**SPECIAL TRIBUNAL OF SOUTH AFRICA**

**Judgment summary**

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| ***Special Investigating Unit v Phathalizwi Training Institute and Another*** | |
| URL | <https://lawlibrary.org.za/za/judgment/special-tribunal-south-africa/2022/31> |
| Citations | (EC 6 of 2020) [2022] ZAST 31 |
| Date of judgment | 18 May 2022 |
| Keyword(s):[[1]](#footnote-1) | Irregular and unlawful tender extension, failure to comply with public procurement regulations, services rendered, retention of profits accrued from irregular tender |
| Case type[[2]](#footnote-2) | Review application |
| Result | Upheld with costs |
| Flynote[[3]](#footnote-3) | **Public procurement regulations –** legality of tender extension – whether funds earned from irregular and unlawful tender may be retained |
| Legislation and International Instruments[[4]](#footnote-4) | o Section 217(1) of the Constitution of South Africa  o Section 2(1) of the Special Investigations Unity and Special Tribunals Act |
| Cases cited as authority[[5]](#footnote-5) | o *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13  o *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v CEO of the South African Social Security Agency and Other*s 2014 (1) SA 604 (CC)  o *State Information Technology SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA (CC) |
| Facts[[6]](#footnote-6) | The first respondent was awarded a tender by the second respondent, and thereafter awarded an extended tender. The two tenders related to different services; the former for a community outreach program while the latter was for a Covid-19 campaign. A training report was produced by the first respondent as proof of services rendered for the extended tender; however, the report did not include adequate objective proof that the Covid-19 campaign reached the required number of people.  The applicant sought to review the extended tender on the basis that it had not complied with procurement regulations, and that no services had in fact been rendered by the first respondent in terms of the extended tender. |
| Summary[[7]](#footnote-7) | The tribunal was asked to determine whether the extension of the extended tender was irregular and unlawful, whether services were rendered under the extended tender, and whether the first respondent was permitted to retain all the funds it had earned from the extended tender. The tribunal held that the extended tender related to different services and therefore it was unlawful to extend it without complying with the necessary public procurement regulations. The first respondent was also unable to provide adequate evidence to demonstrate services rendered, and therefore was not entitled to payment thereof.  In addition, the first respondent had raised two points *in limine* regarding the review process sought by the applicant, and the admissibility of hearsay evidence - both of which were dismissed by the tribunal. |
| Decision/ Judgment[[8]](#footnote-8) | The tribunal found the extended tender to be unlawful and it was set aside. Further, the tribunal found that the second respondent was not liable for payment of the first respondent’s invoices relating to the extended tender. The first respondent was also found to be liable for the applicant’s legal costs. |
| Basis of the decision[[9]](#footnote-9) | Although the first respondent relied upon the government’s General Conditions of Contract (“**GCC**”) to support the lawfulness of the extended tender, the tribunal found that such reliance was misplaced because the specific GCC clause related to extensions where a service provider was unable to perform timeously due to certain circumstances. The extended tender related to new and different services, and was not an extension as envisioned in the GCC clause (i.e. an extension of the original tender due to the first respondent’s inability to perform timeously), and therefore the extended tender was found to be unlawful. The tribunal also found that the training report presented by the first respondent contained contradictory information and lacked objective proof, such as attendance registers, to confirm that services were actually rendered and therefore the first respondent was not entitled to payment for the services it alleged to have rendered. |
| Reported by  Date | African Legal Information Institute ([AfricanLII](https://africanlii.org/))  18 May 2022 |

1. Clarify the type of issues that come up in the case. [↑](#footnote-ref-1)
2. Whether Trial, Application or Appeal. [↑](#footnote-ref-2)
3. **Area of law** - topic – subtopic. [↑](#footnote-ref-3)
4. Legislation/ International instrument title and section numbers. [↑](#footnote-ref-4)
5. List of cases considered to be important precedent (case name and citation). [↑](#footnote-ref-5)
6. Brief facts about the case (max 150 words). [↑](#footnote-ref-6)
7. Summary of the determination of legal questions and/or grounds of appeal (between 150-250 words). [↑](#footnote-ref-7)
8. A brief summary of the ruling/judgment of the court (max 100 words). [↑](#footnote-ref-8)
9. A 1-2 sentence summary of the basis of the decision (i.e. which legal rules were relied on). [↑](#footnote-ref-9)