

SOUTH AFRICA / JUDGMENT

Oneconnect Solutions (Pty) Ltd v University of Johannesburg and Others (2023/122252) [2024] ZAGPJHC 713 (30 July 2024)

[2024] ZAGPJHC 713

COURT

South Gauteng High Court, Johannesburg

BEFORE

G S Myburgh

CASE / FILE NUMBER

2023/122252

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REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

Case

No: 2023/122252

1.

REPORTABLE: NO

2.

OF INTEREST TO OTHER JUDGES: NO

3.

REVISED: YES/NO

30

July 2024

In

the matter between:

ONECONNECT
SOLUTIONS (PTY) LTD
APPLICANT
And
UNIVERISTY
OF JOHANNESBURG
FIRST RESPONDENT
EIFFEL CORP
(PTY) LTD
SECOND RESPONDENT
PERSONNEL VISION (PTY) LTD T/A
VISIONS
CONSULTING
THIRD RESPONDENT

This judgment was handed down
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representatives by email and by
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for hand down is deemed to be 30 July 2024

JUDGMENT

G S MYBURGH, AJ:

[1] This is an application for leave to appeal against a judgment and order which I delivered in January this year, in terms of which I dismissed the main application with costs.

[2] The test which applies is well known – in essence, a party who seeks leave to appeal is required to demonstrate that it has prospects of success on appeal; alternatively, that there is some other compelling reason to grant leave. It was not contended that

there are extraneous compelling reasons, and I do not think there are any. The question is thus simply whether I believe that another court might reasonably come to a different conclusion.

[3] Mr Kutumela, who appeared for the applicant argued that my judgment departs, in certain material respects, from established jurisprudence. He also argued that the effect of my judgment would be to pre-empt the decision of the court which may, in due course, come to hear the review. I am not persuaded that my judgment has either of the effects contended for; however, for reasons which appear

hereunder, I do not consider it necessary to deal further with this argument.

[4] An argument which I understood to be central to the applicant's case was that I ought not to have found that the applicant's tender in respect of the alternative product "Ultra" was in fact non-compliant (this for reasons which appear from my judgment) as the respondent had not raised that as a defence. I have to confess to being in two minds about this as I am not convinced that a distinction falls properly to be drawn between a tender which, on analysis, and bearing in mind what transpired during the bid clarification process, is found

not to cover everything that was required, and one which is non-compliant. In either event, the price tendered would not cover everything that was required by the RFP or invitation to tender, and the price could accordingly be said to be misleading – as the university considered the applicant's tender to be.

[5] That said, I accept that “non-compliant” is something of term of art and that another court might reasonably adopt a view not quite as narrow as that which I adopted and my reasonably come to a different conclusion – especially on this on this issue. I have accordingly decided that leave to appeal ought properly to be granted. As it appears to me that the issues are

essentially of a legal rather than factual nature, I am of the view that the appeal should lie to the Supreme Court of Appeal.

[6] I accordingly make the following order:

Order

- a. The application for leave to appeal is granted.
- b. The appeal shall lie to the Supreme Court of Appeal.
- c. The costs of the application for leave to appeal shall be costs in the appeal.

G S MYBURGH

ACTING JUDGE OF THE HIGH COURT

JOHANNESBURG

APPEARANCES:

For the Applicant:

Adv L Kutumela

Instructed by:

Motsoneneng Bill Attorney Inc.

For the 1st Respondent:

Adv C Avidon

Instructed by:

Lawtons Africa

Date of Hearing:

20 June 2024

Date of Judgment:

30 July 2024

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Prepared on 14 October 2026 · Esheria