

SOUTH AFRICA / JUDGMENT

Khari Investments (Pty) Ltd v Mopani District Municipality (5424/2018)

[2024] ZALMPPHC 86 (12 August 2024)

[2024] ZALMPPHC 86

COURT

Limpopo High Court, Polokwane

BEFORE

Bresler

CASE / FILE NUMBER

5424/2018

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FLYNOTES:

MUNICIPALITY

– Oral agreement – Enforceability
– Supply chain management policies – Whether oral agreement can be concluded by deviating from SCM policy – Failure to follow prescribed procedures relating to expenditure decisions results in irregular expenditure – Unlawful
–
Peremptory provision prohibits conclusion of oral agreements – Non-compliance with provisions renders oral agreement unenforceable – Claim dismissed – Local Government: Municipal Finance and Management Act 56 of 2003, s 116.

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

LIMPOPO

DIVISION, POLOKWANE

CASE

NO: 5424/2018

(1) REPORTABLE:

YES/NO

(2) OF

INTEREST TO THE JUDGES: YES/NO

(3) REVISED

DATE:

12.08.2024

SIGNATURE: In

the matter between: KHARI INVESTMENTS
(PTY) LTD
(Previously known
as SGL Engineering Projects
(Pty) Ltd
PLAINTIFF
-and-
MOPANI DISTRICT
MUNICIPALITY
DEFENDANT

JUDGMENT

BRESLER AJ:

Introduction:

- [1] The Plaintiff claims payment from the Defendant in an amount of R2,412,434.66 (two million four hundred and twelve thousand four hundred and thirty-four rand and sixty-six cents) including Value Added Tax calculated at 14%.
- [2] The claim of the Plaintiff is premised on an oral agreement concluded between the Plaintiff, duly represented by Mr Lesiba Gwangwa and the Defendant, duly represented by Dr. T Maake who was the Municipal Manager of the Defendant at the time.
- [3] In its Plea, the Defendant denies that it entered into an oral agreement, alternatively denies that Dr Maake had the required

authority to represent the Defendant in the alleged oral agreement and furthermore denies having received performance in terms of the oral agreement. As will be seen from what has been stated herein after, the Defendant conceded in its opening argument, and again confirmed in its closing argument that the crux of the defence lies with the fact that the alleged oral agreement is not aligned with the procurement processes, thus rendering the oral agreement void for lack of legality and consequently unenforceable.

- [4] Having regard to the testimony of the various witnesses and the concessions made by Counsel for the Defendant, it is unquestionable

that an oral agreement was concluded between the Plaintiff and the Defendant.

- [5] This court is therefore called upon to determine, having regard to the prevailing legal position, the supply chain management policies and internal financial procedures of the Defendant, if the oral agreement is valid and enforceable.

The Plaintiff’s evidence:

- [6] Dr. T Maake testified on behalf of the Plaintiff. He confirmed the oral agreement concluded between the Plaintiff and the Defendant and stated that he was duly authorised to do so by virtue of being the Municipal Manager at the time. He furthermore testified that the Plaintiff was appointed as a professional service provider in 2009 and in terms of the provisions of the applicable supply chain management policy of the Defendant. He also testified that the Defendant is entitled to make single source appointments where it is urgent and there is an emergency.
- [7] Dr. Maake testified that there were critical defects in the infrastructure at the Nkowankowa Sewage Plant. As the Plaintiff was engaged in the project from the onset, it was a natural continuance of the previous work carried out by it. There was spillage of sewerage into the river system which was polluting the environment in contravention of the Constitution, 1996 and the National Water Act, 36 of 1998, and a speedy decision had to be taken to remedy the situation.
- [8] The Defendant required the Plaintiff to draft a technical report to enable the Defendant to apply for funding from the Department of Water and Sanitation to restore the effective functioning of the Sewage Plant. During the course of the argument this was referred to as the 'refurbishment' of the Plant.
- [9] Hereafter, Mr Lesiba Gwangwa, the Director of the Plaintiff, testified. His testimony aligned with the testimony of Dr. Maake to the extent that the oral agreement, and the extent thereof, was confirmed. He furthermore confirmed his appointment as professional service provider in 2009 in respect of the Upgrading of the Nkowankowa Sewage Treatment Plant. He furthermore essentially confirmed that he was appointed to attend to the refurbishment report consequent to his earlier involvement in the Upgrading project. During or about January 2017, he learned that financing was approved based on his report. The contractor appointed to refurbish the Sewage Plant, BMK, made us of a copy of his report.
- [10] Having regard to the testimony of Mr Gwangwa, and the documentation presented to court, it is evident that the Defendant, duly represented by Dr. Maake and the Plaintiff, duly represented by Mr. Gwanga did enter into an oral agreement resulting in the Plaintiff rendering professional services to the Defendant.

