**SPECIAL TRIBUNAL OF SOUTH AFRICA**

**Judgment summary**

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| ***Special Investigating Unit and Another v LNG (Pty) Ltd*** | |
| URL | https://lawlibrary.org.za/akn/za/judgment/zast/2024/1/eng@2024-02-07 |
| Citations | (GP03/2022) [2024] ZAST 1 |
| Date of judgment | 7 February 2024 |
| Keyword(s):[[1]](#footnote-1) | Application, Special Tribunal, administrative law, legality review, unlawful contracts, recovery, civil proceedings, irregular step, procurement procedures, Covid-19, deviation, default judgement, appeal |
| Case type[[2]](#footnote-2) | Application |
| Result | Granted |
| Flynote[[3]](#footnote-3) | **Administrative Law –** administrative review – irregular award of public procurement contract |
| Legislation and International Instruments[[4]](#footnote-4) |  Section 18 of the Superior Court’s Act   Uniform Rule 30   Tribunal Rule 28   Section 38 of the Public Finance Management Act |
| Cases cited as authority[[5]](#footnote-5) |  Ledla Structural Development (Pty) Ltd and Others v Special Investigating Unit (“Ledla”) (CCT 319/21) [2023] ZACC. 8; 2023 (6) BCLR 709 (CC); 2023 (2) SACR 1 (CC) (10 March 2023)   AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others 2015 (6) BCLR 653 (CC)   Black Sash Trust v Minister of Social Development and Others (Freedom Under Law NPC Intervening) 2017 (3) SA 335 (CC) |
| Facts[[6]](#footnote-6) | The Special Investigating Unit, the first applicant (**SIU**), sought to review and set aside the procurement contract between LNG (Pty) Ltd, the respondent (**LNG**), and the MEC: Gauteng Department of Health, the second applicant (**GDOH**) (**Review Application**). GDOH had procured personal protective equipment (**PPE**s) from LNG during the Covid-19 pandemic. However, the procurement did not follow the normal procurement procedures and it was submitted that the deviation to such procedures were not properly approved and therefore LNG had been illegally appointed. LNG appealed the Review Application but failed to file its answering affidavit as required by the directive issued. SIU therefore filed a default judgement application (**Default Judgement Application**) but LNG responded with an irregular step application (**Irregular Step Application**). |
| Summary[[7]](#footnote-7) | The Special Tribunal (**Tribunal**) was asked to determine whether the Irregular Step Application brought by LNG should be granted, and whether the Default Judgement Application sought by the SIU should be granted. |
| Decision/ Judgment[[8]](#footnote-8) | The Irregular Step Application was dismissed, and the Default Judgement Application was granted. |
| Basis of the decision[[9]](#footnote-9) | The Tribunal found that, as LNG had elected not to apply for condonation and not to file its opposing papers in the Review Application as required by the directive, it had failed to make out a proper case for striking out the applicants’ Default Judgement Application. The Irregular Step Application was therefore dismissed.  As LNG had failed to file its opposing papers, the Review Proceedings proceeded on a default basis. The Tribunal found that LNG’s appointment did not comply with applicable regulations and requirements contained in the Public Finance Management Act. In applying the “no-profit-no-loss” principle, the Tribunal found that it was just and equitable to divest LNG of the profits it earned from contracts awarded pursuant to the impugned decision. The LNG contract was declared unlawful and invalid, and the Tribunal ordered that it be divested of the profits it made in the supply of PPEs to the GDOH. |
| Reported by  Date | African Legal Information Institute ([AfricanLII](https://africanlii.org/))  7 February 2024 |

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)