

SOUTH AFRICA / JUDGMENT

PCM Mining Supply (Pty) Ltd and Another v Manuli Fluiconnecto (Pty) Ltd and Another (2023-018601) [2023] ZAGPJHC 1015 (12 September 2023) [2023] ZAGPJHC 1015

COURT

South Gauteng High Court, Johannesburg

BEFORE

N Manoim

CASE / FILE NUMBER

2023-018601

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REPUBLIC OF SOUTH
AFRICA
IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG LOCAL
DIVISION, JOHANNESBURG

CASE NO:

2023-018601
NOT REPORTABLE
NOT OF INTEREST TO
OTHER JUDGES
NOT REVISED
12.09.23
In

the matter between:

PCM
MINING SUPPLY (PTY) LTD
FIRST
APPLICANT
PETROS
MAFAKALADA TONGA
SECOND
APPLICANT
And
MANULI
FLUICONNECTO(PTY) LTD
FIRST RESPONDENT
ANGLO
AMERICAN PLATINUM LTD
SECOND
RESPONDENT

JUDGMENT

Manoim J

- [1] On 30 January 2023, the first respondent, Manuli Fluiconnecto (Pty) Ltd (“Manuli”) published an advertisement calling for expressions of interest from community-based organisations to partner it for the supply of hydraulic hose assemblies at “... one of the mining operations in the Greater Tubatse Region.” The client for whom these services is to be provided is not named in the advert. It simply described as “... an active mining operation in the Greater Tubatse region.” Despite this anonymity this alarmed the first applicant, PCM Mining Supply Ltd (“PCM”). The reason was that it considered that the partnership advertised was going to be for the supply of hydraulic hoses to the second respondent, Anglo American Platinum Pty Ltd (“Amplats”) and that it (“PCM”) already believed it had a contract with Manuli to be its joint venture partner. I will refer to this as the Amplats project.
- [2] PCM rushed to court on 22 February 2023 with an urgent application for an interim interdict to prevent PCM from proceeding with the Amplats project with any other joint venture partner. The contractual basis on which PCM alleged its claim was based was not clear from the founding affidavit, and Wilson J who heard it, allowed PCM to file a supplementary affidavit, which it duly did, as well as a second one, to attempt to remedy this deficiency. Manuli, in response filed a supplementary answering affidavit. On 14 March 2023, the parties were again in urgent court and Randera AJ gave an interim order, interdicting Manuli from appointing any company as its joint venture or community development partner for the Amplats project pending the finalisation of the matter in the ordinary course.
- [1]
- [3] This explains how this matter is before me now on the ordinary opposed motion roll. The applicant now seeks a final interdict on these terms:

- a. That Manuli be interdicted from appointing any company as its joint venture partner pursuant to the advert;
 - b. That Manuli be interdicted from issuing a further such advert in the future;
 - c. That if Manuli has appointed another company pursuant to the advert that such appointment be voided;
 - d. That the Court declare that there is an existing joint venture between PCM and Manuli as its partner for the Amplats Matotolo contract.
- [4] The requirements for a final interdict are well-known. They are a clear right on the part of the applicant; an injury actually committed or reasonably apprehended; the absence of any other satisfactory remedy available to the applicant.[2] All of these requirements must be present.[3]

Clear right

- [5] This case turns on PCM's allegation that in March 2021, it entered into an oral agreement in terms of which PCM would become Manuli's sole local development partner for the Greater Tubatse region. The agreement was reached between the second applicant, Petros Tonga, the applicant's owner and sole director, and Johan Weigand, a manager of Manuli. Tonga alleges that the agreement was express or alternatively tacit. At the time it was anticipated that Amplats was going to put out a tender for hydraulic hose management known as the Matotolo tender.
- [6] It was agreed as well that each party would tender separately for the contract but whoever won it would retain the other as a joint venture partner on an exclusive basis. The tenders themselves are not in the record. But there is no dispute between the parties that this was the arrangement at the time. During the course of 2021 various documents show that Manuli held out to Amplats that PCM was its joint venture party for the tender. In addition, when Manuli was faced with an aggressive approach from a third party, which sought to be its joint venture party for the tender, Manuli rebuffed this party by asserting that its chosen party was PCM.
- [7] That is how matters stood, or so PCM believed, until the applicants participated in a video call set up by Amplats in February 2023, along with other companies. In that call Amplats announced that Manuli had won the tender and it would now be seeking a community partner. This came as a shock to PCM who had up until then understood that it had an agreement with Manuli that it was the joint venture partner. This video call is not common cause. Manuli claims to have no knowledge of it. Admittedly PCM is not in a position to say it did not take place so I must accept this was the case. Although Amplats has been cited as a respondent in these proceedings it has not filed any papers, so I do not have its version.

