Undoing Unlawful Municipal Procurement Contracts through State Self-review: A Reflection on *Govan Mbeki Municipality v New Integrated Credit Solutions (Pty) Ltd* 2021 4 SA 436 (SCA)

SC Sephiri*

Online ISSN
1727-3781

P·E·R
Pioneer in peer-reviewed, open access online law publications

Author

Seamogelo C Sephiri

Affiliation

The Independent Institute of Education's IIEMSA, Johannesburg, South Africa

Email

seamosephiri@gmail.com

Date Submitted

10 April 2025

Date Revised

11 September 2025

Date Accepted

11 September 2025

Date Published

04 December 2025

Editor

Prof Oliver Fuo

Journal Editor

Prof Wian Erlank

How to cite this contribution

Sephiri SC "Undoing Unlawful Municipal Procurement Contracts through State Self-review: A Reflection on *Govan Mbeki Municipality v New Integrated Credit Solutions (Pty) Ltd* 2021 4 SA 436 (SCA)" *PER / PELJ* 2025(28) - DOI http://dx.doi.org/10.17159/1727-3781/2025/v28i0a21909

DOI
http://dx.doi.org/10.17159/1727-3781/2025/v28i0a21909

Abstract

The aim of this contribution is to reflect on what the judgment of the Supreme Court of Appeal (SCA) in *Govan Mbeki Municipality v New Integrated Credit Solutions (Pty) Ltd* 2021 4 SA 436 (SCA) adds to the existing jurisprudence on state self-review and to show some gaps that still need to be addressed by courts. This case note argues that the principles on state self-review, including the requirements for assessing delay, were correctly applied by the unanimous decision of the SCA in the *Govan Mbeki* case. It argues that the main contribution the SCA adds to the jurisprudence on state self-review is that, as part of assessing delays and deciding on whether to condone them or not, courts can now ask organs of state to show the steps they took against delinquent officials such as disciplinary actions and, where appropriate, criminal proceedings. This is a strong requirement that may dissuade municipal officials from instituting frivolous large-scale self-review applications that falsely seek to give the impression that they are self-correcting unlawful procurement decisions. This contribution identifies two main gaps in the jurisprudence on state self-review: the absence of a specified timeframe within which self-review applications should be instituted; and the lack of clarity on the percentage of profits that businesses can keep from unlawful procurement contracts.

Keywords

Municipalities; contract for goods and services; corruption; state self-review; Govan Mbeki Municipality; Supreme Court of Appeal; South Africa.

.....

1 Introduction

The transition to constitutional democracy in South Africa led to the restructuring of government institutions. In terms of the *Constitution of the Republic of South Africa*, 1996 (hereafter the *Constitution*), local government (made up of 257 municipalities) is established as a distinct sphere of government in a system of cooperative governance.[1] Local government has been bestowed with significant legislative, executive, fiscal and administrative powers.[2] Municipalities have powers to structure and manage their administration, budgeting and planning processes in a manner that enables them to be responsive to community needs.[3] They must govern in line with specified constitutional values such as accountability, respect for the rule of law, a high standard of professional ethics, transparency and responsiveness.[4] The conduct of every municipality must be consistent with the *Constitution*, otherwise it is invalid.[5]

Furthermore, municipalities are constitutionally mandated to: provide democratic and accountable government; promote socio-economic development; encourage a safe and healthy environment; provide services to communities in a sustainable manner; and encourage public involvement in local government matters.[6] Municipalities must also contribute towards realising the fundamental rights guaranteed in the *Constitution*, such as the right to adequate housing, the right to sufficient water, and the right to an environment that is not harmful to health and well-being, for example.[7] The *Constitution* obliges national and provincial government to support municipalities to realise their mandate.[8] This includes adopting provincial

---

* Seamogelo Charity Sephiri. LLB LLM. Lecturer, Faculty of Law, The Independent Institute of Education's IIEMSA, Johannesburg, South Africa. E-mail: seamosephiri@gmail.com. ORCiD: https://orcid.org/0000-0003-1234-0275. Thank you to the two anonymous reviewers for providing input on how to improve this case note.

1 For details, see Fuo "Courts and Local Governments in South Africa" 103-108.

2 See *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 1 SA 374 (CC) paras 35-38; *City of Cape Town v Robertson* 2005 2 SA 323 (CC) paras 55-60.

3 See s 153 of the *Constitution of the Republic of South Africa*, 1996 (the *Constitution*).

4 See ss 1(c)-(d) and 195 of the *Constitution*; Ngcobo *Informal Economy for Local Economic Development* 60-61.

5 See s 2 of the *Constitution*.

6 See s 152 of the *Constitution*. Also see Rautenbach and Venter *Constitutional Law* 233.

7 See ss 7(2), 8(1) 24, 26, and 27 of the *Constitution*; s 4(2)(j) of *the Local Government: Municipal Systems Ac*t 32 of 2000. Also see Fuo "Courts and Local Governments in South Africa" 108-110.

