

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

<b><i>Special Investigating Unit v Mlangeni Brothers and Another</i></b>	
URL	<a href="https://lawlibrary.org.za/akn/za/judgment/zast/2022/47/eng@2022-11-14">https://lawlibrary.org.za/akn/za/judgment/zast/2022/47/eng@2022-11-14</a>
Citations	(GP07/2021) [2022] ZAST 47
Date of judgment	14 November 2022
Keyword(s): <sup>1</sup>	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
Case type <sup>2</sup>	Application
Result	Successful
Flynote <sup>3</sup>	<b>Administrative law</b> – just and equitable relief – the party seeking to retain reasonable expenses incurred in the supply of goods in terms of an impugned contract bears the evidentiary burden of proof
Legislation and International Instruments <sup>4</sup>	<ul style="list-style-type: none"> <li>● Section 172(1)(b) of the Constitution</li> </ul>
Cases cited as authority <sup>5</sup>	<ul style="list-style-type: none"> <li>● <i>Steenkamp NO v Provincial Tender Board of the Eastern Cape</i> 2007 (3) SA 121 (CC)</li> <li>● <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)</li> <li>● <i>Pillay v Krishna</i> 1946 AD 946</li> <li>● <i>State Information Technology SOC Ltd v Gijima Holdings (Pty) Ltd</i> 2018 (2) SA (CC).</li> </ul>
Facts <sup>6</sup>	The second respondent, the Gauteng Department of Health ( <b>GDOH</b> ), had awarded the first respondent, Mlangeni Brothers Events CC ( <b>MBE</b> ), a contract ( <b>the impugned contract</b> ) for the supply of personal protective equipment ( <b>PPE items</b> ) during the

<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>Covid-19 pandemic. The applicant, the Special Investigating Unit (<b>SIU</b>), 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 (<b>IES</b>) by a specific date. The SIU sought a just and equitable order, asking the Special Tribunal to divest MBE of the profit it stood to gain from the impugned contract and to order that it only be permitted to retain the reasonable expenses incurred in the supply of the PPE items to the GDOH.</p>
Summary <sup>7</sup>	<p>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.</p>
Decision/ Judgment <sup>8</sup>	<p>MBE was divested of the profit it had earned from the impugned contract with the GDOH, and the GDOH was ordered only to pay 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.</p>
Basis of the decision <sup>9</sup>	<p>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 in 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.</p> <p>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 a reasonable expenditure.</p> <p>The Special Tribunal also held that, as the bidding process for the impugned contract had failed to meet the requirements of proper</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).

	<p>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.</p> <p>The Tribunal found that it was just and equitable for each party to pay their own legal costs.</p>
Reported by Date	African Legal Information Institute ( <a href="#">AfricanLII</a> ) 14 November 2022