



**IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF SECTION 2 (1) OF THE  
SPECIAL INVESTIGATIONS UNIT AND SPECIAL TRIBUNALS ACT 74 OF 1996**

**JUDGMENT SUMMARY**

<b><i>Special Investigating Unit and Another v Duneco CC and Others</i></b>	
URL	<a href="https://lawlibrary.org.za/akn/za/judgment/zast/2023/10/eng@2023-06-23">https://lawlibrary.org.za/akn/za/judgment/zast/2023/10/eng@2023-06-23</a>
Citations	(WC/05/22) [2023] ZAST 10
Date of judgment	23 June 2023
Keyword(s): <sup>1</sup>	Special tribunal, application, legality review, procurement, municipality, irregular, invalid, set aside, liability, unreasonable delay, interests of justice, clear, undisputed, Covid-19 pandemic, personal protective equipment, contract, supplier, irregular expenditure, compliance, constitution, unsolicited, deviation, policy, just and equitable, joint and several liability
Summary <sup>2</sup>	The second applicant ( <b>Municipality</b> ) had concluded a contract with the first respondent ( <b>Duneco</b> ) for the supply of personal protective equipment ( <b>PPEs</b> ) due to the Covid-19 pandemic ( <b>PPE Contract</b> ). The first applicant (the <b>SIU</b> ) investigated the Municipality's affairs and applied for a legality review of the PPE Contract. The third, fourth, and fifth respondents ( <b>Municipal Employees</b> ) were the municipal employees identified as being responsible for the conclusion of the PPE Contract. Due to the pre-existing relationship between the third respondent ( <b>Municipal Manager</b> ) and the only member of Duneco, Mr Klazen ( <b>Klazen</b> ), as well as the lack of compliance with proper procurement processes, the SIU sought to have the PPE Contract set aside. The respondents opposed the application.

<sup>1</sup> Clarify the type of issues that come up in the case.

<sup>2</sup> Summary of the facts, the main legal questions and/or grounds of appeal, and the court's reasoning (between 150-250 words).

	<p>The Special Tribunal was asked to consider the issue of delay, to determine whether the proper procurement process had been followed, whether the decision to purchase PPEs from Duneco was irregular and invalid and should be set aside, what relief should be granted, and whether the Municipal Employees should be liable in accordance with the Local Government: Municipal Finance Management Act (<b>MFMA</b>).</p>
Decision/ Judgment <sup>3</sup>	<p>The application was granted, and the decision taken by the Municipal Manager, acting on behalf of the Municipality, was declared irregular and invalid. The amount paid by the Municipality to Duneco was declared to be an irregular expenditure in terms of the MFMA, and the Municipal Employees were ordered to repay the value of the PPE Contract to the Municipality.</p>
Basis of the decision <sup>4</sup>	<p>The Special Tribunal granted condonation for the delay in bringing the application because it found that the delay was not unreasonable, and also considered the potential prejudice to affected parties.</p> <p>Based on the evidence presented, the judge found the conduct of the Municipal Employees as well as Klazen to be inconsistent with the Constitution, the applicable legislative measures and proper procurement procedures. The decision to purchase PPEs from Duneco was therefore declared irregular and invalid.</p> <p>In terms of determining appropriate relief, the judge considered what would be regarded as just and equitable in terms of section 172(1)(b) of the Constitution, and found that it was not possible to make a finding that the PPEs were not delivered or that the PPE Contract was not executed by Duneco, and it was therefore unfair to set it aside.</p> <p>Finally, as a result of the conduct of the Municipal Employees, the judge found them to be jointly and severally liable for incurring irregular expenditures as per section 32 of the MFMA.</p>
Reported by Date	<p>African Legal Information Institute (<a href="#">AfricanLII</a>) 23 June 2023</p>

<sup>3</sup> The ruling/judgment of the court, as given in the Order.

<sup>4</sup> A 1-2 sentence summary of the basis of the decision (i.e. which legal rules were relied on).

