

SPECIAL TRIBUNAL OF SOUTH AFRICA
Judgment summary

<i>Special Investigating Unit v Zakheni Strategic Supplies (Pty) Ltd and Another</i>	
URL	https://lawlibrary.org.za/index.php/za/judgment/special-tribunal-south-africa/2022/35
Citations	(GP 9 of 2021) [2022] ZAST 35
Date of judgment	29 June 2022
Keyword(s): ¹	Procurement contract, irregularities, just and equitable relief, Covid-19 pandemic, emergency procurement procedures, personal protective equipment, application to strike out, founding affidavit, replying affidavit, inadmissible findings, liquid claim, Tribunal's jurisdiction, statement and debatement of account, turpitude, unlawful and irregular contract, remedy, counterclaim
Case type ²	Application
Result	Upheld with costs
Flynote ³	Procurement law – emergency procurement procedures – reviewing and setting aside an irregular and unlawful contract, and just and equitable relief
Legislation and International Instruments ⁴	<ul style="list-style-type: none"> ● Rule 6(11) of the Uniform Rules of the Court ● Section 42 of the Civil Proceedings Evidence Act ● Sections 166(e) and 172(1)(b) of the Constitution of South Africa ● Section 4(1)(c) of the Special Investigating Unit and the Special Tribunal's Act ● Sections 76(4)(b)(c) and (g) of the Public Finance Management Act
Cases cited as authority ⁵	<ul style="list-style-type: none"> ● <i>Hollington v F Hewthorn and Company Ltd</i> 1943 ALL ER 35 ● <i>Special Investigating Unit v Nadasen and Another</i> 2002 (4) SA 605 (SCA) ● <i>Special Investigating Unit and Another v Caledon Properties</i>

¹ Clarify the type of issues that come up in the case.

² Whether Trial, Application or Appeal.

³ **Area of law** - topic – subtopic.

⁴ Legislation/ International instrument title and section numbers.

⁵ List of cases considered to be important precedent (case name and citation).

	<p><i>(Pty) Ltd and Another</i>, Special Tribunal Case No: GPI7/2020. Unreported judgment delivered on 26 February 2021</p> <ul style="list-style-type: none"> ● <i>AllPay Consolidated Investment Holdings (Pty) Ltd and Others v CEO of the South African Social Security Agency and Others</i> 2014 (4) SA 179 (CC) ● <i>Special Investigating Unit and SABC v Vision View Productions CC</i> [2020] ZAGPJHC 19 June 2020 ● <i>SABC SOC Ltd and Another v Mott MacDonalds SA (Pty) Ltd</i> (29070 of 2018) [2020] ZAGPJHC 5 (08 December 2020)
Facts ⁶	<p>The applicant sought to review and set aside a contract that the Gauteng Department of Health awarded to the first respondent for the supply of personal protective equipment (PPE). The applicant argued that the PPE contract award did not comply with applicable regulatory provisions and was unlawful and irregular, and was tainted with turpitude.</p> <p>The first respondent opposed the application and raised preliminary points asking the Tribunal to strike out specified material and to determine whether motion proceedings were applicable, and questioning the Tribunal's jurisdiction and the applicant's standing to ask for its audited financial statements and to debate the account. The first respondent also counter-applied for performance and payment of the PPE contract.</p>
Summary ⁷	<p>The Tribunal had to determine whether the PPE contract was awarded in breach of the applicable regulatory provisions and was tainted with turpitude.</p> <p>The Tribunal also considered the preliminary points raised and the counterclaim sought by the first respondent.</p>
Decision/ Judgment ⁸	<p>The application was upheld and the first respondent's counterclaim was dismissed with costs. The Tribunal approved the striking out of some of the specified material in favour of the first respondent. The first respondent was ordered to provide the applicant with its audited financial statements to determine the profits earned from</p>

⁶ Brief facts about the case (max 150 words).

⁷ Summary of the determination of legal questions and/or grounds of appeal (between 150-250 words).

⁸ A brief summary of the ruling/judgment of the court (max 100 words).

	the PPE contract.
Basis of the decision ⁹	<p>The Tribunal found that the PPE contract was unlawfully and irregularly awarded as it did not comply with applicable procurement prescripts and was singularly awarded contrary to the Gauteng Treasury Circular 3 of 2020. The PPE contract was not found to be tainted with turpitude as the evidence submitted for this was inadmissible.</p> <p>The Tribunal agreed to strike out the inadmissible material. The other preliminary points were dismissed because the Tribunal found that motion proceedings were appropriate as the amounts claimed were liquid, and held that its constitutional jurisdiction and authority to grant just and equitable relief was confirmed by the Special Investigating Unit and the Special Tribunal's Act and case law.</p> <p>The Tribunal found that the applicant was entitled to a statement and debatement of the first respondent's account based on section 172(1)(b) of the Constitution and case law.</p>
Reported by	African Legal Information Institute (AfricanLII)
Date	29 June 2022

⁹ A 1-2 sentence summary of the basis of the decision (i.e. which legal rules were relied on).