The Defendant's evidence:

- [11] The Defendant called Ms Happiness Mabuza to testify. She is a project manager employed by the Defendant for the past 10 years. Her responsibilities include the monitoring of progress of projects at the various sites and in terms of the scope and to ensure that the project does not exceed the allocated budget. She was never involved in in the Upgrading project for which the Plaintiff was appointed in
2009. She confirmed her involvement in the Refurbishment project which, according to her, is a separate project.
- [12] Ms Mabuza confirmed that BMK was appointed as the contractors on the Refurbishment project in December 2016. She admittedly had no personal knowledge of any negotiations or discussions between the Plaintiff and the Defendant during the period 2009 to
2014. She did however confirm that there was an ongoing emergency at the Plant that required immediate attention as sewerage was spilling into the river.
- [13] Hereafter, the Defendant called Ms Mamaloko Makwela (previously Mosomane) to testify. She is employed by the Defendant as a project manager technician. Her duties and responsibilities include management of projects. She was the project manager that dealt with the Upgrading of the Nkowankowa Sewage Treatment Plant.
- [14] The witness was only employed by the Defendant in 2015. This is when she learned of the Plaintiff's involvement in the project. She has no personal knowledge of events prior to 2015. She was however asked if the discharge of raw sewerage into the river could be classified as an emergency and she replied that it would, thus confirming that emergency conditions existed.
- [15] Hereafter, the Defendant called Ms Sibongile Pinkie Mathebula, the Chief Financial Officer of the Defendant. At the time of the trial, she was only employed at the Defendant for approximately 15 months. Her knowledge of the matter is limited to a file that was presented to her by the Defendant. When perusing the file, she noticed that there was no Appointment letter, Service Level Agreement or VAT invoice. According to her, all agreements had to be in writing to be valid and enforceable. The supply chain management policy 'legislates on how procurement within the municipality should be carried out' and it 'is a guideline which then details how the implementation of the act should occur'.[1]
- [16] According to Ms Mathebula, even in emergency situations there are procedural requirement that must be met. Consequently, no oral agreement could have been concluded in 2014. She was however not able to indicate to the Court what procedures are involved and in place safe to repeatedly refer to the supply chain management policy of the Defendant.
- [17] As neither of the Defendant's witnesses has any knowledge pertaining to the oral agreement, the testimony in this regard

presented by the Plaintiff must be accepted as the truth. As stated before, Counsel for Defendant conceded that this agreement was in all probability concluded and that the Plaintiff performed in terms thereof. The quantum of the Plaintiff's claim was also not disputed.

[18] Having regard to the testimony of the witnesses presented to this Court, this Court has no difficulty in finding that the oral

agreement was concluded, that the Defendant's representatives had full knowledge of the oral agreement, that the Plaintiff's

performed in terms thereof and that the Defendant accordingly utilized the report prepared by the Plaintiff when it appointed BMK

to refurbish the plant.

[19] In closing argument, the Defendant persisted with its view that the oral agreement in unenforceable as it constitute an illegal contract. This Court is clearly only called upon to determine if an oral agreement of the nature concluded between the parties, is enforceable irrespective of compliance with statutory prescripts.

