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**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**

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| ***Special Investigating Unit v Mlangeni Brothers and Another*** | |
| URL | https://lawlibrary.org.za/akn/za/judgment/zast/2022/47/eng@2022-11-14 |
| Citations | (GP07/2021) [2022] ZAST 47 |
| Date of judgment | 14 November 2022 |
| Keyword(s):[[1]](#footnote-1) | Special Tribunal, administrative law, review, legality, just and equitable relief, burden of proof, setting aside, tender, personal protective equipment, PPE, covid-19, pandemic, contract, irregularities, procurement, costs, application, profit, retain, expenses, condonation |
| Summary[[2]](#footnote-2) | The second respondent, the Gauteng Department of Health (**GDOH**) had awarded the first respondent, Mlangeni Brothers Events CC (**MBE**) a contract (**the impugned contract**) for the supply of personal protective equipment (**PPE items**) during the Covid-19 pandemic. The applicant, the Special Investigating Unit (**SIU**) had investigated the impugned contract and instituted proceedings to review and set aside the contract, citing various procurement irregularities. The Special Tribunal granted the order, but reserved the costs of the application for determination in the present proceedings, and directed MBE to file an Income and Expenditure Statement (**IES**) by a specific date. The SIU sought a just and equitable order by asking the Special Tribunal to divest MBE of the profit it stood to acquire from the impugned contract and that it only be permitted to retain the reasonable expenses incurred in the supply of the PPE items to the GDOH.  The Special Tribunal was asked to determine what would be regarded as just and equitable relief in terms of section 172(1)(b) of the Constitution. |
| Decision/ Judgment[[3]](#footnote-3) | MBE was divested of the profit it had earned from the impugned contract with the GDOH, and the GDOH was ordered to pay only MBE the amount which the Special Tribunal found to be reasonable expenses incurred in the supply of PPE items to the GDOH. Each party was ordered to pay their own legal costs. |
| Basis of the decision[[4]](#footnote-4) | In terms of the just and equitable relief sought by the SIU to divest MBE of its profits, the Special Tribunal held that MBE bore the evidentiary burden of proving the reasonable expenses it incurred in the supply of PPE items to the GDOH, as well as establishing that exceptional circumstances existed for the Special Tribunal to exercise discretion in its favour to allow it to benefit from the profit it stood to earn from the impugned contract.  The Special Tribunal found several difficulties arising from the IES filed by MBE in proving such reasonable expenses. Although the “no profit no loss” principle enabled MBE to recover reasonable expenses from the GDOH, the Special Tribunal found that MBE had overstated its operating expenses to retain as much of the amount it charged to the GDOH as possible. The Special Tribunal found the IES unreliable, and therefore disallowed various operating expenses except for one, which it found to be reasonable expenditure.  The Special Tribunal also held that, as the bidding process for the impugned contract had failed to meet the requirements of proper procurement processes, divesting MBE of its profits would be the only just and equitable way of ensuring that any loss to the fiscus from the impugned contract would be averted.  The Special Tribunal found that it was just and equitable for each party to pay their own legal costs. |
| Reported by  Date | African Legal Information Institute ([AfricanLII](https://africanlii.org/))  14 November 2022 |

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)