicant tendered for the contract under Tender 273Q but was unsuccessful. The successful tenderers were the third to fifth respondents and the City concluded a contract with them (the replacement contract) that would commence on 1 July 2026 for a period of 36 months.

[4] The applicant lodged an internal appeal against the City's decision in respect of Tender 273Q. Its appeal was dismissed on 12 June 2026.

[5] On 15 June 2026, two weeks before the expiry of the Contract, the applicant and the City concluded an addendum to the Contract (the Addendum) in which it was agreed that 'the Contract be expanded from 01

July 2026 to 31 December 2026, on a month-to-month basis, alternatively until the replacement contract is in place, whichever comes first.'

[6] On 18 June 2026 an employee of the City furnished the applicant with a copy of the signed Addendum and stated in the accompanying email: 'Note we are expecting 1[...] to only be extending by 1 month and closing off on 31 July 2026.'

[7] On 8 July 2026 the applicant's construction manager was advised in a telephonic conversation with an official of the City that Tender 273Q would commence on 1 August 2026.

[8] On 13 July 2026 the applicant instituted an application in two parts.

[9] In Part A, the applicant sought an order that the *status quo ante*, as at the date of service of the application, be preserved in respect of the Contract (the *status quo* relief). Additional relief sought in Part A – among other things an order interdicting the City from implementing any contract or allocating any work pursuant to Tender 273Q – was abandoned in argument at the hearing of the application.

[10] In Part B, the applicant sought an order reviewing and setting aside the City's decisions, first, to declare the applicant's bid in respect of Tender 273Q non-responsive; and second, to award Tender 273Q to the third, fourth and fifth respondents.

[11] It was apparent from the founding papers that what the applicant sought by way of the *status quo* relief was an order holding the City to the Contract beyond 1 August 2026 and until 31 December 2026, unless the City

were to give the applicant one month's notice that the replacement contract was to commence on a date earlier than 31 December 2026, in which case the Contract would end on the date of commencement of the replacement contract.

[12] This relief was sought on the basis that the replacement contract in respect of Tender 273Q was due to be implemented on 1 August 2026, but the applicant had not been afforded one month's notice of termination of the Contract, to which (it claimed) it was entitled.

[13] The applicant framed its Part A relief as a final interdict and it was accepted in argument that there is no relationship between the relief sought in Part A and that sought in Part B. Success under Part A would, at best, allow the applicant to continue providing services in terms of the Contract until 31 December 2026, and not any later date on which the relief sought in Part B would finally be determined.

Urgency

[14] I accept that the application was urgent, in circumstances where the implementation of the replacement contract was imminent and the applicant brought the application expeditiously.

Interdictory relief

[15] The applicant for a final interdict is required to establish (i) a clear right; (ii) an injury actually committed or reasonably apprehended; and (iii)

the absence of an adequate alternative remedy (*Setlogelo v Setlogelo* 1914 AD 221 at 227).

[16] The applicant asserted a right to the continuation of the Contract beyond 1 August 2026 on the basis that it was entitled to, but had not been afforded, one month's written notice of the date on which the replacement contract would commence.

[17] This contention was rooted in the words 'on a month-to-month basis' in clause 4.1 of the Addendum, which reads as follows:

> 'The Parties record that the Contract be expanded from 1 July 2026 to 31 December 2026 on a month-to-month basis, alternatively until the replacement contract is in place, whichever comes first.'

[18] However, I am of the view that on a proper interpretation of clause 4.1, the words 'on a month-to-month basis' are something of a red herring.

[19] The meaning of clause 4.1 must be determined in accordance with the recognised principles of contractual interpretation, which were chrystallised in the following *dicta* of Wallis JA in *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) (*Endumeni*) para 18:

> 'Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the

document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production.'

…

'Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The "inevitable point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.'

[20] In *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA) Unterhalter AJA (as he then was) elaborated on the principles outlined in *Endumeni*:

'[25] … I would only add that the triad of text, context and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitute the enterprise by recourse to which a coherent and salient interpretation is determined.'

'[26] … *Endumeni* is not a charter for judicial constructs premised upon what a contract should be taken to mean from a vantage point that is not

> located in the text of what the parties in fact agreed. Nor does *Endumeni* license judicial interpretation that imports meanings into a contract so as to make it a better contract, or one that is ethically preferable.'

[21] On a plain reading of clause 4.1, there are only two dates on which the Contract (as extended by the Addendum) may come to an end.

[22] The first date is 31 December 2026. On that date the Contract would come to an end by the effluxion of time.

[23] The second date is any date before 31 December 2026 on which 'the replacement contract is in place'. On that date the Contract would come to an end as a result of the occurrence of a specified event, as is the case with any resolutive time clause that provides for termination on the occurrence of an event that is certain to occur albeit that the date of occurrence is uncertain. (See Wessels *The Law of Contract in South Africa* 2nd Edition (1951) para 1439, cited in *Trinity Asset Management (Pty) Ltd v Grindstone Investments 132 (Pty) Ltd* 2018 (1) SA 94 (CC) para 158).