- [8] What happened next and it seems close in time to the call is that Manuli put out an advert calling for community based organisations to partner it in a partnership to supply hydraulic hose assemblies at “... one of the mining operations in the Greater Tubatse Region.” This is the advert that is the subject of the interdict. Admittedly this advert does not contain an express reference to the Amplats tender. But PCM avers that the description so closely resembles the nature of the Amplats tender that it must be understood to refer to that. Manuli gives no satisfactory account as to which client the advert is referring to, so I accept PCMs’ version on this point that it must be Amplats.
- [9] Thus, the case for PCM is that it had agreed with Manuli to be joint venture partners for the tender and whilst each would tender separately the winner would include the other. Manuli won the tender, but it is apparent from the advert that it is no longer prepared to honour the agreement. Thus, PCM alleges, it has thus established a clear right to the relief it seeks.
- [10] Manuli denies that PCM has a clear right. It takes the history of the case back earlier to 2020. In that year Manuli put out an invitation to community organizations in the area (the area where PCM conducts business) to enter into partnerships with it. The goal of the project was to develop small firms or SMME’s in the area with skills and opportunities, until they became self-sufficient. What was envisaged is that the community organisations would partner with it on a project and go through various phases of growth to develop their capacity. This aspect of the project is not in dispute. But, according to Manuli, there was a crucial proviso to the project; organisations selected would participate for one project only. The terms of the project are set out in a document whose contents are common cause. After outlining the six phases a development partner will go through it states: “This initiative will be limited to one opportunity per SMME”. I will refer to this as the one project only principle.
- [11] In 2021 both PCM and Manuli made bids for a tender from another mining company, Glencore. Again, each bid separately. Manuli says the arrangement was on the same terms as the Anglo bid. Whoever won would include the other. PCM contends that it bid on its own although it would have included Manuli as its supplier. Again, this tender is not in the record. However, it is common cause that Glencore has awarded the tender to PCM. Although the award was made in 2021, the contract, was only signed in February 2022. There is no dispute about this - the signing page of the contract is in the record.
- [12] Here the chronology of events is crucial. It is Manuli’s case that the Glencore tender was part of the project arrangements between it and PCM. This meant that the one project only principle applied. Once it learnt that the Glencore tender had been awarded to PCM, it considered that in terms of the one project only principle, PCM was no longer eligible to be the joint venture partner for the Amplats tender which at that stage had not yet been awarded.

- [13] Manuli then had to explain why it had held out both to Anglo and the third party, that PCM was its joint venture partner. Manuli explained that this correspondence all took place in 2021, at a time when although the Glencore contract had been announced, it had not yet been signed. Hence at that stage the one project only principle still applied and since the Glencore contract was not yet finalised it still considered PCM as its partner for Amplats. That changed in February 2002 when the Glencore contract was signed, and thereafter there was no correspondence with any party suggesting that it was still in the joint venture with PCM for Amplats.
- [14] The difficulty for PCM is that it seeks to rely on enforcing an oral agreement by motion proceedings. The oral agreement is alleged to be express alternatively tacit. It is as vague as that. Given that the existence of this agreement whose key premise is that PCM was not a once off partner but Manuli's sole joint venture development partner for the area, this once-off conversation for which there is no subsequent proof in the documentation, has made PCM's case difficult to establish in motion proceedings. PCM knew from correspondence it received from Manuli's attorney, prior to commencing this litigation that the latter would rely on the one project only principle. It thus should have proceeded by way of action given the existence of the anticipated dispute of fact about the alleged oral agreement.
- [15] On the other hand, Manuli's version about the one off only principle is supported by the documentation. Its apparent inconsistency in respect of the Amplats contract during 2021 has been satisfactorily explained. There are no documents in the record after PCM signed the Glencore agreement in 2022 that suggest Manuli still regarded PCM as its joint venture partner for Amplats and hence its decision to advertise for community partners in 2023 was not a breach of contract. Manuli contends that PCM has sought to elide its status as one of its development partners to a status as its sole joint venture partner, something it said was never contemplated.
- [16] The applicant fails on these papers to make out the existence of the oral agreement they contend for and hence they are unable to establish a clear right entitling them to an interdict. The application therefore fails and costs must follow cause.

ORDER: -

[17] In the result the following order is made:

1. The application is dismissed.
2. The interim order dated 14 March 2023 is discharged.
3. The applicants, jointly and severally, the one paying the other to be absolved, are liable for the costs of the first respondent on a party and party scale.

N. MANOIM

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

JOHANNESBURG

Date of hearing: 07 August 2023

Date of judgment: 12 September 2023

Appearances:

Counsel for the Applicants:

Adv VJ Chabane

Instructed by.

Montjane Freedom Attorneys

Counsel for First Respondent:

Adv. A Granova (Heads prepared by Adv W.P. Venter)

Instructed by:

HJV Attorneys

[1] See CaseLines 013-1.

[2] Setlogelo v Setlogelo 1914 AD 221

[3] Erasmus, Superior Court practice, volume 2, paragraph 7, D6-12 service 8 2019.

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