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● PE company takes municipality to court for alleged payment delays and cancellation of contract to develop mobile application for bus system

Firm sues for R27m over IPTS deal

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A Port Elizabeth company that received millions of rands during an IPTS spending spree more than five years ago is suing the Nelson Mandela Bay municipality for R27m for developing a mobile application for the city's beleaguered bus system.

The company, Distinctive Trading, is owned by Mawethu Magida, 35, and Zanele Mbatyoti, 35.

Distinctive Trading was hired on May 6 2014 through oral and verbal contracts to

build the application for R24m and then provide training to municipal staff for R8.4m.

But after only receiving just over R10m of the agreed amount split between two payments, the company filed court papers on May 8 2017 demanding that the municipality cough up a further R27m, which includes interest.

The municipality's lawyer, Sureshni Moodliar of Gray Moodliar Incorporated, has since requested the matter be struck off the roll as the claim was vague on details, according to court papers.

This, as Distinctive Trading

was unable to supply evidence and answer questions posed to the company about work done on the application.

Moodliar, who declined to comment, stated in court papers that the particulars of the claim – mainly details on the oral contract – were also embarrassing.

But in court papers filed on February 11 2019, advocate William Mokhari SC argued that the municipality was hell-bent on frustrating Distinctive Trading and delaying in paying the company what was due to it.

Port Elizabeth High Court

judge Fatima Dawood gave Distinctive Trading two weeks from February 21 to amend its particulars of claim and provide the requested information to Moodliar.

According to municipal documents that form part of the court papers, former IPTS head Mhleli Tshamase requested Distinctive Trading to design, commission and implement the mobile application.

"The purpose of this letter is to advise of that you may proceed with the implementation of the full scope of work, in terms of your proposal," Tshamase wrote to Magida on May

6 2014. A budget of R24m for the application and R8.4 for training was also listed in the letter.

Tshamase was suspended in 2015 for alleged irregularities in the R2.5bn IPTS project.

He resigned days before he was meant to appear before a disciplinary hearing.

In Distinctive Trading's particulars of claim, the company states it was meant to be paid when it hit various milestones on the project.

The company claims the first two milestones were met and it invoiced the municipality for R8.4m on May 12 2014

and for R11.3m on August 28 2014.

Instead, the municipality only paid two tranches of R4.9m each.

The contract was then cancelled by the municipality, with no date given in the particulars of claim.

"But for the repudiation and subsequent cancellation of the agreement [Distinctive Trading] would have completed the project 100% and would have been entitled to oversee it for a period of two years," the claim reads.

In total, the company claims it is owed R27m, which in-

cludes the shortfall for the first two milestones, the completion of the contract along with the training and the management of the application for two years.

Magida said on Wednesday he was not in a position to comment on any aspect of the case and directed all questions to his lawyer, Sifundo Vapi of Vapi Incorporated.

Vapi could not be reached for comment.

Municipal spokesperson Mthubanzi Mniki said he was unable to comment on the matter at this stage.

In September 2014, The

Herald reported that in a rush to spend hundreds of millions of rand on the bus system, the municipality had forked out R2.4m for videos, books and DVDs showcasing its troubled Libhongoletu project to Distinctive Trading.

The company was also paid R1.3m in March 2014 for the development and presentation of a process plan for the IPTS and to study the history of Motherwell and the Motherwell Urban Renewal Programme.

The Herald also saw invoices submitted by the company to the municipality totalling R26.6m since June 2013.