



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

**CASE NO: 2025-043172**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**
- (4) Date: 16 May 2025

Signature: [REDACTED]

In the matter between:

**PRO SECURE (PTY) LTD**

Applicant

And

**MOGALE CITY LOCAL MUNICIPALITY**

First Respondent

**MAKHOSANA MSEZANA**

Second Respondent

**WENZILE PHAPHAMA TRADING AND PROJECTS**

Third Respondent

**MABOTWANE SECURITY SERVICES CC**

Fourth Respondent

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**JUDGMENT**

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**A. INTRODUCTION**

- [1] This is an urgent application brought in terms of Rule 6(12) of Uniform Rules of Court wherein the applicant seeks an interim interdict restraining the implementation of tender number RFP no: CDS(PS) 01/2024 ("the tender") awarded to the third respondent ("Wenzile") pending a final determination of Part B, being the review application, wherein the applicant seeks an order setting aside the tender award.
- [2] The first, second and third respondents oppose this application. The fourth respondent ("Mabotwane") filed an explanatory affidavit wherein it confirms its support for the interim interdict and further abides by the decision of this court.
- [3] Mabotwane is the current service provider for the first respondent ("the Municipality") and, like the applicant, is also an unsuccessful bidder. The services of Mabotwane were terminated by the Municipality and Wenzile is required to commence services on 01 May 2025.
- [4] This application was heard on an urgent basis before me. The applicant's cause and substantiation for urgency was primarily that, should an interdict not be granted, the Municipality intended to implement the tender award, appoint **Wenzile Phaphama Security** in terms of the tender and commence the contract by or on 1 May 2025.
- [5] At the commencement of the hearing, Mr Muza came on record as counsel for the third respondent **Wenzile Phaphama Security**. On behalf of the third respondent a document titled "Third respondent's points of law" running into some 32 pages had been filed on the previous evening. There was no explanation whatsoever. There was opposition from the applicant's counsel.

- [6] The court ruled that Mr Muza could not continue with his points of law due to the flagrant non-compliance with the Uniform rules of court, more particularly rule 6(5) (d)(iii).
- [7] On behalf of the applicant, Mr Lüderitz submitted that the applicant would demonstrate that it has established a clear right as opposed to simply a *prima facie* right. This is one of the requisites of an interim interdict, which the applicant requires. The others being: irreparable harm, no other satisfactory remedy and a balance of convenience.<sup>1</sup>
- [8] The applicant relies on the Municipality's Supply Chain Management ('SCM') Policy<sup>2</sup> as well as the invitation to submit the Request for a Proposal ('RFP'). These contain the terms and conditions subject to which the adjudication process is to be considered.
- [9] In its clause 25(2) and (3) the policy contemplates a two-stage bidding process. It reads as follows:
- “(2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.*
- (3) In the second stage final technical proposals and priced bids are invited from only the bidders who submitted proposals.”*
- [10] In clause 4 it provides for a two-envelope bidding system. This entails the submission of two discreet envelopes. The first envelope contains technical proposals that are concerned with functionality. Only those bidders that qualify are then invited to submit the second envelope which contains pricing proposals.

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<sup>1</sup> *Setlogelo v Setlogelo* 1914 AD 221.

<sup>2</sup> Annexure A – Supply Chain Management Policy in terms of the Municipal Finance Management Act, 2003.

[11] The specifications in the RFQ are compiled by a Bid Specification Committee. This committee is created by clause 27.2 which provides that:

*“(1) A bid specification committee must compile the specifications for each procurement of goods or services by the Mogale City Local Municipality.*

*(2) Specifications - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services,”*

[12] Clause 28 deals with the functions of the Bid Evaluation Committee ('BEC'), which are:

*“... to evaluate bids in accordance with*

*1. The specifications for a specific procurement.*

*2. The points system set out in terms of paragraph 27(2)(h).”*

[13] The preference point system envisaged is dependent on value and is either on a 80:20 or 90:10 basis. In the instant case the basis is recorded as 90:10<sup>3</sup> given that the value of the tender is in excess of R50 million.

[14] What it effectively comes down to, Mr Lüderitz submitted, is that 90 points are awarded for price and 10 points are awarded for specific goals that have been clearly specified in the invitation to submit a tender.

[15] The policy document then records that “the points scored must be rounded off to the nearest two decimals. The contract must be awarded to the tenderer scoring the highest points.”

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<sup>3</sup> Clause 45.

[16] A contentious clause in the invitation to tender is clause 39 which appears to conflict with clause 46(8) of the municipality's own policy. It provides that:

*"The lowest or any tender will not necessarily be accepted and Mogale City reserves the right to accept a tender in whole, or, in part."*

[17] The cause of the applicant's dissatisfaction is that the municipality has placed reliance on clause 39 and took into account criteria that is not in the RFQ and its own policy to award the tender to **Wenzile**, to its detriment and that of **Mabotwane**. This is a third scoring criterion called "*special goals*".

[18] Mr Nalane submitted on behalf of the first and second respondents that the facts are largely common cause. The main point in dispute is whether price should have been the sole determinant of the winning tender. In other words, should the applicant obtain the tender, simply because its price was cheaper?

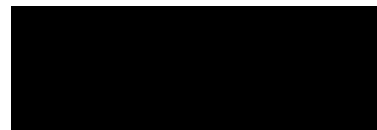
[19] On the question raised above, I will defer to the court that hears the review in due course. The details pertaining to how the bid was evaluated, will only help enlighten me on whether there are prospects of success in the review, which is relevant to determining the grant or refusal of the temporary interdict.<sup>4</sup>

[20] The thrust of the first and second respondents' case is that the mere fact that the applicant scored the highest points on price is not determinative of whether it won the tender or not. The applicant's contention is that absent the application of the criterion of "special goals", it would have been awarded the tender. This is how it establishes its *prima facie* right.