The

Legal Framework:

[20] The Defendant's Supply Chain Management Policy (the 'SCM Policy') states the following[2]:

'Deviation from the Procurement Process

General

283. The Municipal Manager may dispense with the official procurement processes established by this Policy, and procure any required goods or services through any convenient process, which may include direct negotiation, but only in respect of:

(i) any contract relating to an emergency (as described in clauses 285 and 286 below) where it would not be in the interest of the Municipality

to invite bids,

(ii) any goods or services which are available from a single provider only,

(iii) the acquisition of animals for zoos, or

(iv) the acquisition of special works of art or historical objects where specifications are difficult to compile;

(v) any other exceptional circumstances where it is impractical or impossible to follow the official procurement process, including:

(vi) any purchase on behalf of the Municipality at a public auction sale;

- (vii) any contract in respect of which compliance therewith would not be in the public interest;
- (viii) ad-hoc repairs to plant and equipment where it is not possible to ascertain the nature or extent of the work required in order to call for bids; and
- (ix) any contract in respect of accommodation, travel agencies and courier services
- (x) any acquisition in respect of show stalls.

284. The Municipal Manager may condone a deviation from the procurement processes, provided that such deviation is limited to the circumstances referred to in clause 283.

Emergency Dispensation

285. The conditions warranting Emergency dispensation should include the existence of one or more of the following:

- a. the possibility of human injury or death;
- b. the prevalence of human suffering or deprivation of rights;

the possibility of damage to property, or suffering and death of livestock and animals;

- d. the interruption of essential services, including transportation and communication facilities or support services critical to the

effective functioning of the Municipality as a whole;

- e. the possibility of serious damages occurring to the natural environment;
- f. the possibility that failure to take necessary action may result in the Municipality not being able to render an essential community service; and
- g. the possibility that the security of the state could be compromised.

286. The prevailing situation, or imminent danger, should be of such a scale and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated above.

[21] Section 299 of the SCM Policy furthermore states that reasons for all deviations shall be recorded and reported by the Municipal Manager to

Council at the next Council meeting and shall be included as a note to the annual financial statements.

[22] As to compliance with this provision, Counsel for the Plaintiff submitted that this report will be wholly within the knowledge of the Defendant. Dr. Maake was suspended prior to the financial year end and has no knowledge if there was compliance by his predecessor. The Defendant however did not present evidence as to either the existence or the absence of the report or the note to the financial statements.

[23] The Court is therefore in the dark as to whether there was compliance with this aspect. As will be seen from what is stated herein after, the compliance herewith is irrelevant for purposes of this judgment.

[24] In the Guide for Accounting Officers of Municipalities and Municipal Entities the following is stated pertaining to one of the aspects of supply chain management:[3]

Supply Chain Performance: This is the monitoring process, undertaking a retrospective analysis to determine whether the proper processes have been followed and whether the desired objectives were achieved. Some of the issues that may be reviewed are:

- Compliance with the policy objectives;
- Cost efficiency of SCM process (i.e. the cost of the process itself); and
- Whether the supply chain practices are consistent with Government's broader policy focus; and
- Whether there are means to improve the system.

[25] The same Guide provides in paragraph 4.4.5.5 as follows:

4.4.5.5 Deviation from, and Ratification of Minor Breaches of Procurement Processes

4.4.5.5.1 Should it be impractical to invite competitive bids for specific requirements, the accounting officer may dispense with official procurement processes and procure goods and services by other means such as price quotations and negotiations.

4.4.5.5.2 Incidences where it will be impractical to invite competitive bids for specific requirements, include, among others:

·Emergency cases: cases where immediate reaction is necessary in order to avoid a dangerous or risky situation or misery or disaster such as floods or fires;

·In case of a sole supplier;

·For the acquisition of special works of art or historical objects where specifications are difficult to compile; and acquisition of animals for zoos; or in any other exceptional cases.

4.4.5.5.3 ...

4.4.5.5.4 The accounting officer must record the reasons for any deviations as mentioned above and report it to the next meeting of the council, or board of directors in the case of a municipal entity, and include as a note to the annual financial statements.

