

SOUTH AFRICA / JUDGMENT

**Armshield Securiry Services CC v
MEC for Health Department
KwaZulu-Natal (13243/2022P) [2024]
ZAKZPHC 130 (17 October 2024)
[2024] ZAKZPHC 130**

COURT

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Ncube

CASE / FILE NUMBER

13243/2022P

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU

– NATAL DIVISION

PIETERMARITZBURG

CASE

NO: 13243/2022P

Before:

Honourable Ncube J

Heard

on: 06 August 2024

Delivered

on: 17 October 2024

REPORTABLE: NO

OF INTEREST TO

OTHER JUDGES: NO

REVISED: NO

DATE:

17/10/2024

SIGNATURE

In

the matter between: ARMSHIELD SECURIRY
SERVICES
CC
Applicant
and
MEC FOR HEALTH
DEPARTMENT KWAZULU - NATAL
Respondent
ORDER
In

the result the following
order is made:

1.
It is declared that the respondent was not entitled to terminate the contract before the appeal process was finalised.
2.
The application is adjourned sine die
3.
The applicant is awarded the costs of this application.

Delivered: This
judgement was handed down electronically by circulation to the parties' legal representatives via email. The date and time for hand-down is 17 October 2024 at 08h30

JUDGMENT

NCUBE J

Introduction

- [1] This is opposed application in which the applicant seeks payment for security services rendered in terms of a public contract. The applicant contends that the agreement between the applicant and the respondent with regard to the provision of security services entered into on 01 December 2014 to 30 November 2017 and continued after 30 November 2017 on a month-to-month basis has not terminated on 25 October 2021, the date of the finalisation of the appeal process. The respondent contends that since after 30 November the contract was running on month-to-month basis, the respondent was entitled to terminate the contract even before the appeal process was finalised.

Facts

- [2] On 15 October 2014 after a tender process, the applicant was awarded contract number ZNB 4549 / 2014 - H by the respondent. The contract was for the provision of security services at Rietvlei Hospital for the initial period of three

- (3) years from 01 December 2014 to 30 November 2017. The contract price was an amount of (R28 300 301-64) Twenty-eight million three hundred thousand three hundred and one rand sixty-four cents.
- [3] Before the expiry of the contract on 30 November 2017, the parties agreed that the contract will continue to operate after 30 November 2017, on a month-to-month basis as the respondent had not issued a new tender. As from 01 November 2017 to 30 June 2021, the applicant rendered security services to the respondent on the basis of the month-to-month agreement. On 11 October 2019, the respondent advertised a tender for the provision of security services under Bid ZNB 4002/2019 – H. The closing date was 07 November 2017. On 31 July 2020 the respondent advised the applicant in a letter that the tender process had been completed thus giving the applicant notice of termination of the month-to-month contract by the end of 31 August 2020. On 20 August 2020 and before the expiry of the month-to-month agreement, the respondent advised the applicant by means of a letter that the month-to-month agreement would then terminate on 30 September 2020. On 22 September 2020 the month-to-month agreement was further extended to 31 October 2020.
- [4] On 25 September 2020 the respondent published a notice of intention to award contract ZNB 4002/19 -H in respect of security services for hospitals in Kwazulu-Natal Department of Health for a period of three years. The notice was accompanied by the list of successful bidders. The applicant was not on the list. Aggrieved at the respondent's decision, not awarding the tender to it, on 1 October 2020 the applicant decided to appeal the respondent's failure not to award the contract to it. On 23 October 2020, the respondent extended the month-to-month contract to 30 November 2020.
- [5] On the 26 November 2020 the respondent wrote to the applicant advising the applicant that the contract was extended on month to month basis until the appeal process is finalized. No further letters of extension were addressed to the applicant after the letter of 26 November 2020. On 26 May 2021 the respondent wrote a letter to the applicant cancelling the month to month agreement with effect from 30 June 2020. The appeal process had not been finalised by that date. The appeal process was finalised on 25 October 2021. The applicant and other institutions who had appealed together with the applicant, were successful in their appeal. It was ordered that the tender process start de novo.
- [6] At the hearing of this application, the parties agreed that at this stage the court is only required to decide only one point and that is whether the respondent was entitled to terminate the extended month to month contract before the finalization of the appeal process. The applicant claims that in the letter of 26 November 2020, the respondent undertook to extend the contract which was already running on month-to-month basis until the appeal process was finalized. The respondent contends that in the 26 November 2020 letter, the respondent undertook merely to extend the contract on a month-to-month basis. Therefore, according to the respondent, no meaning should be attached to the words "until

such time as the appeal process has been finalized” According to the respondent, those words should be treated pro non scripto.

