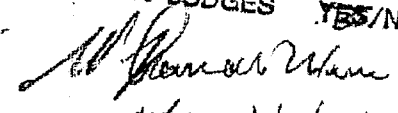


IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

CASE NO: 28084/2012

DATE: 2012-05-29

10

DECLARATION OF INTEREST IS NOT APPLICABLE	
(1) REPORTABLE	YES NO
(2) OF INTEREST TO OTHER JUDGES	YES/NO
(3) REVISED	NO
DATE	5/6/2012
 SIGNATURE	

In the matter between

**ZIKHULISE CLEANING MAINTENANCE
AND TRANSPORT CC**

and

**THE COMMISSIONER FOR SOUTH AFRICAN
REVENUE SERVICES
MINISTER OF FINANCE**

Applicant

1ST Respondent
2ND Respondent

J U D G M E N T

20 WRIGHT AJ: The applicant Closed Corporation, is in the business of constructing affordable housing through Government tenders, It relies on a clearance certificate issued by SARS to be able to conduct its business. SARS issued such a certificate on 17 January 2012. The certificate was issued for the ensuing year.

On 16 March 2012, SARS wrote to the applicant which writing was received by the applicant on 18 April 2012. In the letter SARS stated that the certificate has been rendered inactive as from the date of the letter. The reasons were furnished in the letter.

On receipt of SARS' letter the applicant queried SARS. On 26 April SARS replied, setting out various legislative provisions. In this letter SARS states that it was in the process of considering whether to withdraw the certificate and state that, 'the facts as to why you are not compliant appear from our letter of 26 March 2012.

10 The applicant is invited to make representations by 11 May if the applicant disputes the fact. In my view the words, 'rendered inactive, withdraw and cancel' are different labels for the same thing. By 16 March, SARS had clearly taken a decision on reasons it deemed valid. To afford the applicant a belated opportunity to change the stance of SARS is not competent in law. SARS exercises a public function and its decision, taken on 16 March, impacts the applicant.

Whether the decision is reviewable, via the promotion of Administrative Justice Act 3 of 2000 or through the principle of legality, is not something I need decide. The applicant was entitled to
20 reasonable notice of SARS' intention to call the certificate into question and an opportunity to put its case to SARS. These opportunities should have occurred before 16 March, 2010.

In my view the applicant is entitled to an order in terms of prayers 2.1 of the Notice of Motion, to effect that pending the outcome of an application to be launched by the applicant for the review of

SARS' decision.

I grant an order that the decision is of no force and effect.

On the question of costs, I take the view that both sides reasonably employed two counsel and that the applicant has achieved sufficient success on its fresh Notice of Motion, to entitle it to party on party costs.

I was requested to grant a punitive costs order, relating to about 1500 pages of documentation filed by SARS. I considered that this documentation was relevant to and admissible evidence on the relief
 10 sought by the applicant, in its original Notice of Motion, in prayers 2.2 and 2.3. Those prayers, relating to the current tax status of the applicant, have been put on the shelf by the new Notice of Motion prepared today.

ORDER

I grant the following orders.

1. Prayers 2, 3 and 4.1 read with 4.2 of the amended Notice of Motion are granted.
2. The second order I grant is that prayer 4.3 of the amended Notice of Motion is dismissed.

20 MR ROWAN: M'Lord, just for clarity, Your Lordship indicated, if I heard correctly an order in terms of paragraph 2, and probably meant 2.1.

COURT: Your amended Notice of Motion ... (intervenes)

MR ROWAN: Paragraph, I think it is 2.1.

COURT: Yes, but 2.2 says you are given leave to approach this Court.

MR ROWAN: Oh, yes, Your Lordship is absolutely correct. Thank you

M'Lord.

COURT: Is your review of my judgment over?

MR ROWAN: It is.

MR COETZEE: As the Court pleases.



CASE NO: 28084/2012

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

PRETORIA 29 MAY 2012

BEFORE THE HONOURABLE MR JUSTICE WRIGHT, AJ

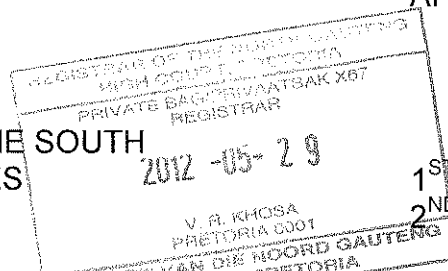
In the matter between:

ZIKHULISE CLEANING, MAINTENANCE AND
TRANSPORT CC

APPLICANT

AND

THE COMMISSIONER FOR THE SOUTH
AFRICAN REVENUE SERVICES
MINISTER OF FINANCE




1ST RESPONDENT
2ND RESPONDENT

HAVING HEARD counsel(s) for the party(ies) and having read the documents filed of record

IT IS ORDERED

1. THAT, pending the determination of the Applicant's review application, set out in Part B of this Notice of Motion:-
 - 1.1 The decision of the first respondent to invalidate/cancel/withdraw the Tax Clearance Certificate, Number 0020/1/2012/0002509263)"the Tax Certificate" for the period from 17 January 2012 to 16 January 2013 or for any portion of that period and which decision was first communicated to the applicant by letter dated 16 March 2012 and received on 18 April 2012, shall be of no force and effect;
 - 1.2 The Applicant is given leave to approach this court on an urgent basis, should the circumstances so warrant, on these papers duly supplemented for an order:
 - 1.2.1 Declaring that the Tax Certificate shall be deemed to be valid and current pending the outcome of the relief sought in Part B;
 - 1.2.2 Permitting the applicant to rely on the Tax Certificate pending the outcome of the relief sought in Part B.
2. THAT the applicant is entitled to apply for the relief sought in Part B hereto the same papers, duly supplemented.

3. THAT the Applicant's costs of suit be paid by the first Respondent.
4. THAT the costs associated with the perusal and copying of the annexures to the answering affidavit relating to the pending criminal proceedings (pages 349 – 1850) are to be paid on a scale as between attorney and own client.


BY THE COURT

REGISTRAR	THE NORTH GAUTENG HIGH COURT, PRETORIA
JM	PRIVATE BAG/PRIVAATSAK X67 REGISTRAR
2012 -05- 2 9	
V. R. KHOSA PRETORIA 0001	
SIFTER VAN DIE NOORD GAUTENG HOË HOË, PRETORIA	

Att: Faber