

SPECIAL TRIBUNAL OF SOUTH AFRICA
Judgment summary

<i>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</i>	
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	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, <i>litis contestation</i> , application, witness statements, subpoena, condonation, postponed, trial, jurisdiction, locus standi, heads of argument, oral arguments, <i>stare decisis</i> doctrine, certainty, investigation, interpretation, status, powers, adjudicate, special court, civil court, purpose, malpractices, maladministration, principle of legality, administrative justice
Case type ²	Special pleas
Result	Dismissed with costs
Flynote ³	Special Tribunal proceedings – Tribunal jurisdiction and judicial review – the Tribunal is a court that has a review function and may review decisions based on the principle of legality
Legislation and International Instruments ⁴	<ul style="list-style-type: none"> ● Sections 217 and 166(e) of the Constitution ● Section 8(2) of the Special Investigations Unit and Special Tribunals Act (SIU Act)
Cases cited as authority ⁵	<ul style="list-style-type: none"> ● The Special Investigating Unit and Another v Caledon River Properties (Pty) Ltd t/a Magwa Construction & Another GP 17/2020 ● Ledla Structure Development (Pty) Ltd and Others v The SIU GP 07/2020 ● Patmor Explorations (Pty) Ltd v Limpopo Development

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>Tribunal (1250/2016) [2018] ZASCA 19; 2018 (4) SA 107 (SCA)</p> <ul style="list-style-type: none"> ● Special Investigating Unit v Nadasen (5/2001) [2001] ZASCA 117; 2002 (1) SA 605 (SCA) ● Chisuse v Director-General, Department of Home Affairs [2020] ZACC 20; 2020 (6) SA 14 (CC) ● State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd (CCT254/16) [2017] ZACC 40; 2018 (2) SA 23 (CC) ● Special Investigating Unit and Another v Engineered Systems Solutions (Pty) Ltd (216/2020) [2021] ZASCA 90
Facts ⁶	<p>The plaintiff, the Special Investigating Unit (SIU), had issued summons against the three defendants in each of the two matters before the Special Tribunal (Tribunal). In both matters, the second defendant was Kwane Capital (Pty) Ltd (Kwane Capital). 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 thus sought to have the contracts declared invalid and set aside, and to direct Kwane Capital to repay the relevant amounts to the municipalities.</p>
Summary ⁷	<p>Kwane Capital pleaded the same three special pleas in each matter. These 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 SIU Act, and whether the review application ought to have been brought in terms of the Promotion of Administrative Justice (PAJA).</p>
Decision/ Judgment ⁸	<p>The three special pleas were dismissed and costs were awarded.</p>
Basis of the decision ⁹	<p>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 therefore held that the Tribunal was able to consider the two matters.</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).

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

	<p>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.</p> <p>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.</p>
Reported by Date	African Legal Information Institute (AfricanLII) 6 December 2022