

" FA 12 "



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 20899/21

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: <input checked="" type="checkbox"/>
	10 Apr 2022
	DATE SIGNATURE

In the matter between:

DNG POWER HOLDINGS (PTY) LTD
(REGISTRATION NUMBER 2015/094255/07)

APPLICANT

And

DEPARTMENT OF MINERAL RESOURCES AND
ENERGY

FIRST RESPONDENT

MINISTER OF THE DEPARTMENT OF MINERAL

SECOND RESPONDENT

RESOURCES AND ENERGY	
THE DIRECTOR GENERAL OF THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY	THIRD RESPONDENT
INDEPENDENT POWER PRODUCER PROCUREMENT PROGRAMME	FOURTH RESPONDENT
KARPOWERSHIP SA (PTY) LTD	FIFTH RESPONDENT
MULILO TOTAL COEGA (PTY) LTD	SIXTH RESPONDENT
MULILO TOTAL NIEWE-GOEGA (PTY) LTD TRADING AS MULILO TOTAL HYDRA STORAGE	SEVENTH RESPONDENT
OYA ENERGY (PTY) LTD	EIGHTH RESPONDENT
UMOYILANAGA ENERGY	NINTH RESPONDENT
ACWA POWER	TENTH RESPONDENT

JUDGMENT

RAULUNGA J

INTRODUCTION

1. The applicant ("DNG") seeks leave to appeal against the judgment and order of this Court dated 30 January 2022, dismissing its review application.
2. DNG seeks leave to appeal in terms of the provisions of section 17(1)(a)(i) and (ii) of the Superior Courts Act 10 of 2013 ("the Superior Courts Act"). Section 17(1)(a) thereof reads as follows:
 - (i) the appeal would have a reasonable prospect of success;
 - Or
 - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration".

3. DNG lays down three grounds of appeal upon which it seeks leave to appeal and upon which it is submitted that leave to appeal ought to be granted, namely:
 - 3.1 Firstly, the Court should not have disallowed DNG's supplementary founding affidavit of 12 October 2021 ("SFA").
 - 3.2 Secondly, the Court erred in not finding, that on the papers DNG had established corruption in respect of the tender process.
 - 3.3 Thirdly, the Court erred in not finding, that the disqualification of DNG ought in the circumstances to have been set aside and remitted for reconsideration.
4. All the respondents oppose this application on the basis that the grounds DNG raises none of them establishes a basis for leave to appeal to be granted. Furthermore, that there are no reasonable prospects of success or there is no some compelling reason, like conflicting judgments, for leave to be granted.
5. The 6th to 13th respondents go even further. They submit that it is worth remembering that, DNG in its replying affidavit in the review application, stated that "DNG has already stated that it seeks no pointed relief against the sixth to tenth respondents and the sixth to tenth respondents (now including the 11th to 13th respondents, after the joinder application was granted), are interested parties solely as a result of their status". Further, DNG also states that "the sixth to tenth respondents... are not the center of their application and their opposition to same is not strictly necessary herein". It also states that the sixth to seventh respondents are correct- there is no specific- "attack in respect of the sixth to seventh respondents": - see in this regard paragraph 126 of the review judgment.
6. As this Court said in paragraph 127 of the review judgment, the review is not about the sixth to thirteenth respondents. DNG's gripe is about its disqualification and Karpowership's appointment. This case is therefore between DNG, the state respondents and Karpowership. It is for that reason that the application for leave to appeal against the sixth to the seventh respondents should be dismissed.
7. Having read the papers, and having perused the relevant authorities pertaining to this application, I am convinced that leave to appeal should be granted against the state respondents and Karpowership.



8. There exist reasonable prospects of appeal regarding the rejection of the SFA. There is some other compelling reason why the appeal should be heard. The reason being that, the review application concerns the Government procurement of energy supply of 2000 megawatts of generation of capacity under the RMIPPPP, as an immediate measure intended to alleviate the ongoing electricity supply constraints. This is in the public interest.
9. In the circumstances the following order is made:
- 9.1 Leave to appeal is granted only as against the state respondents and Karpowership, on an urgent basis to the SCA.
- 9.2 Leave to appeal against the sixth to the thirteenth respondents is dismissed with costs.
- 9.3 Costs for leave to appeal against the state respondents and Karpowership are costs in the appeal.
- 9.4 DNG is ordered to pay costs of the sixth to thirteenth respondents, including the costs of two counsel where applicable.



JUDGE T. J. RAULINGA

JUDGE OF THE HIGH COURT

Appearances:

- | | |
|---|------------------------------|
| Applicant's Counsel | : Adv. L. Hollander |
| Applicant's Instructing Attorney | : Andre Pienaar & Associates |
| 1 st - 4 th Respondent's Counsels | : Adv. N. Maenentje SC |
| | : Adv. L. Zikalala |
| 1 st - 4 th Instructing Attorney | : Wabber Wentzel Attorneys |
| 5 th Respondent's Counsels | : Adv. J. Babamla SC |



5th Respondent Instructing Attorney

6th -13th Respondent's Counsels

6th-13th Instructing Attorney

Date of hearing

Date of judgment

: Adv. E. Webber

: Pinsant Masons South Africa INC.

