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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 Raymond Mhlaba Local Municipality Kwane Capital (Pty) Ltd Port St. Johns Local Municipality; In re: Special Investigating Unit v Raymond Mhlaba Local Municipality Kwane Capital (Pty) Ltd Port St. Johns Local Municipality*** |
| URL | https://lawlibrary.org.za/akn/za/judgment/zast/2020/1/eng@2020-12-06 |
| Citations | (EC/01/2020; EC/03/2020) [2020] ZAST 1 |
| Date of judgment | 6 December 2022 |
| Keyword(s):[[1]](#footnote-1) | Special pleas, jurisdiction, Special Tribunal, summons, contracts, contractual obligations, procure, purchase agreements, procurement processes, unlawful, fair, transparent, Constitution, invalid, set aside, judicial review, civil proceedings, self-review, conditional counterclaims, replications, *litis contestatio*, application, witness statements, subpoena, condonation, postponed, trial, jurisdiction, locus standi, heads of argument, oral arguments, *stare decisis* doctrine, certainty, investigation, interpretation, status, powers, adjudicate, special court, civil court, purpose, malpractices, maladministration, principle of legality, administrative justice |
| Summary[[2]](#footnote-2) | The plaintiff, the Special Investigating Unit (**SIU**), issued summons against the three defendants in each of the two matters before the Special Tribunal (**Tribunal**). The second defendant was Kwane Capital (Pty) Ltd (**Kwane Capital**) in both matters. The relevant municipalities had entered into contracts to procure goods from Kwane Capital, and the SIU sought to have these contracts set aside insofar as the procurement processes which had preceded the contracts were not lawful, fair and transparent, as section 217 of the Constitution required. The SIU therefore sought to have the contracts declared invalid and set aside, and to direct Kwane Capital to repay the relevant amounts to the municipalities. Kwane Capital pleaded the same three special pleas in each of the two matters.These special pleas required the Tribunal to consider whether the Tribunal was a court with jurisdiction to consider the two matters, whether the judicial review sought by the SIU constituted civil proceedings as provided by section 8(2) of the Special Investigations Unit and Special Tribunals Act (**SIU Act**), and whether the review application ought to have been brought in terms of the Promotion of Administrative Justice (**PAJA**). |
| Decision/ Judgment[[3]](#footnote-3) | The three special pleas were dismissed in both matters, and costs were awarded. |
| Basis of the decision[[4]](#footnote-4) | The Tribunal relied on case law confirming that the Tribunal was a court with the characteristics of a court, as contemplated in section 166(e) of the Constitution, and held that the Tribunal was in fact able to consider the two matters. On the issue of judicial review, the Tribunal held that, based on the purpose of the SIU Act, the Tribunal had a review function to review the award of contracts by organs of the State. A contrary interpretation would render the scheme and purpose of the SIU Act fruitless. Finally, the Tribunal held that, while reviews could be brought in terms of PAJA and the principle of legality, it was trite that a government entity seeking to self-review its decisions would do so under the principle of legality. The Tribunal found that the SIU was not regarded as a private person in the present proceedings, and therefore a review application in terms of PAJA would not have been appropriate. |
| Reported byDate | African Legal Information Institute ([AfricanLII](https://africanlii.org/))6 December 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)