- [26] From an analysis of the aforesaid it is apparent that deviations from the normal procurement processes are possible provided that they fall under the circumstances contemplated in section 283 of the SCM policy. What is conspicuously absent from the said section (and the SCM policy as a whole) is an indication as to the extent of the deviation that is allowed.
- [27] To determine if an oral agreement will constitute an allowable deviation from the SCM policy, one must have appreciation for the interaction between the difference laws regulating Local Government in general. More specifically, the law regulating the existence and status of SCM policies within the greater legal framework.
- [28] One of the constitutional objectives of Local Government, is 'to ensure the provision of services to communities in a sustainable manner'.^[4] To achieve this objective, Section 216(1) of the Constitution mandates that national legislation must prescribe measures to ensure both transparency and expenditure control in each sphere of government by introducing:
- 28.1 generally recognised accounting practices;
 - 28.2 uniform expenditure classifications; and
 - 28.3 uniform treasury norms and standards.
- [29] Giving effect to the constitutional mandate, Chapter 11 of the Local Government: Municipal Finance and Management Act^[5] (the 'MFMA'), is aimed at expenditure control. The MFMA however only provides a broad framework, with the regulations and policies addressing the process in more particularity. The MFMA affirms the three predominant principles of government expenditure
- being:
- 29.1 Expenditure must be planned and authorised in terms of the municipal budget;
 - 29.2 Expenditure must be incurred following the correct procedures; and
 - 29.3 Financial resources must be productively applied.
- [30] The defence raise by the Defendant is premised on a contravention of the principle enshrined in paragraph 29.2 above. The Defendant opines that the failure to follow the prescribed procedures relating to expenditure decisions results in irregular expenditure. Irregular expenditure is unlawful.
- [31] The term 'irregular expenditure' is defined in Section 1 of the MFMA to mean:
- 'Irregular expenditure', in relation to a municipality or municipal entity, means-
- (a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;

- (b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;
- (c) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act 20 of 1998); or
- (d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law,

but excludes expenditure by a municipality which falls within the definition of 'unauthorised expenditure';

[32] Section 170 of the MFMA provides:

170 Departures from treasury regulations or conditions

- (1) The National Treasury may on good grounds approve a departure from a treasury regulation or from any condition imposed in terms of this Act.
- (2) Non-compliance with a regulation made in terms of section 168, or with a condition imposed by the National Treasury in terms of this Act, may on good grounds shown be condoned by the Treasury.

[33] The MFMA furthermore regulates the creation and implementation of a supply chain management policy to the extent that Section 111 states:

111 Supply chain management policy

Each municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of this Part.

[34] Of critical importance is the provisions of Section 112 of the MFMA that states that:

112 Supply chain management policy to comply with prescribed framework

- (1) The supply chain management policy of a municipality or municipal entity must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for municipal supply chain management, which must cover at least the following:
 - (a) The range of supply chain management processes that municipalities and municipal entities may use, including tenders, quotations, auctions and other types of competitive bidding;
 - (b) when a municipality or municipal entity may or must use a particular type of process;
 - (c) procedures and mechanisms for each type of process;

- (d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders or other bids;
- (f) competitive bidding processes in which only pre-qualified persons may participate;
- (g) bid documentation, advertising of and invitations for contracts;
- (h) procedures and mechanisms for-
- (i) the opening, registering and recording of bids in the presence of interested persons;
- (ii) the evaluation of bids to ensure best value for money;
- (iii) negotiating the final terms of contracts; and
- (iv) the approval of bids;
- (i) screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;
- (j) compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids;
- (k) participation in the supply chain management system of persons who are not officials of the municipality or municipal entity, subject to section 117;
- (l) the barring of persons from participating in tendering or other bidding processes, including persons-
- (i) who were convicted for fraud or corruption during the past five years;
- (ii) who wilfully neglected, reneged on or failed to comply with a government contract during the past five years; or
- (iii) whose tax matters are not cleared by South African Revenue Service;
- (m) measures for-
- (i) combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and
- (ii) promoting ethics of officials and other role players involved in municipal supply chain management;
- (n) the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by-

- (i) councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act; or
 - (ii) municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to that Act;
 - (o) the procurement of goods and services by municipalities or municipal entities through contracts procured by other organs of state;
 - (p) contract management and dispute settling procedures; and
 - (q) the delegation of municipal supply chain management powers and duties, including to officials.
- (2) The regulatory framework for municipal supply chain management must be fair, equitable, transparent, competitive and cost-effective.