[24] There is nothing in the text of clause 4.1 or the Addendum as a whole that provides for termination of the Contract by notice or requires the City to give the applicant notice of the date on which the replacement contract will be in place.

[25] Viewed in its context – within the Addendum and in the circumstances in which the Addendum was concluded – it is evident that the purpose of clause 4.1 was to ensure that the City would not experience a break in the provision of important municipal services between the end date

of its fixed-term contract with the applicant and the commencement of its new fixed-term contract with the third to fifth respondents. The use of the word ‘replacement contract’ signifies an intention that the City would not find itself bound by two contracts for the same services when the contract with the third to fifth respondents commenced.

[26] The applicant knew, when the Addendem was concluded, that it had not been successful in respect of Tender 273Q and that the ‘hard stop’ for its continued services would be the date on which the replacement contract was ‘in place’. The parties were *ad idem* at the hearing of the matter that the date on which the replacement contract would be ‘in place’ was the date on which it commenced. That is the bargain that the applicant made.

[27] In my view there is no basis for the construction of clause 4.1 that the applicant advances. The following observation in paragraph 51 of *Capitec* is apposite.

> ‘Most contracts, and particularly commercial contracts, are constructed with a design in mind, and their architects choose words and concepts to give effect that design. For this reason, interpretation begins with the text and its structure. They have a gravitational pull that is important. The proposition that context is everything is not a licence to contend for meanings unmoored in the text and its structure. Rather, context and purpose may be used to elucidate the text.’

[28] In argument for the applicant reliance was placed on the common law principle whereby a periodical lease agreement that contains no express termination clause is terminable by either party on reasonable notice. However, that principle applies only to lease agreements that *fix no end date*

and are thus of indefinite duration. The principle that applies in lease agreements of defined duration (whether they are to end on a fixed date or on the happening of a specified event) is the following:

> 'If a lease is for a fixed period or until the occurrence of a specified event, the obligations arising from it terminate automatically when the period ends or the event occurs' (Bradfield & Lehmann, *Principles of the Law of Sale & Lease*, Third Edition, p 185).

[29] I was also referred to *Amalgamated Beverage Industries Ltd v Rond Vista Wholesalers* 2004 (1) SA 538 (SCA) for the proposition that a tacit term that a contract is terminable by reasonable notice may by implication be read into the contract in appropriate circumstances. However, that case too concerned a contract that was silent on its duration. In *Transnet Ltd v Rubenstein* 2006 (1) SA 591 (SCA) the SCA declined to impute into a contract a tacit term governing termination where the contract itself was not silent on duration but was terminable on the happening of an uncertain future event (see paragraphs 13 and 19).

[30] Finally, it was contended with reference to *Beadica 231 CC and Others v Trustees, Oregon Trust and Others* 2020 (5) SA 247 (CC) that the constitutional values of fairness, reasonableness and justice that infuse the law of contract support the applicant's proposed construction of clause 4.1.

[31] *Beadica* is not however authority for the proposition that a court can read into a contract a clause that is at odds with its plain terms solely on the basis of the recognised values. It dealt with the instances in which a court might refuse to *enforce* contractual provisions on grounds of unfairness. Its

key findings were that 'abstract values do not provide a free-standing basis upon which a court may interfere in contractual relationships' (paragraph 79) and that the principle of *pacta sunt servanda* – that contracts freely and consciously entered into must be honoured – itself gives effect to the 'central constitutional values of freedom and dignity' (paragraph 83).

[32] On the view that I have taken, that clause 4.1 of the Addendum did not entitle the applicant to one month's written notice of the date on which the replacement contract would be in place, it is unnecessary to address the City's alternative argument that the email of 18 June 2026, in which the applicant was advised that the City was 'expecting 1[...] to only be extending by 1 month and closing off on 31 July 2026' constituted such notice. Suffice to say that in my view a communication of an *expectation* of an end date would generally not suffice to give a counter-party notice of an actual end date.

[33] The applicant did not establish a clear right to one month's notice of the commencement of the replacement contract. If it *had* established such a right, the City's stated intention to implement the replacement contract on 1 August 2026 would have grounded a reasonable apprehension of harm to that right. Urgent interdictory relief would also have been the only adequate remedy available to the applicant. However, my finding that no clear right has been established is dispositive of the applicant's case as a final interdict cannot be granted unless all three requisites are met.

Conclusion and costs

[34] I concluded that the applicant had failed to meet the requirements for the relief that it sought and that it was appropriate that the applicant should be ordered to pay the costs of the application.

ML NORTON

ACTING JUDGE OF THE HIGH COURT

WESTERN CAPE DIVISION

<u>Appearances</u>

For the applicant:	DC Joubert SC
Instructed by:	Reid Attorneys Inc.
	c/o Halday Attorneys
	Cape Town
For the first and	
second respondents:	R Williams SC
	R Matsala
Instructed by:	Fairbridges Attorneys
	Cape Town