8 Section 154(1) of the *Constitution*; also see Rautenbach and Venter *Constitutional Law* 234.

and national regulations to guide the exercise of municipal powers and functions.[9]

Like any other organ of state, municipalities must use public procurement to achieve their service delivery mandate.[10] Section 217 of the *Constitution* provides the main regulatory framework for municipalities to procure goods and services. In terms of section 217(1) of the *Constitution*: when a municipality procures goods or services, it must do this in terms of a system which is fair, competitive, equitable, cost-effective and transparent. Section 217(2) of the *Constitution* makes provision for the advancement of historically disadvantaged people in public procurement. On the other hand, section 217(3) of the *Constitution* requires legislation to be adopted to regulate a system of preferential procurement. Section 217(1) of the *Constitution* is mandatory.[11] When a municipality procures contrary to this provision, such procurement is illegal, unlawful and invalid.[12] This will equally be in violation of the supremacy of the *Constitution* and the principles of the rule of law.[13] In terms of legislation, Chapter 11 of the *Local Government: Municipal Finance Management Act* 56 of 2003 (the MFMA) provides the overarching statutory regulatory framework for procurement in the local government context.[14]

---

9 Steytler and De Visser *Local Government Law* 15-5 to 15-57; Fuo 2017 *De Jure* 329-330.

10 See the definition of organ of state in s 239 of the *Constitution*.

11 See *Koth Property Consultants CC v Lepelle-Nkumpi Local Municipality Ltd* 2006 2 SA 25 (T) para 6; *Airports Company South Africa SOC Ltd v Imperial Group Ltd* 2020 4 SA 17 (SCA) para 20; *BW Bright Water Way Props (Pty) Ltd v Eastern Cape Development Corporation* 2019 6 SA 443 (ECG) para 66; *Tetra Mobile Radio (Pty) Ltd v MEC, Department of Works* 2008 1 SA 438 (SCA) para 8.

12 *Municipal Manager: Quakeni v FV General Trading CC* 2010 1 SA 356 (SCA) para 14

13 Section 1(c) of the *Constitution*.

14 Other relevant national legislation and National Treasury guidelines include: the *Preferential Procurement Policy Framework Act* 5 of 2000, which directly gives effect to s 217(2) of the *Constitution*; the *Preferential Procurement Policy Regulations* (GN R32 in GG 40553 of 20 January 2017); Code of Conduct for Municipal Councilors: Schedule 1 of the *Local Government: Municipal Systems Act* 32 of 2000; the *Municipal Supply Chain Management Regulations* (GN R868 in GG 27636 of 30 May 2005) (*MSCM Regulations*); MFMA Circular No 83 (National Treasury 2016 https://mfma.treasury.gov.za/Circulars/Documents/MFMA%20Circular%2083%20-%20eTender%20Portal%20-%2018%20July%202016.pdf); MFMA Circular No 102 National Treasury 2020 (https://mfma.treasury.gov.za/Circulars/Documents/Forms/AllItems.aspx?RootFolder=/Circulars/Documents/MFMA%20Circular%20102%20-%20Emergency%20Procurement%20in%20Response%20to%20National%20State%20of%20Disaster&FolderCTID=0x012000E772703726E2A8479752CF24A134692B&View=%7b06AB24E7-1C64-4A80-A0FA-273E6A829094%7d); and MFMA Circular No 103 (National Treasury 2020 https://mfma.treasury.gov.za/Circulars/Documents/MFMA%20Circular%20No%20103%20-%20Preventative%20Measures%20in%20Response%20to%20COVID%2019%20-

At times non-compliance with the regulatory framework for procurement by municipalities is linked to corruption. Corruption in municipal procurement is rampant across South Africa.[15] The "best-known form of corruption is the award of tenders and other contracts to certain companies on conflictual relations such as friendships or family connections".[16] In terms of the *Prevention and Combating of Corrupt Activities Act* 12 of 2004, corruption in procurement takes place when a municipal official or politician accepts bribes in order to improperly influence the award, execution or implementation of any contract or to fix the price of a contract.[17]

The award of a tender by a municipality constitutes administrative action because it meets the definitional elements in the *Promotion of Administrative Justice* Act 3 of 2000 (PAJA).[18] This is so because procurement by local government equates to the exercise of public power and the performance of a public function, which falls within the domain of administrative action.[19] This means that, apart from complying with the dictates of local procurement law, municipal officials must also comply with the right to just administrative action as given effect through PAJA.[20]

A municipality or municipal administrator who believes an award was erroneously or fraudulently made can approach a court to review and nullify the decision to award a tender, for example. Such a review must take place through the constitutional principle of legality.[21] It is now settled law that where an organ of state seeks to review and nullify its own administrative act (state self-review), legality is the route for review and not review in terms

27%20May%202020.pdf). This fragmented regulatory framework will be replaced by the *Public Procurement Act* 28 of 2024 when it comes into effect.

15 Ramaphosa 2020 https://www.businesslive.co.za/fm/opinion/2020-08-24-read-in-full-president-cyril-ramaphosas-letter-to-anc-members-about-corruption/ 6; AGSA 2020 https://www.agsa.co.za/Portals/0/Reports/MFMA/201819/GR/MFMA%20GR%202018-19%20Final%20View.pdf 145-190; Pooe, Mafini and Makhubele 2015 *IBER* 67-77; Ambe and Badenhorst-Weiss 2012 *Journal of Transport and Supply Chain Management* 249; National Treasury *Public Sector Supply Chain Management Review* 4; Ambe 2016 *Research Journal of Business and Management* 278.

16 Ramaphosa 2020 https://www.businesslive.co.za/fm/opinion/2020-08-24-read-in-full-president-cyril-ramaphosas-letter-to-anc-members-about-corruption/ 5.

