



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Regional Magistrates:	YES / NO
Circulate to Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case No: 1508/2024
Heard: 3 July 2024
Judgment delivered: 3 July 2024

In the matter between:-

RAUBEX BUILDING (PTY) LTD

Applicant

and

**THE HOD: DEPT OF ROADS & PUBLIC WORKS, NC
THE MEC: DEPT OF ROADS & PUBLIC WORKS, NC**

First Respondent
Second Respondent

JUDGMENT

Mamosebo, J

[1] On 12 June 2024 the applicant served and filed the Notice of Motion, to be heard on 28 June 2024 at 09:30 seeking the following relief on an urgent basis:

- "1. *That the applicant's non-adherence to this court's rules related to time periods and service be condoned and the application be heard as an urgent application in terms of Rule 6(12).*
2. *That the respondents be ordered to, within five days after the granting of this order, give written reasons to the applicant for its failure to secure public tender: TENDER NUMBER: DRPW 015/2023, PROJECT NAME: NURSING COLLEGE KIMBERLEY PHASE 2A.*

3. *That the respondents be further ordered to provide the applicant with the following documents related and germane to the tender mentioned directly herein above:*
 - 3.1 *Copies of any and all, whether they were externally sourced or internally generated, evaluation reports and bids submitted;*
 - 3.2 *The minutes of meetings held by any Evaluation and/or Adjudication Committee, established in order to deal with, advise on and make decisions as to – bids submitted;*
 - 3.3 *Any recommendations made by such committees to award the tenders;*
 - 3.4 *The appointment letter issued to the successful tenderer;*
4. *For insofar as this court may deem it necessary, the time periods set in section 5 of the Promotion of Administrative Justice Act, 3 of 2000 is truncated on the terms set out in prayers 1 and 2 above, in terms of section 9 of the abovementioned Act.*
5. *The respondents be ordered to pay the costs of the application; and*
6. *Further and/or alternative relief."*

[2] The respondents filed a Notice of Intention to Oppose the application and on 28 June 2024 agreed to a schedule for the filing of further affidavits and Heads of Argument. The matter was set down for today, 03 July 2024 at 09:00.

[3] Mr Van Aswegen, counsel for the applicant, made the submission conceding that the applicant will not persist in seeking the relief sought in prayer 3 but still persists with the relief in prayer 2, that of essentially compelling the respondents to provide the applicant with records and full and written reasons to award the successful tenderer with the tender to build the nursing college.

[4] The application is brought in terms of sections 5 and 9 of the Promotion of Administrative Justice Act, 3 of 2000 (PAJA). Section 5 deals with reasons for administrative action while section 9 addresses the variation of time. Mr Van Aswegen, invoking *Sikutshwa v MEC for Social Development Eastern Cape Province and Others* 2009 (3) SA 47 (Tkh) at paras 53, 66 and 67, submitted that the application is urgent the applicant's tender was R49 million lower than that of the successful tenderer generally it ought to have been awarded the tender. The applicant wrote a letter to the respondents dated 05 June 2024

requesting for reasons on or before 10 June 2024 which to date has not been forthcoming. Concerned that the tender was to the value of over five hundred million, just the establishment of the site alone will cost the public purse. That is sufficient to warrant this application being deemed urgent.

- [5] Despite the applicant relying on s 5 of PAJA which affords the administrator 90 days after receiving the request, the applicant has not persuaded me why granting the respondents 5 days within which to respond, of which three of the five were working days, it has not made out a case of exceptional circumstances which would trigger s 9 of PAJA resultantly truncating the 90-day period. It is only at commencement of this hearing where prayer 3 was abandoned, otherwise, it effectively means the argument as appearing in the respondents' heads pertaining to the non-compliance with the Promotion of Access to Information Act 2 of 2000, (PAIA) was also at play. The request for information and the request for reasons are governed by the two pieces of legislation. However, the applicant has embodied the two requests in one letter addressed to the Head of Department, Mr Johny Mac Kay dated 05 June 2024. The applicant has, in my view, conflated issues pertaining to the request made.
- [6] Mr Mthombeni, counsel for the respondents, contended that paragraph 9 of the HOD letter, was not contained as part of the relief in the Notice of Motion since the applicant did not ask this court to stay the tender pending the outcome of the intended review application. Counsel submitted that the application was premature and lacks urgency.
- [7] The applicant has not made out a case for urgency and even if there could be any, it is in my view, self-created. I am not convinced that the applicant will not be afforded substantial redress at a hearing in due course. In the premises, the application stands to fail.
- [8] This application was unmeritorious and justifies a punitive cost order. The application is struck off roll with costs on a scale as between attorney and client, including costs of counsel.



MC MAMOSEBO**JUDGE OF THE HIGH COURT****NORTHERN CAPE DIVISION**

Obo the Applicant:
On instruction of:

Adv. W.A. van Aswegen
Duncan & Rothman Attorneys

Obo the First and Second Respondents:
On instruction of:

Adv. X.P. Mthombeni
Mkhokeli Pino Attorneys