

SOUTH AFRICA / JUDGMENT

KwaDukuza Municipality v Skillful 1169 CC and Another (11060/2017) [2018] ZAKZDHC 35 (6 July 2018) [2018] ZAKZDHC 35

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Madondo DJP

CASE / FILE NUMBER

11060/2017

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IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

DIVISION, DURBAN

REPORTABLE

Case

no: 11060/2017

In

the matter between:

KWADUKUZA

MUNICIPALITY APPLICANT

and

SKILLFUL

1169

CC FIRST

RESPONDENT

TECHNOLOGIES

ACCEPTANCES (PTY) LIMITED SECOND

RESPONDENT

JUDGMENT

MADONDO DJP:

Introduction

- [1] The applicant seeks an order declaring and setting aside as null and void ab initio, alternatively reviewing, the agreements appointing the first and second respondents as the maintainer and supplier respectively of office automation equipment for the applicant.
- [2] The applicant is the KwaDukuza Municipality, a municipality as defined in terms of the Local Government Municipal Structures Act, 117 of 1998 and established in terms of such Act.
- [3] The first respondent is Skillful 1169 CC, a close corporation with limited liability, duly incorporated in accordance with the Close Corporations Act, trading as Capital Office Automation at 24/26 Reynolds Street, Port Shepstone, KwaZulu-Natal.
- [4] The second respondent is Technologies Acceptances (Pty) Limited, a company with limited liability, duly incorporated in accordance with the company laws of South Africa of Fintech Building, Stone Ridge Office Park, 8 Greenstone Place, Greenstone Hill, Gauteng.

Factual

Background

- [5] The applicant, in terms of the written agreements entered into between the parties on 5 December 2016, appointed the first respondent to service and maintain office automation equipment (being copiers, scanners, fax machines and the like) and the second respondent to supply such equipment to the applicant.
- [6] In concluding such contracts, the applicant purportedly relied on the provisions of s 110 of the Local Government: Municipal Finance Management Act 56 of 2003 (the LGMFMA) read with reg 32 of the Municipal Supply Chain Management Regulations. It is common cause between the parties that the contracts in question were concluded without there having been a competitive bidding process. There was therefore non-compliance with the provisions of s 217 of the Constitution read with s 112 of the LGMFMA.
- [7] Prior to the conclusion of the agreements between the parties, the practice at the applicant municipality had been that each and every department of the applicant was entitled to procure its own respective office automation equipment independently from one another. This exercise resulted in a multitude of rental and maintenance contracts being entered into between the various departments of the applicant and numerous suppliers of the required equipment. As a result of such multiply agreements, deadlines in respect of renewals were often missed and this resulted in termination of services. According to the applicant it was

becoming a nightmare to keep a track of agreements.

[8] As such, the applicant took the decision to investigate the possibility of concluding one agreement for the supply, service and maintenance of all its office automation equipment. The applicant thought that such an agreement would be more cost-effective than the current multitude of agreements, would allow better monitoring of the services rendered and, would also reduce the administrative costs involved in the processes of securing the services.

[9] During its investigation, the applicant discovered that the Greater Kokstad Municipality had secured such a contemplated supply

agreement, after a competitive bid process. The applicant took the decision to explore the possibility of utilising the mechanism of reg 32 of the Municipal Supply Chain Management Regulations read with s 112(1) (o) of the LGMFMA in an effort to satisfy its procurement needs for office automation equipment.

[10] On 25 August 2016, the applicant, through its municipal manager, directed a letter to the municipal manager of the Greater Kokstad Municipality, requesting the latter's authorisation to utilise their competitive bidding procedure for the procurement of the applicant's office automation equipment. In reply thereto, the acting municipal manager of Greater Kokstad Municipality consented to the appointment of the service provider by the applicant under reg. 32 of the Municipal Supply Chain Management Regulations through the competitive bidding process of Greater Kokstad Municipality. The applicant also sought and obtained the consent of the service

provider involved, who was the first respondent in this case.

[11] Following the obtaining of such consent, the applicant placed the matter before its Tender Evaluation Committee for its recommendation,

which in turn recommended that the applicant proceed with concluding the agreement with the first respondent. The services to be procured from the first respondent was the supply and delivery of office machines on a full maintenance lease as per Greater Kokstad bid GKM 16-13/14, taking into consideration technology advancements and change of rates.

[12] On 3 October 2016 the applicant's Tender Adjudication Committee met, considered the matter and unanimously resolved to appoint the first respondent utilising the mechanism of reg 32 of the Municipal Supply Chain Management Regulations.

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