[35] It is apparent that a supply chain management policy is subservient to a 'prescribed regulatory framework for municipal supply chain management.'

[36] Section 116(1) of the MFMA conversely provides:

116 Contracts and contract management

- (1) A contract or agreement procured through the supply chain management system of a municipality or municipal entity must-
- (a) be in writing;
 - (b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for-
 - (i) the termination of the contract or agreement in the case of non- or under- performance;
 - (ii) dispute resolution mechanisms to settle disputes between the parties;
 - (iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and
 - (iv) any other matters that may be prescribed.

[37] Section 171(1) of the MFMA furthermore states:

171 Financial misconduct by municipal officials

- (1) The accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently-
- (a) contravenes a provision of this Act;

[38] The crux of the Plaintiff's argument is that an oral agreement can be concluded by deviating from the SCM policy. In this Court's view, the Plaintiff loses sight of the trite provisions of the MFMA in as far as the MFMA renders a contravention of the provisions of the said Act as financial misconduct and an irregular expenditure.

[39] It could not have been the intention of the Legislature that National Legislation of this nature can be circumvented with internal

financial policies or procedures. This will impede the principles enunciated in Section 217(1) of the Constitution that states:

(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national

legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent,

competitive and cost effective.

[40] Regard must also be had to the provisions of Section 217(3) of the Constitution that specifically states that National Legislation must prescribe a framework within which the supply chain management policy must be implemented.

[41] In as far as this Court may have held any doubt as to the hierarchy of laws applicable in these circumstances, Regulation 2(1)(d) of the Local Government: Municipal Finance Management Act (56/2003): Municipal Supply Chain Management Regulations[6] pertinently prescribe that the supply chain management policy is subject to the provisions of other applicable legislation. By implication this will include the MFMA

[42] Both parties referred the Supreme Court of Appeal decision rendered in the matter of City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd[7] and specifically paragraphs [11] to [13] where the following was stated:

'[11] It is important at the outset to distinguish between two separate, often interwoven, yet distinctly different 'categories' of cases. The distinction ought to be clear enough conceptually. And yet, as the present matter amply demonstrates, it is not always truly discerned. I am referring to the distinction between an act beyond or in excess of the legal powers of a public authority (the first category), on the one hand, and the irregular or informal exercise of power granted (the second category), on the other. That broad distinction lies at the heart of the present appeal, for the successful invocation of the doctrine of estoppel may depend upon it. (See TE Dönges & L de van Winsen Municipal Law 2 ed (1953) 38 - 41.)

[12] In the second category, persons contracting in good faith with a statutory body or its agents are not bound, in the absence of knowledge to the contrary, to enquire whether the relevant internal arrangements or formalities have been satisfied, but are entitled to assume that all the necessary arrangements or formalities have indeed been complied with (see for example *National and Overseas Distributors Corporation (Pty) Ltd v Potato Board* 1958

(2) SA 473 (A); *Potchefstroom se Stadsraad I v Kotze* 1960

(3) SA 616 (A)). Such persons may then rely on estoppel if the defence raised is that the relevant internal arrangements or formalities were not complied with.

[13] As to the first category: failure by a statutory body to comply with provisions which the legislature has prescribed for the validity of a specified transaction cannot be remedied by estoppel because that would give validity to a transaction which is unlawful and therefore *ultra vires*. (See for example *Strydom v Die Land- en Landboubank van Suid-Afrika* 1972

(1) SA 801 (A); *Abrahamse v Connock's Pension Fund* 1963

(2) SA 76 (W); and *Hauptfleisch v Caledon Divisional Council* 1963

(4) SA 53 (C).)'

[43] And further at [16]:

[16] There are formidable obstacles to the plaintiff's reliance upon the doctrinal device of estoppel. Assuming in the plaintiff's favour that all of the requirements for its successful invocation have been established, this is not a case in which it can be allowed to operate. It is settled law that a state of affairs prohibited by law in the public interest cannot be perpetuated by reliance upon the doctrine of estoppel (*Trust Bank van Afrika Bpk v Eksteen* 1964

(3) SA 402 (A) at 411H - 412B), for to do so would be to compel the defendant to do something that the statute does not allow it to do. In effect

therefore it would be compelled to commit an illegality (*Hoisain v Town Clerk, Wynberg* 1916 AD 236).

