

SPECIAL TRIBUNAL OF SOUTH AFRICA
Judgment summary

<i>Special Investigating Unit v Zeelwa Trading (Pty) Ltd and Another</i>	
URL	https://lawlibrary.org.za/akn/za/judgment/zast/2022/46/eng@2022-10-13
Citations	(MP03/2021) [2022] ZAST 46
Date of judgment	13 October 2022
Keyword(s): ¹	Application, Special Tribunal, procurement procedures, Covid-19, personal protective equipment, set aside, order, relief, absolution from the instance, punitive costs, postponement, review, excessive, prices, bench mark, supplier, deviation, witness, quotation
Case type ²	Application
Result	Granted with punitive costs awarded
Flynote ³	Civil proceedings – application for absolution from the instance – absolution may be granted where the Special Tribunal has failed to make out a <i>prima facie</i> case for the relief sought
Legislation and International Instruments ⁴	<ul style="list-style-type: none"> ● Section 172(1)(b) of the Constitution
Cases cited as authority ⁵	<ul style="list-style-type: none"> ● Claude Neon Lights (SA) Ltd v Daniel 1976 (4) SA 403 (A)
Facts ⁶	In the main trial, the plaintiff, the Special Investigating Unit (SIU), had sought to review and set aside an allegedly unlawful decision made by the second defendant, the Mpumalanga Department of Social Development (DSD), to procure personal protection equipment (PPE) items from the first defendant, Zeelwa Trading (Pty) Ltd (Zeelwa). After that trial, Zeelwa applied for absolution from the instance, which was granted.
Summary ⁷	The Special Tribunal was asked to determine whether the SIU had established <i>prima facie</i> evidence that Zeelwa had failed to follow the applicable procurement procedures and whether the prices charged by Zeelwa for the PPE items were excessive. The Special Tribunal was also asked to consider punitive costs. A punitive cost order is only awarded in exceptional circumstances to punish vexatious litigation and to assist the successful litigant in recovering their

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).

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).

	substantial expenses as a result of the litigation.
Decision/ Judgment ⁸	The Special Tribunal granted Zeelwa's application for absolution from the instance and awarded costs on a punitive scale. The SIU was ordered to pay for wasted costs relating to the postponement of the trial at the SIU's instance.
Basis of the decision ⁹	<p>The Tribunal found that the SIU did not lead evidence to support the allegations that Zeelwa failed to comply with the prescribed procurement procedures or to supply PPE items to the National Department of Health's requirements. The SIU had failed to call all the necessary witnesses, to discover key documents such as the investigative report and the approved deviations.</p> <p>Regarding Zeelwa's alleged excessive pricing, the SIU relied on Treasury Instruction 8 of 2019/2020 (T18). The T18 provided different prices for the same items, however, and, the SIU submitted that it had taken its own decision regarding which prices in T18 should be used as a benchmark. The Special Tribunal found the SIU's approach arbitrary, as it did not have the authority to benchmark prices in the T18. The Special Tribunal, therefore, found that the SIU had not established <i>prima facie</i> evidence that Zeelwa had charged excessive prices for the PPE items.</p> <p>The Special Tribunal found the SIU's conduct deserving of a punitive cost order, as the SIU's investigator had found no irregularities with how the DSD transacted with Zeelwa, it failed to lead evidence to establish <i>prima facie</i> that Zeelwa's conduct was unlawful, and it failed to discover critical documents. Furthermore, Zeelwa suffered prejudice as a result of the postponement sought by the SIU in this action, as it hampered Zeelwa from doing further business with the State. In addition, the evidence the SIU obtained as a result of the postponement did not end up advancing the SIU's case. The Special Tribunal found that it would have been unfair for Zeelwa to be out-pocketed as a result of that postponement.</p>
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⁸ A brief summary of the ruling/judgment of the court (max 100 words).

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