17 See ss 12 and 13 of the *Prevention and Combating of Corrupt Activities Act* 12 of 2004.

18 See the meaning of "administrative action" and "decision" in s 1 of the *Promotion of Administrative Justice Act* 3 of 2000 (PAJA).

19 *City of Tshwane Metropolitan Municipality v New GX Enviro Solutions and Logistics Holdings (Pty) Ltd* (53694/20) [2021] ZAGPPHC 390 (21 June 2021) para 11.

20 See ss 33 of the *Constitution* and s 3 of PAJA. Also see *Khumalo v Member of the Executive Council for Education, Kwa-Zulu Natal* 2015 5 SA 57 (CC).

21 *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 2 BCLR 240 (CC) para 40 (hereafter the *Gijima* case).

of PAJA.[22] The main reason for this approach is that the constitutional right to just and administrative action does not extend to the state.[23] In *Gijima* the Constitutional Court held that because PAJA was specifically enacted to give effect to the rights of private persons to administrative justice under section 33 of the *Constitution*, PAJA cannot apply to state self-review.[24] Due to this exclusion of PAJA, the Court held that the principle of legality is the preferred tool for constitutional control of the exercise of public power.[25] The decision of the Court in *Gijima* regarding the appropriate route for self-review by organs of state has been applied in cases where municipalities applied to courts to review and set aside their own procurement decisions.[26] The route of self-review adopted by the Constitutional Court has, however, been subject to trenchant criticism.[27]

The aim of this contribution is to reflect on what the judgment of the Supreme Court of Appeal (SCA) in *Govan Mbeki Municipality v New Integrated Credit Solutions (Pty) Ltd* 2021 4 SA 436 (SCA) adds to the existing jurisprudence on state self-review and to show gaps that still need to be addressed by courts. In order to achieve this objective, the remainder of the contribution is structured in two parts. The first part of the case note provides an overview of the *Govan Mbeki Municipality* case: the facts, the issues in dispute, the decisions, and the reasoning of the court. The second part reflects on the significance of the SCA judgment and highlights gaps in the jurisprudence on self-review. The contribution ends with a conclusion.

2 Overview of the *Govan Mbeki Municipality* case

2.1 Facts and issue in dispute

This case centred on the lawfulness of a debt management contract that was entered into between the appellant, Govan Mbeki Local Municipality, and the respondent, New Integrated Credit Solutions (Pty) Ltd (NICS).[28] Following an order by the High Court declaring only part of the agreement invalid, the Municipality approached the SCA to declare the entire agreement with NICS invalid due to the allegations that it was marred with

22 *Gijima* case paras 27-40; *Buffalo City Metropolitan Municipality v ASLA Construction (Pty) Ltd* 2019 6 BCLR 661 (CC) (hereafter the *Buffalo City* case) para 45; *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye and Lazer Institute* 2014 3 SA 481 (CC) para 82; *Khumalo v Member of the Executive Council for Education: KwaZulu-Natal* 2014 3 BCLR (CC) (hereafter the *Khumalo* case) paras 28 and 44.

23 See *Gijima* case paras 27-29.

24 See *Gijima* case paras 30-31.

25 *Gijima* case paras 38-40.

26 The *Buffalo City* case*; Govan Mbeki Municipality v New Integrated Credit Solutions (Pty) Ltd* 2021 4 SA 436 (SCA) (hereafter the *Govan Mbeki Municipality* case).

27 Boonzaier 2018 *SALJ* 642-677; Hoexter and Penfold *Administrative Law* 154-155, 739-741.

28 *Govan Mbeki Municipality* case para 1.

irregularities and non-compliance with statutory prescripts and constitutional norms.[29] On the other hand, NICS argued that the SCA should declare the entire agreement as valid and enforceable.

The Newcastle Local Municipality issued a tender notice by inviting bids from service providers for debt management services towards the end of 2014.[30] NICS submitted a bid to collect debt older than 60 days for the Municipality at a charge of 16.5%, which included value-added tax at 14%, on all successfully recovered revenue. The Newcastle Local Municipality's bid-adjudicating committee agreed that NICS should be appointed as the service provider. NICS was informed that it was the preferred bidder on 3 February 2015, and this was confirmed by the Municipality in writing on 25 March 2015. NICS was informed that it would be used as a service provider for a period of 3 years on a commission of 16.5% on collected debt from customers that was more than 60 days old. As a result, a service agreement was finalised between Newcastle Local Municipality and NICS on 30 April 2015. A clause was included in this agreement to the effect that NICS would be entitled to a commission of 2.5% on debts younger than 60 days.[31]

The Govan Mbeki Local Municipality (GMLM) became aware that the Newcastle Local Municipality had procured the services of NICS without certainty on the details of the bid specification and bid-adjudication process. Acting in terms of regulation 32 of the *Municipal Supply Chain Management Regulations* (the *MSCM Regulations*) the GMLM approached the Newcastle Local Municipality to secure its consent in order to procure debt management services from NICS. In terms of this provision, a Supply Chain Management Policy may allow an accounting officer to procure goods or services for a municipality or municipal entity under a contract that was secured by another organ of state. After obtaining the green light from the Newcastle Local Municipality, GMLM and NICS finalised a written agreement for the provision of debt management services on 12 September 2015 for a period of 3 years. Essentially, GMLM adopted the same type of agreement that NICS had with the Newcastle Local Municipality.[32] The agreement contained an obligation on the parties to submit any dispute arising therefrom to arbitration and that the decision of the arbitrator would be final and binding, and might be made an order of court.[33]

