

**SPECIAL TRIBUNAL OF SOUTH AFRICA**  
**Judgment summary**

<b><i>Special Investigating Unit and Another v LNG Scientific (Pty) Ltd; In re: LNG Scientific (Pty) Ltd v Special Investigating Unit and Another</i></b>	
URL	<a href="https://lawlibrary.org.za/index.php/za/judgment/special-tribunal-south-africa/2022/34">https://lawlibrary.org.za/index.php/za/judgment/special-tribunal-south-africa/2022/34</a>
Citations	(GP 3 of 2022) [2022] ZAST 34
Date of judgment	29 June 2022
Keyword(s): <sup>1</sup>	Review application, access to record of decision, self-review application, discovery of records, Tribunal Rule, Uniform Rules of the Court, interlocutory application, public procurement, personal protection equipment, administrative decision, prejudice, Covid-19 pandemic, defective performance, procurement irregularities
Case type <sup>2</sup>	Application
Result	Dismissed with costs in the course
Flynote <sup>3</sup>	<b>Court rules</b> – review application – the obligation of a respondent to provide an applicant with access to record in a self-review application
Legislation and International Instruments <sup>4</sup>	<ul style="list-style-type: none"> <li>● Rules 53 and 35 of the Uniform Rules of the Court</li> <li>● Tribunal Rule 10</li> <li>● Section 4(1)(c)(i) read with section 5(5), and section 8(2) of the Special Investigating Units and Special Tribunals Act</li> </ul>
Cases cited as authority <sup>5</sup>	<ul style="list-style-type: none"> <li>● <i>Jockey Club of South Africa v Forbes</i> 1993 (1) SA 649 (A)</li> <li>● <i>SIU v Chauke Quantity Surveyors &amp; Project Managers in Association with Listed Entities t/a Chauke Mbenyane Co-Arc Consultants &amp; Nine Others (45529/2016) [2018] ZAGPPHC 240</i> (25 January 2018)</li> <li>● <i>Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd</i> 2019 (4) SA 331 (CC)</li> </ul>
Facts <sup>6</sup>	During the Covid-19 pandemic, the then Chief Financial Officer of the Gauteng Department of Health procured personal protective

<sup>1</sup> Clarify the type of issues that come up in the case.

<sup>2</sup> Whether Trial, Application or Appeal.

<sup>3</sup> **Area of law** - topic – subtopic.

<sup>4</sup> Legislation/ International instrument title and section numbers.

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

<sup>6</sup> Brief facts about the case (max 150 words).

	<p>equipment (<b>PPE</b>) from the applicant, LNG Scientific (Pty) Ltd (<b>LNG</b>). The first and second respondents sought to review and set aside the decision to award the PPE contract due to alleged irregularities in the procurement process and defective performance (<b>review application</b>). LNG opposed the review application and brought an interlocutory application to compel the respondents to furnish it with a record of the impugned decision in terms of Uniform Rule 53(1)(b). The respondents opposed the interlocutory application. They argued that because the review application had been brought in terms of Tribunal Rule 10 (and not the Uniform Rules), they were not obliged to produce the record but would consent to an order in terms of Uniform Rule 35(13) and produce the record within 20 days of the Tribunal's order.</p>
Summary <sup>7</sup>	<p>The Tribunal had to determine whether the respondents were obliged to deliver a record of the impugned decision in terms of Uniform Rule 53(1)(b).</p> <p>The Tribunal also considered whether the respondent's tender to discover relevant documents would enable LNG to properly oppose the review application.</p>
Decision/ Judgment <sup>8</sup>	<p>The interlocutory application was dismissed with costs in the course. The respondents were also ordered to discover only the records relevant to the impugned decision (excluding documents already annexed to their founding affidavit).</p>
Basis of the decision <sup>9</sup>	<p>The Tribunal noted that the review application was a self-review application that sought to review a decision taken by the second respondent. The mechanism in Uniform Rule 53 would not be applicable because the record was already available to the second respondent. The Tribunal held that, as the review application had been brought in terms of the Tribunal Rules which did not compel the filing of a record of the impugned decision and it was a self-review application, LNG had failed to establish the basis for invoking the application of the Uniform Rule.</p> <p>The Tribunal recognised the importance of a record of the decision in review proceedings to ensure neither party is disadvantaged, but ordered the respondents to discover only relevant information to</p>

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

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

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

	prevent an unfettered discovery process.
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Date	1 July 2022