

Motsoaledi welcomes ConCourt ruling on contract cancellation

Home Affairs Minister Dr Aaron Motsoaledi has welcomed the Constitutional Court judgment dismissing an application challenging the cancellation of a R1.5bn Electronic Document Management System contract.



Image source: Getty Images

In a statement, the Department of Home Affairs said the matter started when it wanted to digitise its records.

“In terms of the law, SITA had to issue a tender looking for a service provider on behalf of the department,” the department said.

The tender had initially been awarded to three companies - New Dawn, Valor IT and Ideco.

"But before any contract could be signed or service level agreement could be finalised, National Treasury warned that there was no money for such a huge tender.

"As a consequence, the Home Affairs Department could not go ahead with this contract," said the department.

It said that Ideco understood the position of government and "let matters rest there". However, said Home Affairs, "New Dawn and Valor IT somehow decided they were entitled to State money in this regard and litigated against the Department for R602m and R28m respectively".

The Constitutional Court this week dismissed the application after it found that the application "lacks reasonable prospects of success. Consequently, it has decided that the leave to appeal must be refused with costs".

"Because of litigation by these two companies, the department's audited contingent liability shot up to R2.1bn in the 2019/20 financial year," the department said.

Contingent liability in Home Affairs is the amount that companies and individuals claim by way of litigation either for contracts, as is the case in this one, or for Immigration or Civic matters.

The department said as long as a public institution had contingent liability on its books, the Auditor-General would flag it each year as a risk. The department said if it cannot successfully defend litigation and the money becomes payable, the budget of the department would be severely impacted.

However, the department said in this case, it "vigorously defended the matter and contended that there was no contract signed".

The Minister said: "It baffles the mind that the two companies could pursue the State for this huge amount of money, going right up to the Constitutional Court, despite knowing that they had never provided any service to the department.

"We are aware that it is the Constitutional right of individuals and companies to utilise the various courts of the country in pursuit of justice. However, we believe it is sheer opportunism, bordering on theft and corruption, for anybody to demand State money when they didn't provide any services. We strongly discourage this kind of behaviour."

Consequently, the Minister has instructed the department to pursue legal costs against New Dawn and Valor IT, which date back to 2010 when the initial claim was filed.

The Minister intends to write a letter to National Treasury to request that these two companies be blacklisted from doing business with the State.

"This is not vindictiveness but it's a warning to individuals and companies who believe that they can receive millions in public funds via spurious litigation," said Motsoaledi.