

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



Case number: 2025-174404

Date of hearing: 6 August 2026

Date delivered: 27 August 2026

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES/NO	
(2) OF INTEREST TO OTHERS JUDGES: YES/NO	
(3) REVISED	
27/8/26	[REDACTED]
DATE	SIGNATURE

In the application of:

APPCENTRIX (PTY) LTD

Applicant

and

THE MINISTER OF POLICE

Respondent

JUDGMENT

SWANEPOEL J:

[1] The applicant seeks an urgent order that the respondent must assign a purchase order for services which have been, or are to be rendered by the applicant, for and on behalf of the respondent, during the period of 1 March 2026 to 28 February 2027.

[2] The common cause facts are the following:

[2.1] During 2021 the applicant successfully bid for a contract for the provision of monitoring services, for the establishment of a National IS/ICT Operations Centre, and for the provision of maintenance and support ("the services"), for a period of five years.

[2.2] On 17 August 2023 the parties entered into an agreement in terms of which the applicant undertook to render the services, and the respondent undertook to pay for the services within 30 days of receipt of an invoice accompanied by a delivery note.

[2.3] The total contract price was R 549 789 000.

[2.4] On 21 January 2026 the parties entered into a Master Service Agreement ("MSA") in terms of which the effective date for the agreement was recorded to be 1 May 2024, and it also recorded that the MSA would continue until 30 April 2029.

[3] The respondent has authorized various purchase orders as the project unfolded, for implementation services, infrastructure deployment,

software licensing, architecture and commissioning and latterly for maintenance and support. Since March 2026 the applicant has not received any purchase orders. Nonetheless, the applicant has continued to provide continuous monitoring of the police's ICT environment, has maintained the monitoring platform, has provided operational reporting, incident management services, and platform and technical support. It continues to do so.

[4] On 31 March 2026, 30 April 2026 and 31 May 2026 respectively the applicant issued invoices for services rendered in those months. The respondent has refused to effect payment of those invoices, amounting to R 32 976 385.64 (the average cost per month is R 8 244 096.41) and has refused to issue purchase orders.

[5] The respondent has pleaded, in limine, that the applicant was obliged in terms of the MSA to approach a mediator to attempt to resolve the dispute between the parties. Secondly, the respondent says that an investigation into "identified" procurement irregularities is underway, and that the claim for payment is premature. The respondent says that it is currently not ascertainable whether the applicant is entitled to payment or not. If it is found later, that payment was not due, the such payment will, the respondent says, amount to wasteful and fruitless expenditure.

[6] The respondent has also attacked the alleged lack of urgency of the application.

Mediation and prematurity

[7] The respondent relies on clause 21.1 and 21.2 of the MSA which reads:

“21.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

21.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.”

[8] The respondent does not seek a stay of the proceedings. It pleads the alternate dispute resolution clause as a complete defence to the application. It says that it is only when mediation has failed, that a dispute may be referred to a court. Alternate Dispute Resolution mechanisms are of much value in commercial matters. It allows contracting parties to agree on their preferred method of resolving disputes, whether by adjudication by an expert, mediation by a trained mediator, or by an arbitrator in accordance the Arbitration Act, 1965. The parties are allowed to resolve their disputes in the manner that they choose, speedily and efficiently.

[9] However, alternate dispute resolution is not in all instances the best manner in which to resolve conflicts that may arise in the course of a contract. For that reason, a court is never divested of jurisdiction to entertain any dispute that would normally fall within its jurisdiction. However, there must be a dispute that is capable of resolution by alternate dispute resolution. In *Parekh v Shah Jehan Cinemas (Pty) Ltd and Others*¹ the Court held (per Didcott J) the following:

“Arbitration is a method for resolving disputes. That alone is its object, and its justification. A disputed claim is sent to arbitration so that the dispute which it involves may be determined. No purpose can be served, on the other hand, by arbitration on an undisputed claim. There is then nothing for the arbitrator to decide.”

[10] In *Telecall (Pty) Ltd v Logan*² the court said:

[12] I conclude that before there can be a reference to arbitration a dispute, which is a dispute capable of formulation at the time when the arbitrator is to be appointed, must exist and there can not be an arbitration and therefore no appointment of an arbitrator in the absence of such a dispute.”

[11] I accept that mediation proceedings may encompass issues that are broader than strictly legal questions which may justify arbitration or court proceedings. However, as much as a court is not constrained from determining a dispute where the parties have agreed to arbitrate a dispute, it is also not constrained from hearing a dispute where a mediation has been agreed upon.