: Adv. V. Maleka SC

: Adv. A. Bhami SC

Adv. G. Snyman

: Adv. J. Mitchell

Adv. M. Salukazana

Herbert Smith Freehills

: 22 March 2022

: 01 April 2022

"FA₁₃"

23 Nov 2021

Environment Dept appointing independent expert to help rule on Karpowership appeal

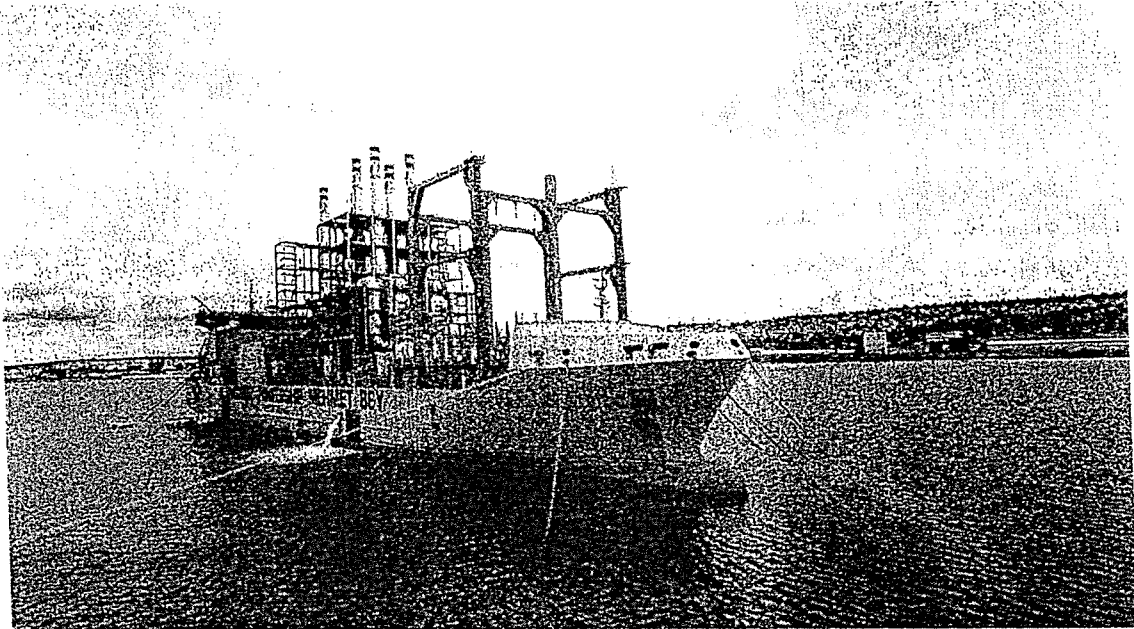
fin24

Jan Cronje

SHARE

-
-
-

02:15



SA energy company DNG is challenging the selection of Turkish company Karpowership as main preferred bidder in government's Risk Mitigation IPP Procurement Programme.

Supplied

The Department of Forestry, Fisheries and the Environment says it is appointing an "independent expert" to assist Minister Barbara Creecy in responding to an appeal by floating power ship provider Karpowership SA.

Karpowership SA, which falls under Turkey's Karadeniz Energy Group, was in March named a preferred bidder in the state's Risk Mitigation IPP Procurement Programme (RMIPPPP) to fast-track the production of new power to cut down on load shedding.

The energy group produces electricity from gas-fired power stations on ships. Its local unit bid to moor five powerships and three support vessels, known as floating storage regasification units, at the ports of Saldanha Bay, Coega and Richards Bay.

In late June, it was refused environmental approval by the DFFE. In its ruling, the department said Karpowership SA had not undertaken a noise modelling study on the impact of running the ships on marine life. It also said that the powership provider's public consultation process had been lacking.

The energy group soon lodged an appeal against the decision. In August, one of its local directors, Mehmet Katmer, said it was "very confident" an appeal would be successful as it "meets all the requirements".

On Tuesday, the DFFE said that while it has finished sourcing the information it needs from all parties, it has decided to appoint an expert to help decide whether to grant or refuse the appeal.

"The appeals administrator is currently in the process of appointing an independent expert to assist the minister on the appeals," said the DFFE. "As soon as the appointment process is finalised, the expert will have 10 days to consider the appeals and make recommendations in respect thereof."

According to a departmental tender document, the closing date for bids to be considered as an independent expert is 6 December.

While the RMIPPPP was devised as a speedy answer to SA's energy woes, it has been beset by repeated delays. The 11 preferred bidders have struggled to clear regulatory hurdles quickly, while a lawsuit launched by a losing bidder has further delayed proceedings. The suit, by DNG Energy, is set to be heard later this month in the North Gauteng High Court in Pretoria.

A handwritten signature and initials in the bottom right corner of the page. The signature is a stylized 'M' and the initials are 'M' and 'D'.