Discussions

[7] This matter turns on the issue of whether the respondent was entitled to terminate the month to month agreement on 30 June 2020, before the finalisation of the appeal process on 25 October 2021. The whole issue revolves around the interpretation of the letter of 26 November 2020. The relevant part of the letter reads:

“You are therefore kindly advised that the above - mentioned contract will be extended on a month-to-month basis until such time that the appeal process per institution, in respect of the bid ZNB 4002/2019-H has been finalised. The contract is extended under the same terms and conditions of the original contract and service providers are required to execute their contractual obligations accordingly.”

[8] The first consideration in the interpretation of legal documents is the language used in light of ordinary rules of grammar and syntax. In *Natal Joint Municipal Pension Fund v Endumeni Municipality*[1]. Wallis JA expressed himself in the following words:

“..... The present state of the law can be expressed as follows:

‘Interpretation is the process of attributing meaning to the word 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 documents, 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 material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusiness – like results or undermines the apparent purpose of the document”.

[9] Mr Khan, Counsel for the respondent, argued the application on the basis of a tacit term in the contract which allowed the respondent to terminate the contract before the finalisation of the appeal process. Mr Crampton, Counsel for the applicant, argued correctly in my views, that the applicant herein, relies on an express term of the contract.

[10] The letter from the respondent clearly states that the month to month contract will continue until such time that the appeals process has been finalized. Therefore, the argument of a tacit term is misplaced. A tacit term is a term which is implied from the facts of the case. In casu, there is no need for the court to insert a tacit term since the respondent's letter is clear and expressly says the month to month contract is extended "until such time that the appeals process is finalized".

[11] In fact paragraphs 2 and 3 of the respondent's letter dated 26 November 2020 state:

"2 Appeals have been lodged against the awarding of Bid ZNB 4002/2019-H

(Provision of the Security Services at Major Hospitals)

3 You are therefore kindly advised that the above – mentioned contract will be extended on a month-to-month basis until such time that the appeals process per institution, in respect of Bid ZBN 4002/2019-H has been finalized. The contract is extended under the same terms and conditions of the original contract, and the Service Providers are required to execute their contractual obligations accordingly."

[12] From paragraph 2 of the letter, it is apparent that what prompted the respondent to write the letter, was the appeals process. Paragraph 3 of that letter is dependent on paragraph 2. The contention by the respondent that in the letter he was only stating that the contract would run on month-to-month basis, does not make sense. As on 26 November 2020, the contract was already running on month-to-month basis. There was therefore no need on the 26 November 2020 for the respondent to repeat that the contract would run on month-to-month basis. By issuing the 26 November 2020, letter the respondent was indicating that since appeals had been lodged, the month-to-month contract will continue until the appeals process was finalised.

[13] The appeal process had not been finalised by 30 June 2021, the date with effect from which the contract was to be terminated. The appeal process was finalised on 25 October 2021. In terms of the letter of 26 November 2020, the respondent was not entitled to terminate the contract on

30 June 2021 before the finalisation of the appeal process.

Order

[14] In the result, the following order is made:

1. It is declared that the respondent was not entitled to terminate the contract before the appeal process was finalised.
2. The Application is adjourned sine die
3. The applicant is awarded the costs of this application.

JUDGE OF THE KWAZULU – NATAL

DIVISION OF THE HIGH COURT

Legal Representation:

For the Applicant: Adv DP Campton Instructed by AT Mpungose Ground Floor 12 MONTROSE PARK. For the Respondent: AR Khan Instructed : State Attorney Kwazulu – Natal 6th Floor METLIFE BUILDING DURBAN Heard: 06 August 2024 Delivered on: 17 October 2024

[1] 2012

(4) SA 593 at 603 Pora 18

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