[12] Moreover, clause 21.1 requires the parties to mediate, when there is *“any dispute or difference of any kind whatsoever [arising] between the purchaser and supplier in connection with or arising out of the contract...”*

[13] Is there a dispute arising from or in connection with the contract? The respondent says that during March 2026 information surfaced regarding possible procurement irregularities involving the contract and the MSA. Due to the paucity of the averments, the Court is left in the dark as to the nature of the possible irregularities. We are, however, told that the investigation relates to a contract between Telkom/BCX and the police in which the applicant was a subcontractor to Telkom/BCX. The irregularities apparently relate to the applicant's appointment in this contract in the face of the “damning” outcome of the Telkom/BCX contract.

[14] Firstly, there is no dispute arising from or in connection with this contract. The respondent is clearly happy with the services rendered by the applicant, and is also quite content to continue to receive the services whilst at the same time refusing to pay what it owes.

[15] In my view, there is no dispute that is capable of mediation. In addition, the so-called dispute apparently relates to ‘irregularities’ in a contract to which the applicant was not a party. Finally, any dispute in regard to the Telkom/BCX contract would require the latter's involvement in the dispute resolution process. Telkom/BCX is not a party to the mediation agreement, and mediation would thus be futile.

[16] The aforesaid is dispositive of the mediation defence. As for the 'premature' defence, it is not a defence to say that a party is investigating whether it owes money or not, and that the proceedings can wait until it has made up its mind on that score. The notion that this is a defence is unfounded.

Urgency

[17] The respondent says that the applicant's urgency is self-created. It alleges that the process of issuing a new purchase order had commenced in February 2026, during discussions between the applicant and one Col. Tungwana. At that stage, it says, it must have been obvious to the applicant that new purchase orders would not be authorized.

[18] On 26 May 2026 the applicant formally demanded that a purchase order be issued within 10 days, failing which an urgent application would be launched. A further letter of demand was sent on 19 June 2026, again on 8 July 2026 and finally on 16 July 2026. This application was launched on 22 July 2026.

[19] To say that the applicant took its time in launching this application would be charitable. It knew for months that there was a problem with the issuing of a new purchase order. It is quite apparent from the tone of its correspondence that it did not want to antagonize its client. Under normal circumstances, I would have had no hesitation in striking the application for lack of urgency.

[20] However, these are not normal circumstances. The respondent entered into the MSA on 21 January 2026. Within a month thereafter it was refusing to issue new purchase orders. The 'concerns' regarding procurement issues only arose in March 2026, and could not have been the cause of the delay in issuing the purchase orders in February. The respondent has not explained why it would not issue new purchase orders in February.

[21] We are now almost six months on from when these 'concerns' were raised, but there is no indication as yet that the investigation has an end in sight. I have not been told what the exact allegations against the applicant are, what its alleged involvement was with the Telkom/BCX contract, what irregularities are suspected to have occurred, nor how they may impact this contract.

[22] The respondent is quite happy to accept the benefit of the services, but is not willing to pay one cent towards their procurement. That is, to me, iniquitous. I expect better judgment from a government department. If there are real concerns regarding the contract, or regarding previous procurement 'irregularities', then take the bull by the horns and suspend the contract. The respondent cannot expect the applicant to continue to provide services without any payment in sight. The Minister cannot have his cake and eat it.

[23] In some instances the strength of a case on the merits may outweigh the considerations of urgency, as it does in this matter. It is so

that a decision on urgency is a matter within my discretion, and despite the applicant's extremely dilatory approach to the matter, I choose to find that the matter is urgent for the aforesaid reasons. I also take into consideration that the applicant is under financial strain, a formal demand for payment of approximately R 8 million having been made by a debtor. I also do not think that it is appropriate to expect a company to place its finances at the State's disposal without expectations of any return in the foreseeable future. Commercial imperatives can be as urgent as any other.³

[24] As for a defence on the merits of the matter, there is none.

[25] I make the following order:

[25.1] The respondent is ordered to assign a purchase order for the services that the applicant is obliged to render for the period 1 March 2026 to 28 February 2027.

[25.2] The respondent shall pay the costs of this application including the costs of counsel on scale B.


SWANEPOEL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION PRETORIA

¹ 1980 (1) SA 301 (D) at 305 E
² 2000 (2) SA 782 (SCA)

³ Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd
1982 (3) SA 582 (W)