"FA14"

18 Aug 2021

Eskom's De Ruyter takes dig at 'long-term contracts' for floating powerships

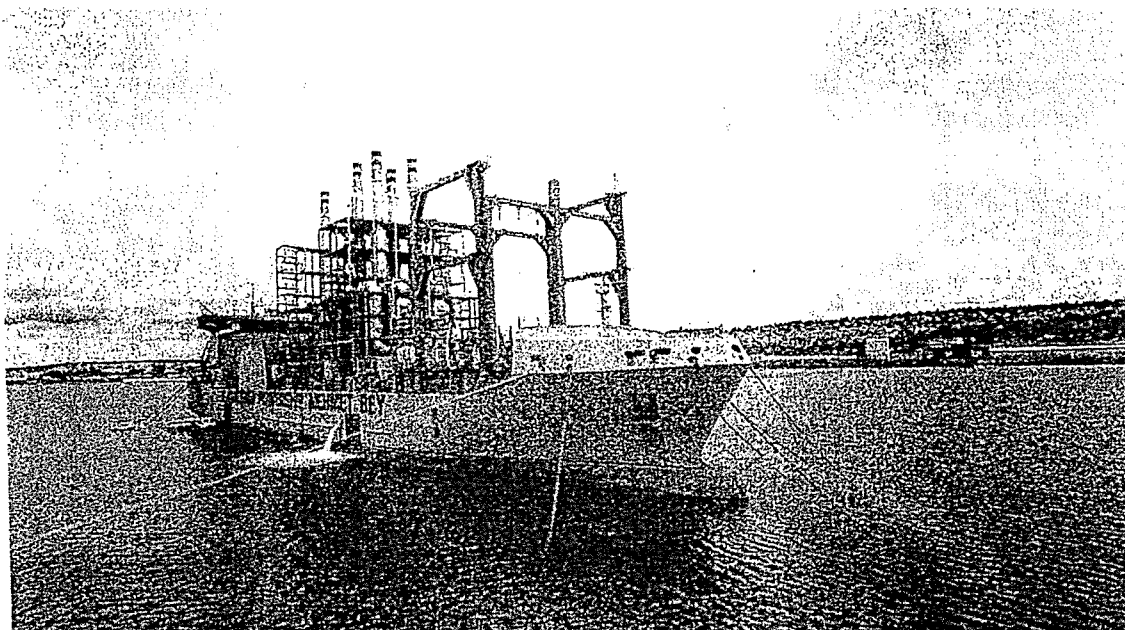
fin24

Jan Cronje

SHARE

-
-
-

03:24



Karpowership "Shark" Class

- Eskom CEO Andre de Ruyter has said the power utility must be "wary of entering into long term contracts" with providers of gas-to-power projects.
- Speaking at the University of Pretoria, De Ruyter said that Eskom's board was "very aware of its fiduciary obligations" and would not enter into "onerous" contracts.
- While the CEO did not refer to any companies by name, his remarks appear to reference energy company Karpowership SA.

M (H)

Eskom's CEO Andre de Ruyter has waded into the debate around whether South Africa should buy electricity from powerships moored in harbours by saying the power utility must be "wary of entering into long term contracts that bind us in a rapidly changing energy environment".

De Ruyter was answering question about his view on energy generating ships using liquefied natural gas during an address at the University of Pretoria on Tuesday night. This is the first time that the Eskom CEO has made his thoughts on powerships known in public.

While the CEO did not refer to any companies by name, his remarks appear to reference energy company Karpowership SA, which in March was named a preferred bidder in a programme to fast-track new power production.

The Turkish-owned powership operator bid to moor a total of five gas-to-power ships and three support vessels at the ports of Saldanha Bay, Richards Bay, and Ngqura within the Coega Special Economic Zone.

But the process stalled in late June after it was refused environmental approval, for - among other reasons - not conducting sufficient public participation. Karpowership has said it will appeal the decision.

On Thursday De Ruyter said that while boosting energy supply was important, the length of proposed contracts needed to be carefully investigated.

"I would suggest that we need to look at the time and the terms of these contracts carefully to ensure that we as Eskom - as the ultimate designated buyer - are comfortable to sign up to these agreements," he said, adding that discussions were ongoing, and he wasn't at liberty to say more.

"But I can give you the assurance that the board of Eskom is very aware of its fiduciary obligations toward the entity and will not enter into onerous contracts."

What will it cost?

The Department of Mineral Resources and Energy has previously defended using 20-year power purchase agreements in its Risk Mitigation IPP Procurement Programme, saying they will help keep costs down over the long-term.

But some energy analysts have said the 20-year contracts were too long.

"No-one has ever signed a 20-year contract for powerships. They offer a short-term emergency power option when there are no alternatives," UCT Professor Anton Eberhard, who also chaired the Eskom Sustainability Task Team, told Fin24 in April.

"There is no room for negotiation of its terms now otherwise losing bidders will mount a legal challenge arguing the process was not fair for all participants."

In response to a request for comment, Karpowership SA declined to comment.