[44] As stated herein before, the MFMA pertinently prohibits the conclusion of oral agreements. This is a peremptory provision. It cannot be said that the SCM policy by implication allows a municipal manager to conclude an agreement that is rendered unlawful

by legislation. This will defeat the purpose of preventative legislation of this nature.

[45] Moreover, the SCM policy and the provisions of the MFMA is not an 'internal document' for purposes of applying the well-known indoor management rule (or *Turquand* rule). It is a public document to which parties, wishing to participate in the process, has a right to access. They have 'the obligation and the means to ascertain the public rules of the game before they participate'. [8] It therefore cannot be said that the Plaintiff did not have

knowledge of either the SCM Policy or the provisions of the MFMA when it concluded the oral agreement with the Defendant. It follows that estoppel cannot be utilised to validate a illegality.

- [46] As was stated in *Merifon (Pty) Limited v Greater Letaba Municipality and another*[9] the principle of legality was manifestly implicated because the Municipality's conduct was at odds with Section 19 of the MFMA. In casu, the illegality lies with the non-compliance with the peremptory provisions of Section 116 of the MFMA rendering the agreement void.
- [47] Having concluded that the non-compliance with the provisions of Section 116 of the MFMA renders the oral agreement by its very nature, unenforceable, this court need not ascertain if the circumstances of the matter entitled the parties to deviate from the SCM policy on the basis of urgency. The mere fact that it is common cause between the parties that the agreement was concluded orally renders a further determination of the merits unnecessary.
- [48] The Plaintiff's claim therefore stands to be dismissed. This court sees no reason why the costs should not follow the outcome of the proceedings with the exception to the wasted costs occasioned as a result of the unavailability of counsel for the Defendant on the 15th of November 2023.
- [49] As to the costs of the 15th of November 2023, the matter was postponed purely at the behest of the Defendant. There is no reason why the Defendant should not be responsible for these costs.
- [50] Having regard to the complexity of the matter, the value of the claim and the importance of the relief sought, it will be just and equitable if costs to counsel is awarded on Scale B in respect of work performed after 12 April 2024.

Order:

[51] In the result the following order is made:

25.1 The Plaintiff's claim is dismissed.

25.2 The Plaintiff is ordered to pay the costs of the Defendant including the costs to counsel on Scale B for work performed after 12 April 2024, with the exclusion of the wasted costs pertaining to the postponement of the trial on 15 November 2023.

25.3 The Defendant is ordered to pay the Plaintiff's wasted costs pertaining to the postponement of the trial on 15 November 2023.

M BRESLER

ACTING JUDGE OF THE HIGH COURT,

APPEARANCES:

FOR THE PLAINTIFF : Adv. L Franck INSTRUCTED BY : Ian Levitt Attorneys
janyde@ianlevitt.co.za FOR THE DEFENDANT : Dr. T Ramatsekisa INSTRUCTED BY : Modjadji
Raphesu Attorneys modjadjiraphesu@telkomsa.net DATE OF HEARING : 13 May 2024 DATE OF
JUDGMENT : 12 August 2024

- [1] Transcript, page 596, lines 1 – 14
- [2] As contained on page 391 of Volume 4: Trial bundle
- [3] Supply Chain Management: A Guide for Accounting Officers of Municipalities and Municipal Entities, The National Treasury, Republic of South Africa, October 2005 contained on page 77 and further in the ‘Maake bundle’ (reference is made to paginated page 88)
- [4] Section 152 of the Constitution of the Republic of South Africa, 1996
- [5] Act 56 of 2003
- [6] Published in GN R 868, GG 276636, 30 May 2005
- [7] 2008 (3) SA 1 (SCA)
- [8] See Nelson Mandela Bay Municipality v Afrisec Strategic Solutions (Pty) Ltd 2008 JDR 1014 (SE) at para [29] – [30]
- [9] 2023 JDR 2444 (CC) at [21] with reference to the decision of Merifon (Pty) Ltd v Greater Letaba Municipality 2023
- (1) SA 408 (SCA)

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