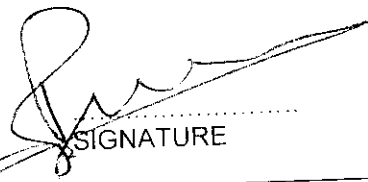




IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO.: 34273/2013

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED. ✓
9/1/2014 DATE	
 SIGNATURE	

9/1/2014

In the matter between:

PRODIBA (PTY) LTD

Applicant

and

THE MINISTER OF TRANSPORT N.O.

First Respondent

THE ACTING DIRECTOR GENERAL FOR
THE DEPARTMENT OF TRANSPORT N.O.

Second Respondent

THE GOVERNMENT PRINTING WORKS

Third Respondent

CORAM: P Z EBERSOHN AJ
DATE HEARD: 12 December 2013.
DATE JUDGMENT HANDED DOWN: 9 January 2014

JUDGMENT: URGENT APPLICATION VARIOUS ASPECTS

EBERSOHN AJ:

- [1] This court granted the earlier main application against the first and second respondents on the 30th September 2013. Their application for leave to appeal was dismissed by this court. The third respondent was joined in this application with the first and second respondents as it has an interest in this application.

[2] Paragraphs two and three of the order made in the main application are at issue in this application. They read as follows:

- “2. The decision taken by die second respondent on 27 April 2013 to cancel the third addendum agreement and the attempted cancellation thereof by the respondents is reviewed and set aside and it is confirmed that the third addendum agreement is in force for the full contractual period thereof.
3. It is directed and ordered that the Department of Transport is obliged to comply with its obligations arising from the third addendum agreement and to make payments to the applicant punctually and to facilitate full compliance by the applicant of its obligations in terms of the third addendum agreement.”

[3] The prayers in the current application read as follows:

1. This matter is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.
2. Interdicting the first and second respondents from negotiating with or transacting with the third respondent to undertake the production and manufacture of smart card driving licence cards.
3. Granting leave to the applicant to implement the order granted by this Honourable Court on 30 November 2013 in the matter issued under case number 34273/2013 (*“the order”*), pending any appeal process the first or second respondent may apply for or institute against the order.

4. Directing the first and second respondents to give effect to and implement the order by executing and complying with all obligations arising from and specified by the third addendum agreement entered into between the applicant and arising from and specified by the third addendum agreement entered into between the applicant and the first and second respondents on 1 February 2013 (*"the third addendum agreement"*).
5. Costs of the application.
6. Further and/or alternative relief."

[4] This application was brought about by the blatant contemptuous attitude and conduct of the first and second respondents who adopted the attitude that they will not be bothered by the interdict issued by the court and they propagated openly that they were negotiating with the third respondent, and apparently negotiated with them to manufacture smart card driving licence cards for them as from somewhere in March 2014 despite the valid "third addendum agreement" concluded between them and the applicant which this court found to be in force and effect and their open refusal to comply with their contractual obligations towards the applicant and their refusal to pay any amount to the applicant despite the fact that payment of a considerable amount is long overdue and despite this court's order. In this regard according to the papers the following amount is overdue R105 333 510,00. Furthermore the following payments are due in the near future R12 774 437,00 on or before 1 January 2014 and R3 929 138,00 on or before 28 February 2014. They are thus in a state of open contempt of this court with regard to the contents of paragraphs two and three of this court's order of 30 September 2013.

[5] On the day of the hearing of the present application, despite an earlier indication that they would apply for leave to appeal from the Supreme Court of Appeal, it materialised that they have not yet done so.

[6] Advocate Cassim SC also handed up a voluminous further affidavit which, she stated, would be filed with the Supreme Court of Appeal. From a cursory glance of the contents of this affidavit it appears that it refers to many new “grounds” which they would try to rely on in argument if leave to appeal was granted by the Supreme Court of Appeal. Why these “grounds” were not already made part of their answering affidavit in the main matter was not really effectively disclosed and they seem to be mere afterthoughts. It is interesting to note that apparently the Minister, who remained silent all along in the past, and who owed the court the courtesy of an explanation as to why he, who is a most material witness and deponent, could not originally make an affidavit, as the court simply does not believe that the other senior members of the Department, his private secretary and even the legal representatives of the respondents could not reach him “as the parliament was not in session and they did not now where he was”. He surely must have come to light subsequently. The suspicion unavoidably arises that the Minister did not want to depose to a perjurious affidavit therefore he remained out of sight and out of reach and hopefully, for him, out of trouble. The Court takes a dim view of this attitude on the part of the Minister. His silence will obviously be held against the respondents. It is strange that the legal representatives of the respondents didn’t advise the respondents of the gravity of the situation. During the hearing of the application regrettably strong words were used from the bar against the

applicant and even the court. This will be tolerated up to a point and I think this point has been reached.

[7] The respondents even falsely contended that this court refused to grant certain relief to the applicant in the main application. They wilfully misconstrued this court's orders made in the main application. What the court did when it considered and drafted the relief to be granted in the main application, was to draft the orders in the widest possible terms against the respondents without being repetitive and using an excess of words, and there was no intention on the part of this court to begrudge the applicant of any relief it claimed and there was no reason to do so.

[8] The first and second respondents are already in gross default with their obligations and it is clear that this court should step in and place them on strict terms. It is clear that a rule 49(11) order cannot be made yet and that portion of the prayers will be postponed *sine die* and the applicant will be granted leave to have the matter re-enrolled urgently on the same papers, before this court, suitably amplified by supporting affidavits. As they clearly induced the applicant into believing that such an application was on its way no order for costs will be made at this stage regarding this aspect of the application but the court may reconsidered this aspect later should it become necessary.

[9] The open contempt of this court's order on the part of the first and second respondents' calls for a punitive costs order to be made against them.

[10] The following order is made:

- “1. This matter is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.
2. The first and second respondents are interdicted and forbidden from negotiating with or transacting with the third respondent to undertake the production and manufacture of smart card driving licence cards and interdicting the third respondent from in effect to manufacture such smart card driving licences for drivers of vehicles in the Republic of South Africa on behalf of the first and/or second respondents and/or anybody else.
3. The first and second respondents are ordered to comply on or before 11:00 on Tuesday the 14th January 2014 with any and all of the obligations imposed on them in paragraphs 2 and 3 of the order of this court of the 30th September 2013 in the main matter and by the third addendum agreement and the pay schedule, agreed upon between them and the applicant, failing which leave is hereby granted to the applicant to implement the orders and to execute against the first and second respondents and to bring further proceedings against them in this court on an urgent basis. The financial obligations to be complied with are for the sake of clarity payment of R105 333 510,00 on or before 11:00 on Tuesday the 14th January 2014, payment of R12 774 437,00 on or before 31 January 2014 and payment of R3 929 138,00 on or before 28 February 2014. Leave is granted to any party to approach this court on two day's notice to the other sides about the aspect the party wishes to be rectified in the order.

4. The portion of the prayers in this matter which can be interpreted as asking for relief in terms of rule 49(11) is postponed *sine die*. If the first and second respondents have in fact in the interim lodged a petition for leave to appeal with the Supreme Court of Appeal, or do so later, this matter may be re-enrolled, on the same papers, suitably amplified with supporting affidavits, on an urgent basis in this court.
5. The first and second respondents are ordered to pay the costs of this application, jointly and severally, payment by the one absolving the other one, on the scale of attorney and own client which costs will also include the costs of two counsel."


P.Z. EBERSOHN

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

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Adv. H.J. Smith

Applicant's attorneys:

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