****

**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**

|  |  |
| --- | --- |
| ***Special Investigating Unit v C Squared Consumer Connectedness (Pty) Limited and Others*** | |
| URL | https://lawlibrary.org.za/akn/za/judgment/zast/2023/13/eng@2023-10-25 |
| Citations | (FS01/2022) [2023] ZAST 13 |
| Date of judgment | 25 October 2023 |
| Keyword(s):[[1]](#footnote-1) | Application, Special Tribunal, unlawful contracts, consequential relief, punitive costs, Covid-19, review, set aside, procurement, condonation, misrepresentation, constitution, central supplier database |
| Summary[[2]](#footnote-2) | Various companies had contracted with the Department of Transport (DOT) for the provision of personal protective equipment during the Covid-19 pandemic. The companies which DOT had contracted with (the Impugned Contracts), included the first respondent (C Squared), and the third respondent (Ecko Green), alternatively, the second respondent. The Special Investigating Unit (SIU) approached the Special Tribunal (Tribunal) to review and set aside the alleged Impugned Contracts with these companies, despite the Public Protector having dismissed the allegations. Notably, the SIU contended that Ecko Green had not been registered on the Central Supplier Database (CSD) as it had alleged when tendering for the DOT contract. The SIU also sought condonation for the delay in bringing the present application.    The Tribunal was asked to determine whether SIU’s condonation request ought to be granted, and whether the application to set aside the Impugned Contracts ought to be granted. |
| Decision/ Judgment[[3]](#footnote-3) | The Tribunal granted SIU’s condonation application. It dismissed the application against C Squared, but granted the application against Ecko Green. Ecko Green was ordered to repay the DOT an amount representing the profits made from its contract with the DOT, plus interest, within 30 days. Costs were also awarded against Ecko Green on a punitive scale. |
| Basis of the decision[[4]](#footnote-4) | Despite the SIU’s failure to provide a full explanation for the delay in bringing the application, the Tribunal exercised its judicial discretion and condoned the delay due to Ecko Green’s reviewable conduct.  The SIU’s contention that it was irrational for the DOT to approve the appointment of C Squared given previous dissatisfaction with its performance, did not render C Squared’s appointment irrational, or its contract reviewable. The application to review C Squared’s contract was therefore dismissed.  The Tribunal found Ecko Green’s misrepresentation about being registered on the CSD, constituted a serious threat to constitutional democracy and rendered the contract reviewable.  In terms of SIU’s consequential relief claim, the Tribunal noted that it was important to distinguish between innocent parties and parties against whom a finding of malfeasance had been made. As Ecko Green had misrepresented itself, the Tribunal found that it was just and equitable to grant the relief claimed, namely, divesting Ecko Green of profits obtained from the Impugned Contract. The negative findings against Ecko Green also resulted in costs being awarded on a punitive scale. |
| Reported by  Date | African Legal Information Institute ([AfricanLII](https://africanlii.org/))  25 October 2023 |

1. Clarify the type of issues that come up in the case. [↑](#footnote-ref-1)
2. Summary of the facts, the main legal questions and/or grounds of appeal, and the court’s reasoning (between 150-250 words). [↑](#footnote-ref-2)
3. The ruling/judgment of the court, as given in the Order. [↑](#footnote-ref-3)
4. A 1-2 sentence summary of the basis of the decision (i.e. which legal rules were relied on). [↑](#footnote-ref-4)