It emerged that, when the Newcastle Local Municipality published the call to tender for debt management services, it had the intention of creating a debt management unit to manage debts younger than 60 days. Following

29 *Govan Mbeki Municipality* case para 1.
30 *Govan Mbeki Municipality* case para 2.
31 *Govan Mbeki Municipality* case para 4.
32 *Govan Mbeki Municipality* case paras 6-9.
33 *Govan Mbeki Municipality* case para 9.

the conclusion of the agreement with NICS, it occurred to the Director of Finance of the Newcastle Local Municipality that the City had budgetary limitations which made it impossible to establish this unit. The Director then approached NICS to see if they could "help" Newcastle Local Municipality collect debts under 60 days. That led to negotiations with NICS which resulted in the September 2015 agreement. The Newcastle Local Municipality justified its deviation from the original notice to tender by placing reliance on section 116(3) of the MFMA, which entitles a municipality to vary an existing contract provided that certain conditions are met.[34]

On 7 November 2016 the Auditor-General (AG) wrote to the Newcastle Local Municipality informing it that the provision in the written agreement concerning the 2.5% commission to NICS in respect of younger debts had not been called for in a tender notice and was not part of the bid by either the NICS or the other bidders. In addition, the AG indicated that the procurement process was unfair to other suppliers and tenderers of the same services.[35] Therefore, according to the AG the Newcastle Local Municipality had not complied with the provisions of section 217(1) of the *Constitution* when procuring debt management services.

In February 2017, having become aware of the details above, the GMLM took a decision to terminate the agreement with NICS by relying on the provisions of section 217 of the *Constitution*. GMLM's decision was based on the fact that, contrary to the requirements of section 217 of the *Constitution*, none of the bidders, including NICS, had been invited to tender for the collection of outstanding debts under 60 days and that the provision of the additional 2.5% commission was unlawful and void.[36] Additionally, the GMLM stated that it was ignorant of the failure of the Newcastle Local Municipality to comply with the legal requirements.[37] It stated that NICS was not entitled to claim 2.5% commission on debt collected from the Municipality's customers because this was not subject to a competitive bidding process mandated by law. GMLM stated that NICS was entitled to claim 16.5% commission only on debt which it had collected from its

---

34 Section 116(3) of the *Local Government: Municipal Finance Management Act* 56 of 2003 (the MFMA) provides that: "(3) A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after— *(a)* the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and *(b)* the local community— (i) has been given reasonable notice of the intention to amend the contract or agreement; and (ii) has been invited to submit representations to the municipality or municipal entity."

35 *Govan Mbeki Municipality* case para 12.

36 *Govan Mbeki Municipality* case para 13

37 *Govan Mbeki Municipality* case para 14

customers and that it was further terminating the contract because NICS had failed to fulfil its contractual obligations.[38] The termination letter stated that GMLM was open to arbitration if NICS found it necessary.

NICS declined the efforts of GMLM to terminate the agreement and approached the High Court for relief to interdict the Municipality from terminating the agreement. Both NICS and the Municipality agreed that the dispute should go for arbitration. On 23 August 2017 an award was made in favour of NICS on the basis that the GMLM's purported cancellation was invalid and of no force. Ultimately the arbitrator ordered that GMLM should pay NICS more than R22 million for debts older than 60 days and more than R23 million for debts younger than 60 days.[39] While the arbitration was being conducted, on 21 June 2017 the GMLM instituted action in the High Court in which it sought an order to declare the entire agreement between itself and NICS unconstitutional, unlawful and invalid *ab initio*. Alternatively, it argued that the part of the agreement dealing with the 2.5% commission be reviewed, declared unconstitutional and set aside because it had not gone through the competitive process and therefore was not in line with section 217 of the *Constitution* and legislation.[40] GMLM argued that the delay in seeking relief was justified and argued that the court should overlook it.[41] NICS, however, insisted that the delay in seeking the relief was a legality review, that it should not be entertained, and that it should be dismissed with costs.[42] NICS denied that the agreement was in conflict with any applicable law. NICS argued that if the court were compelled to declare the contract invalid, justice and equity required that the court should preserve the rights that had already accrued to it.[43] The court concluded that there was no undue delay on the part of GMLM, even though it had become aware of the illegality of the agreement after the AG raised the matter with the Newcastle Local Municipality in November 2016. The court held that the 2.5% commission was against section 217 of the *Constitution* and the relevant Regulations of the MFMA.[44] The court decided not to set aside the entire agreement but to sever the part that covered the 2.5% commission. It declared it unconstitutional, unlawful and void *ab initio* and held that NICS was not entitled to recover any compensation or commission for debts collected from the Municipality's customers under 60 days for the duration of the agreement.[45]

38 *Govan Mbeki Municipality* case para 14.
39 For details of the award, see *Govan Mbeki Municipality* case paras 16-19.
40 *Govan Mbeki Municipality* case para 20.
41 *Govan Mbeki Municipality* case para 20.
42 *Govan Mbeki Municipality* case para 21.
43 *Govan Mbeki Municipality* case para 21.
44 *Govan Mbeki Municipality* case paras 23-24.
45 *Govan Mbeki Municipality* case paras 25-26.