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<sup>4</sup> *Webster v Mitchell* 1948 (1) SA 1186 at 1189. *Olympic Passenger Service (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (N) at 383F.

- [21] “Where the right asserted by the applicant is *prima facie* established although open to some doubt”, the applicant, on proving irreparable injury, had fulfilled the requirement for an interim interdict.<sup>5</sup>
- [22] The irreparable injury or harm to the applicant, is the likelihood of the municipality rolling out the tender in the face of the applicant’s review application, which is yet to be judicially considered.
- [23] It is the applicant's case that there is no other satisfactory alternative remedy for it in due course in the absence of the interim intervention that it seeks.
- [24] The balance of convenience: this requirement calls for the court to exercise its discretion and weigh amongst other considerations, the prejudice to the applicant if the interdict is withheld, against the prejudice to the respondents if it is granted.<sup>6</sup>
- [25] In the result, the application must succeed. The successful litigant is entitled to its costs as is customary in the absence of a case being made to the contrary.
- [26] The following order is made: the draft order filed under CaseLines 12-1 to 12-3 is made an order of court.



J.S. NYATHI  
Judge of the High Court  
Gauteng Division, Pretoria

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<sup>5</sup> *Kilroe v Kilroe* 1928 WLD 112 at 114-15; quoted by *C.B. Prest – the Law and Practice of Interdicts* (1993) at p54.

<sup>6</sup> *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton & another* 1973 (3) SA 685 (A) at 691D-E.

Date of hearing: 23/04/2025  
Date of Judgment: 16 May 2025

On behalf of the Applicant: Mr Lüderitz SC  
With him: Mr GJ Lotter  
Instructed by: Cox Yeats  
c/o Couzyn Hertzog & Horak, Pretoria  
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On behalf of the 1<sup>st</sup> and 2nd Respondents: Mr Sibeko SC  
With him: Mr F. Nalane SC (Who made the submissions)  
With him: Ms S. Magxaki  
Attorneys: Madhlopa & Thenga Inc.  
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On behalf of the 3<sup>rd</sup> Respondent: Adv Muza  
With him : Adv Pooe  
3<sup>rd</sup> Respondent's attorneys: Mkhize Attorneys.

On behalf of the 4th Respondent: Albert Hibbert Attorneys Inc

**Delivery:** This judgment was handed down electronically by circulation to the parties' legal representatives by email and uploaded on the CaseLines electronic platform. The date for hand-down is deemed to be 16 May 2025.

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

CASE NO: 043172/2025

Roll number: 56

On 16 May 2025

Before the Honourable Justice Nyathi J

Court 4F

PRO SECURE (PTY) LTD

and



APPLICANT

MOGALE CITY LOCAL MUNICIPALITY

FIRST RESPONDENT

MAKHOSANA MSEZANA

SECOND RESPONDENT

WENZILE PHAPHAMA TRADING AND PROJECTS CC

THIRD RESPONDENT

MABOTWANE SECURITY SERVICES CC

FOURTH RESPONDENT

This order is made an order of court by the Judge whose name reflects herein, duly stamped by the Registrar of the court and is submitted electronically to the parties/their legal representatives by e-mail. This order is further uploaded to the electronic file of this matter on Caselines by the Judge or the Judge's secretary. The date of this order is deemed to be the date reflected hereinabove.

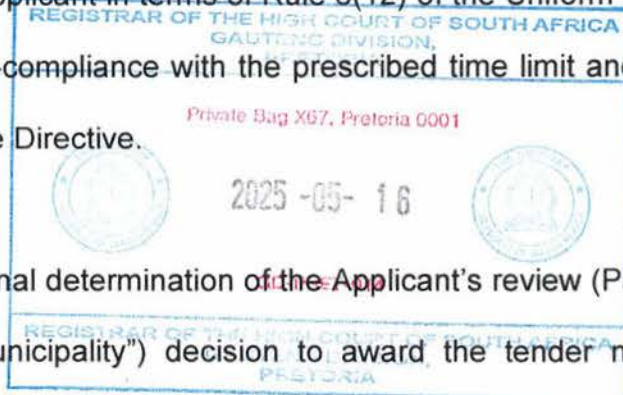
~~DRAFT ORDER~~

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Having read the papers filed of record and considered the matter and having heard counsel for the parties the following order issues:

1. This application is heard as an urgent application and the necessary condonation is granted to the Applicant in terms of Rule 6(12) of the Uniform Rules of Court in respect of the non-compliance with the prescribed time limit and forms, Uniform Rules, and Practice Directive.
2. That pending the final determination of the Applicant's review (Part B) of the First Respondent's ("Municipality") decision to award the tender number RFP no: CDS(PS) 01/2024-A for the appointment of a security service provider to render private security services to the Municipality for a period of 36 months ("the tender") to the Third Respondent:



- 2.1 the First and Second Respondents are interdicted and restrained from in any way implementing or continuing to give effect to the Municipality's decision to award the tender to the Third Respondent;
- 2.2 the First, Second and Third Respondents are interdicted and restrained from in any way concluding or giving any further effect to any service level agreement which may have been concluded between them pursuant to the award of the tender;

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2.3 the Third Respondent is interdicted and restrained from in any way providing any services to the Municipality to give effect to the award of the tender.

2.4 the above orders will operate as interim relief pending the outcome of the review application in Part B.

3. The costs of Part A are costs in the review application (Part B), including the costs of senior counsel on scale C and junior counsel on scale B.



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