IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

Case number: 46825/2017

Date: 2/8/17

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/~~NO~~
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

2/8/2017 .....
DATE SIGNATURE

In the matter between:

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICE

FIRST APPLICANT

DIRECTOR GENERAL OF THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

SECOND APPLICANT

And

MMELA INVESTMENT HOLDINGS (PTY) LTD

RESPONDENT

JUDGMENT

PRETORIUS J.

debtor-creditor lien. In these circumstances it is important as the original contract, which had lapsed in October 2016, had been paid. An amount of R300 million had been paid to the respondent by October 2016 and thereafter payment continued for the storage of the files. The basis for the respondent's reliance on a lien cannot be ascertained from the answering affidavit. Due to a paucity of information in this regard this court cannot make a finding that the respondent's reliance on a lien is proven.

(40) The respondent cannot, in effect, extend the Service Level Agreement, by holding the Department, and the public at large, hostage by refusing to hand over the 6 million files.

(41) Having read the papers, listened to the arguments and having decided the application is urgent, it is clear that these files should be returned to the Department to enable the public to have access to important documents. It will also enable the Department to carry out its constitutional mandate to assist the public, as it has been tasked to do.

(42) In the result I make the following order:

1. The amendment to the Notice of Motion is granted;
2. The respondent is ordered to:
   2.1 commence hand over of all hard copy case files stored in boxes at the off-site facility/facilities of DOCU-FILE resulting from the

off-site storage project under RFB 2007 11B to the Applicants, or their duly designated and appointed officials and/or agents, within 5 days of date of this order and at a rate that is determined by the Applicants;

2.2 hand over all project related documentation and/or electronic data and back-up tapes and licences regarding the off-site storage project under RFB 2007 11B in their possession to the Applicants, or their duly designated and appointed officials and/or agents, within 5 days of date of this order;

2.3 place the applicants in possession of:

2.3.1 an itemised list of the boxes with their box numbers as stored by them or on their behalf with DOCU-FILE; and

2.3.2 an itemised list of the content of each box which include either the case number of each file stored in each box or the bar code number of each file so stored.

3. The Respondent is ordered to pay the costs of this application which shall include the costs consequent upon the employment of two counsel being one senior and one junior counsel.



Judge C Pretorius