GMLM appealed against the decision of the High Court and argued that the entire agreement ought to have been set aside. GMLM argued that its review application should be seen as a collateral challenge devoid of the *Constitution* and the principle of legality.[46] NICS cross-appealed and argued that GMLM's delay in seeking relief in the High Court was unreasonable and should not have been overlooked, and that the application to review and set aside the agreement should have been dismissed on this basis. NICS argued that regulation 32 of the *MSCM Regulations* did not affect the agreement between itself and GMLM and that it applied only to the agreement with Newcastle Local Municipality. NICS argued that GMLM's challenge relied on the principle of legality and therefore section 172 of the *Constitution* was applicable in relation to the exercise of the court's discretionary powers.[47]

2.2 Decision and reasoning of the court

The court focussed on the true nature of the review application by GMLM. According to the court, the review application was state self-review in terms of legality.[48] The court reiterated the established principle that in dealing with a legality review, a court has no pre-determined period during which an application for review should be brought. In this regard, the interest of justice determines how the court uses its discretion. In determining the issue of delay and the manner in which the court should use its discretion in a legality review, a court considers "the date that the applicant became aware or reasonably ought to have become aware of the action taken".[49] Restating the jurisprudence of the Constitutional Court, the court explained that in assessing delay the first question to be answered is whether the delay was reasonable. In this assessment the entire period of the delay must be explained and if it is justified, then the delay is reasonable, and then the merit of the review can be considered. In addition, where the delay cannot be explained and justified, it is unreasonable.[50] The court explained that if the delay is found to be unreasonable, a court has to assess whether the interest of justice requires it to overlook the unreasonable delay.[51] The court reiterated the view of the Constitutional Court that there must be a basis for any court to exercise its discretion to overlook a delay which can be gathered from the facts presented before it or from objectively available factors.[52]

---

46 For details of arguments in the Supreme Court of Appeal (SCA) by the Goven Mbeki Local Municipality (GMLM), see *Govan Mbeki Municipality* case para 27.

47 *Govan Mbeki Municipality* case para 28.

48 *Govan Mbeki Municipality* case para 34.

49 *Govan Mbeki Municipality* case para 34.

50 *Govan Mbeki Municipality* case para 35.

51 *Govan Mbeki Municipality* case paras 35-36.

52 *Govan Mbeki Municipality* case paras 36-37.

According to the court, these show that a legality review is flexible. It requires a consideration of multiple factors and different contexts. An important factor that is considered is the potential prejudice to affected parties and the consequences that flow from declaring a conduct unlawful – which can in some instances be cured by the power of courts to grant just and equitable relief.[53] Another factor which a court takes into account is the nature of the impugned decision.[54] The fourth factor that the court can consider is the conduct of the applicant.[55] The court reiterated that there is a higher standard placed on organs of state to respect the rule of law and government officials have a duty to ensure that substantive and procedural legal requirements are met when dealing with rights.[56] Finally the court restated the position that, where there is no ground to overlook an unreasonable delay, a court is required in terms of section 172(1)(a) of the *Constitution* to declare invalid any conduct that is unlawful and inconsistent with the *Constitution*. Despite a declaration of invalidity, a court may, through the provision of equitable relief, preserve rights which have already accrued from an unlawful contract.[57]

After setting out the above context, the court established that there had been unreasonable delay in instituting and completing the review proceedings and that there was no explanation of the delay.[58] The court established that if GMLM had taken time to look at the documents that were sent to it in August 2015, it could have realised before it concluded the contract with NICS that the original agreement was of questionable validity and that it did not meet the requirements of regulation 32(a) to (c) of the *MSCM Regulations* and section 217(1) of the *Constitution*. The court reasoned that GMLM certainly ought to have known at the time it concluded the agreement in September 2015.[59] At this stage, GMLM should have also realised that the Newcastle Local Municipality had added to the contract debt younger than 60 days without inviting new tenders. A basic check by GMLM should have revealed that the Newcastle Local Municipality had not submitted the extension of the contract to the municipal council, as required by section 116(3) of the MFMA.[60]

The court indicated that during the early implementation of the agreement, GMLM should have experienced challenges such as cost-inefficiency in determining whether payments for debt older than 60 days were being made

53 *Govan Mbeki Municipality* case para 37.
54 *Govan Mbeki Municipality* case paras 38-39.
55 *Govan Mbeki Municipality* case para 40.
56 *Govan Mbeki Municipality* case para 40.
57 *Govan Mbeki Municipality* case paras 41-46.
58 *Govan Mbeki Municipality* case para 52.
59 *Govan Mbeki Municipality* case para 48.
60 *Govan Mbeki Municipality* case paras 29-30, 49.

as a result of the intervention by NICS. Such inefficiency should have spurred GMLM to investigate the validity of the agreement.[61] Despite this, GMLM raised a concern about the legality of the 2.5% commission only 17 months after the effective date of the contract. GMLM instituted action to set aside the entire agreement only 22 months after the effective date of the contract – leading to the case before the SCA. The court noted that by the time the trial started in the High Court, the contract period with NICS had already expired.[62]

In relation to the merits of the case and the degree of statutory non-compliance, the court indicated that it was clear that the part of the 2.5% add-on to the agreement did not comply with regulation 32 of the *MSCM Regulations* and that the non-compliance was atrocious.[63] Based on the facts, the court concluded that the prescripts of both regulation 32 and regulation 51 "were not even close to being adhered to".[64] Justice Navsa disappointedly observed that there had been a complete failure to comply with the competitive bidding process and that the municipal officials had not considered whether there were demonstrable discounts or benefits for the Newcastle Local Municipality. The Judge observed that it was highly likely that a substantial, if not the greater percentage of consumers, would pay their accounts within the first 60-day period.[65] He observed that in relation to the bid as a whole and the resultant agreement, municipal officials did not think about how the recovery of revenue would or could be connected to efforts made or steps taken by the service provider. The Municipality did not place a cap on the commission to be earned. Based on these factors, the Judge held that the prescripts of both regulations 32 and 51 of the *MSCM Regulations* had not been adhered to. The Judge observed that:

> In respect of the tender itself it is necessary to record at this stage that there was no indication at all that NICS was remiss in any way in either not bidding in the form invited or insisting on particular contractual provisions. However, in respect of the add-on it could not have been lost on NICS that it was receiving preferential treatment, as opposed to other bidders, and it was not being asked to revisit the commission on which it had put in a bid. It was more than a windfall that it was glad to accept. That unwarranted benefit was repeated in the GMM agreement. As the computation by the arbitrator proves, the commission on the under 60-day period was especially lucrative, earning NICS approximately R1 million more than it did on the over 60 day revenue. It bears repeating that the total earned in relation to debts younger than 60 days amounted to more than R23 million based on a fraction of the commission in relation to debts older than 60 days. By any measure this is startling. To add insult to consumer injury, payments by the GMM's bulk consumers were included in the computation of what was earned by NICS. There is everything

61 *Govan Mbeki Municipality* case para 49.
62 *Govan Mbeki Municipality* case para 51.
63 *Govan Mbeki Municipality* case para 53.
64 *Govan Mbeki Municipality* case para 53.
65 *Govan Mbeki Municipality* case para 53.

> fundamentally wrong with all of this. This will be borne in mind when an order is made at the end of this judgment.[66]

As evident from the above extract, NICS was complicit in the illegal conduct. This notwithstanding, the court reiterated that there was a legal duty imposed on GMLM officials to satisfy themselves that the bid process complied with legal prescripts and that they had horribly failed in executing this duty. These officials had not shown any concern for good governance or the best interests of the people and businesses that make up their customer base.[67]

The court found that there had been unreasonable delay, and there was no good reason to overlook it. The court held that the agreement in the case before it was clearly unlawful and that it had a duty to declare it as such. Given that a service provider suffers prejudice when a service is rendered without remuneration, the court had to use its equitable remedial powers in section 172(1)(b) of the *Constitution*.[68] The court ordered that NICS should not be deprived of benefits that accrued under the agreement pertaining to commissions earned for debts older than 60 days. However, due to its complicity with the unlawful conduct of GMLM, the court ordered that NICS should be deprived of all commission in relation to debts younger than 60 days.[69] The court expressed the view that: "A message should be sent to service providers that they will not be allowed to reap the benefits of such complicity."[70] The court set aside the order of the lower court.[71]

3 Reflection on the *Govan Mbeki* judgment

3.1 Alignment with jurisprudence of the Constitutional Court

The unanimous decision of the SCA in the *Govan Mbeki* case correctly and heavily relies on the Constitutional Court judgment in the *Buffalo City* case,[72] where the majority of the Court had the opportunity to consolidate its rules on state self-review.[73] In the *Buffalo City* case the Buffalo City Metropolitan Municipality sought to review and set aside its own procurement decision

66 *Govan Mbeki Municipality* case para 53.
67 *Govan Mbeki Municipality* case paras 54-55.
68 *Govan Mbeki Municipality* case paras 57-62.
69 *Govan Mbeki Municipality* case para 63.
70 *Govan Mbeki Municipality* case para 62.
71 The SCA ordered that: "(a) The contract for the provision of debt management services, concluded by the parties during September 2015, which is the subject of this action, is declared unconstitutional and invalid but is set aside only in relation to recovery by the defendant of the commission of 2.5% in respect of debts younger than 60 days, so as to preserve the accrued rights of the defendant as set out in (b) below. (b) The defendant is thus not precluded from recovery of the commission of 16.5% on debts older than 60 days in the amount calculated by the arbitrator, Justice Harms." See *Govan Mbeki Municipality* case para 64.
72 The *Buffalo City* case.
73 *Govan Mbeki Municipality* case paras 34-48, 58-60.

on the ground that the award of a contract had not followed constitutional and statutory prescripts. The Constitutional Court followed its earlier decision in the *Gijima* case and adjudicated the issue on the basis of the legality principle and not PAJA, as the High Court had done. The Constitutional Court observed that:

> The issues raised in this matter have a broader impact beyond the immediate parties. This is so given the current political context where many municipalities are changing administration and undertaking to 'clean house'. The case not only raises legal questions of importance but also affords this court the opportunity to provide guidance to organs of state who may wish to bring similar applications in the future and to lower courts dealing with these cases. The terrain of 'self-review', where a body seeks to review its own decision, has been dealt with in the decisions of this Court in *Tasima* I,[74] *Khumalo*,[75] *Kirland*,[76] *Aurecon*[77] and *Gijima*. However, because these cases – save for *Khumalo* and *Gijima* – dealt with PAJA reviews, it is necessary that we consider the principles emerging from these decisions and the extent of their application, if any, to the legality review.[78]

As is evident from the above extract, one of the main concerns of the Court in the *Buffalo City* case was to develop guidelines to help organs of state and lower courts to deal with self-review cases in future. Justice Theron concluded that it is "now settled that an organ of state seeking to review its own decision must do so under the principle of legality and cannot rely on PAJA".[79] Although South Africa's law on legality review through self-review is settled, different opinions expressed in the majority and minority judgments traversed by Justice Navsa in the *Govan Mbeki Municipality* case[80] show that this area of the law may be reformed in the future to bring about greater certainty. This point was eloquently captured by Justice Navsa, when he remarked that:

> Appreciating that our law on self-review has become somewhat encrusted, it would nevertheless be presumptuous of us to become embroiled in the differences between the majority and minority judgments in *Asla*. Our courts might, in time, after adjudicating a string of cases with various permutations streamline an approach to self-review, or the legislature might intervene, in a constitutionally compliant manner, to cover all forms of review, including those that pertain to the executive and provide for how delay is to impact on such reviews. The Constitutional Court might, in time, revisit prior decisions.[81]

Until the above legal reform comes into realisation, South Africans are bound to follow the rules of state self-review as dictated by the majority of

---

74 *Department of Transport v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC).
75 The *Khumalo* case.
76 *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye and Lazer Institute* 2014 3 SA 481 (CC).
77 *City of Cape Town v Aurecon South Africa (Pty) Limited* 2017 6 BCLR 730 (CC).
78 *Buffalo City* case paras 37-38.
79 *Buffalo City* case para 45.
80 *Govan Mbeki Municipality* case paras 34-46.
81 *Govan Mbeki Municipality* case para 47.

the Constitutional Court in the *Buffalo City* case. The principles on state self-review, including the requirements for assessing delay, were correctly applied by the unanimous decision of the SCA in the *Govan Mbeki* case.[82] This notwithstanding, some South African scholars have argued that the Constitutional Court adopted a wrong legal position on self-review by holding that this cannot take place through PAJA.[83]

3.2 The issue of delay in self-review cases

A common factor across self-review cases is that organs of state that use state self-review as a mechanism to undo their administrative decisions bring such applications before the court after contract periods have run for a long time, placing contractors in a financially exposed position.[84] Aberrant officials of the state do not face judicial sanctions for the role that they play in procurement processes. In the *Govan Mbeki Municipality* case, Justice Navsa observed angrily that:

> This case is part of an ever growing, and frankly disturbing, long line of cases where municipalities and organs of state seek to have their own decisions, upon which contracts with service providers are predicated, reviewed and overturned, for want of legality, more often than not after the contracts have run their course and services have been rendered hereunder, after failing in the most basic fashion in their duty to ensure they comply with constitutional norms and statutory prescripts, and after compounding the initial errors and, as in this case, litigating at large scale, organs of state falsely seek to claim the moral high ground. All of this at public expense and free of sanctions against the functionaries involved.[85]

The above observation speaks to the attitude of officials in organs of state and the way they are deliberately evading accountability. Organs of state are prone to breaching contracts in the understanding that they will escape accountability.[86] It is imperative to notice how, when organs of state endeavour to approach courts for a relief to declare invalid and set aside some of their decisions and declare them unconstitutional, they give the impression that they are doing that which is in the public interest, although that is not usually the case.[87] As already indicated in the *Govan Mbeki* judgment above, although self-review cases do not have a time period within which they should be brought to court, they should be brought within a reasonable time.[88] Without this, there must be a good and honest

---

82 *Govan Mbeki Municipality* case para 34.

83 Boonzaier 2018 *SALJ* 642-677; Hoexter and Penfold *Administrative Law* 154-155, 739-741.

84 See *Sakhisizwe Local Municipality v Tshefu* 2020 2 All SA 299 (ECG); *Altech Radio Holdings (Pty) Limited v City of Tshwane Metropolitan Municipality* 2021 3 SA 25 (SCA); *Govan Mbeki Municipality* case.

85 *Govan Mbeki Municipality* case para 1.

86 Cachalia 2022 *SAJHR* 70; Boonzaier 2018 *SALJ* 662.

87 *Buffalo City* case paras 43-63; *Govan Mbeki Municipality* case para 47.

88 *Buffalo City* case paras 43-63; *Govan Mbeki Municipality* case para 34.

explanation of why the delay occurred. This gives the court information to decide on whether to condone the delay or not. The interest of justice is also used by the court to determine whether to condone or overlook the delay.[89]

3.3 Role of courts in combatting local procurement corruption

Courts play an important role in combatting procurement corruption.[90] Fombad argues that, if courts are willing and able to rigorously enforce the law in a fair, impartial and consistent manner, there is a likelihood that they will contribute towards minimising corruption.[91] It is argued that such rigorous enforcement begins with the correct interpretation of relevant laws, and making reasonable, just, lawful and equitable findings.[92] Through their judgments courts contribute towards making procurement and anti-corruption law as well as to deepening the associated legal discourse.[93] It is submitted that the exercise of the court's role may also contribute towards clarifying the duties of relevant role-players in municipal supply-chain management processes as well as the duties of private businesses.[94]

A reading of the judgment of the SCA in the *Govan Mbeki Municipality* case, as in many other self-review cases,[95] shows that courts play a pivotal role in combatting corruption through their consistent refusal to entertain frivolous applications for self-review by organs of state and by holding organs of state to account not only to the community they serve but to the *Constitution* as well. In the *Govan Mbeki Municipality* case Justice Navsa outlined the possibility that courts may in the near future strengthen their accountability role by expanding the requirements that must be met when an organ of state seeks to justify a delay in instituting a self-review application. According to Justice Navsa:

> However, if the maladministration or corruption is discovered late by conscientious officials seeking to take corrective and appropriate action, courts might insist in the future that public authorities seeking time indulgences set out the steps they took in relation to the misconduct by errant officials, that resulted in the need for corrective action, including, but not limited to disciplinary actions, and where appropriate, criminal proceedings. All the more so, if the corruption or maladministration was hidden from disclosure by inept or corrupt officials. If a service provider was complicit then

89 *Buffalo City* case para 43-63; *Govan Mbeki Municipality* case para 35.

90 Fombad "Corruption and the Crisis of Constitutionalism" 46; Art 11(1) of the *United Nations Convention Against Corruption* (2005).

91 Fombad "Corruption and the Crisis of Constitutionalism" 46.

92 Fuo 2015 *Commonwealth Journal of Local Governance* 19.

93 Fuo 2015 *Commonwealth Journal of Local Governance* 20.

94 Fuo 2015 *Commonwealth Journal of Local Governance* 20.

95 See the *Gijima* case; the *Buffalo City* case; *MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye and Lazer Institute* 2014 3 SA 481 (CC); the *Khumalo* case; *Altech Radio Holdings (Pty) Limited v City of Tshwane Metropolitan Municipality* 2021 3 SA 25 (SCA); *Sakhisizwe Local Municipality v Tshefu* 2020 2 All SA 299 (ECG).

> questions might be asked about what steps were taken by the public authority in relation to such complicity. Beyond the courts, these aspects might even be catered for by legislation. We must all of us, in every branch of the State and civil society, make every effort to protect public monies and ensure that our country's necessary developmental goals as envisaged by the Constitution, in the interest of all our people are met.[96]

It can be said that the above approach is consistent with the powers accorded to courts in section 172(1)(b) of the *Constitution* to make any order that is just and equitable when it decides on any constitutional matter within its competences. In *Economic Freedom Fighters v Speaker of the National Assembly*, Justice Jafta remarked that the power to grant a just and equitable order is wide and flexible, and that it allows courts to formulate an order that does not follow prayers in the notice of motion or some other pleading.[97] Justice Jafta observed that this power enables courts to address the real dispute between the parties by requiring them to take steps aimed at making their conduct consistent with the requirements of the *Constitution*.[98]

The power granted to courts in section 172(1)(b) of the *Constitution* enables judges, such as Justice Navsa to ask a municipality about the steps it took in relation to any misconduct of corrupt officials in procurement contracts under self-review. It is argued that the power of courts in section 172(1)(b) of the *Constitution* is wide enough to enable courts to apply section 32(1)(c) of the MFMA, even when it was not part of the pleadings.[99] This provision seeks to ensure that any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorised an irregular expenditure, is liable for that expenditure. In the procurement context this ensures that municipal officials and politicians that are complicit in unlawful procurement decisions should be personally held liable. This provision has been recently applied by the Special Tribunal and the SCA, albeit not in self-review cases.[100] It is argued that if courts consistently apply section 32(1)(c) of the MFMA in unlawful procurement cases, this will send a very strong message to municipal officials and politicians that the days of *laissez-faire* are over. This provision creates a strong personal statutory liability that could discourage procurement corruption in South African municipalities.

---

96 *Govan Mbeki Municipality* case para 47.

97 *Economic Freedom Fighters v Speaker of the National Assembly* 2018 3 BCLR 259 (CC) para 211.

98 *Economic Freedom Fighters v Speaker of the National Assembly* 2018 3 BCLR 259 (CC) para 211.

99 See s 32 of the MFMA, which deals with unauthorised, irregular or fruitless and wasteful expenditure.

100 *Special Investigation Unit, Matzikama Local Municipality v DUNECO CC* (unreported) case no WC/05/22 of 23 June 2023; *Mbambisa v Nelson Mandela Bay Metropolitan Municipality* 2025 3 SA 112 (SCA).

3.4 Profits from unlawful procurement contracts

In the *Govan Mbeki Municipality* case the SCA did not deal with the issue of profits derived from unlawful contracts that are often secured through corrupt means. This is also a thorny issue which has not been fully addressed in South Africa's self-review jurisprudence.[101] As Du Plessis and Fuo argue, the law is "not clear on what percentage of the profits can be recovered from contractors that were part of the corruption. While contractors are generally allowed to keep profits earned from corrupt procurement deals once they have performed their tasks, courts have indicated a willingness to scrutinise excessive profits".[102] The approach adopted by the SCA to the application of section 32(1)(c) of the MFMA shows that even where a municipality received some services under an irregular or unlawful procurement contract, implicated municipal officials or politicians are still required to repay municipalities the full expenditure that was incurred under such contracts.[103] In the *Mbambisa* case the SCA said that the plain wording of section 32(1)(c) of the MFMA makes it clear that "recovery of unauthorised, irregular, and fruitless and wasteful expenditure by a municipality, is not optional. Instead, the municipality is enjoined to recover such expenditure from the person liable for it, hence the word 'must' in section 32(2)" of the MFMA. The SCA concluded at para 52 of the *Mbambisa* case that:

> The defendants' submission that a claim under s 32 should fail where significant value is received for the work done, is also incorrect. No such requirement is contained in s 32. Rather, s 32 is a self-standing provision that imposes statutory liability on political office-bearers and municipal officials for unauthorised, irregular, and fruitless and wasteful expenditure, as defined in s 1 of the MFMA. In this case the Municipality proved that the defendants had incurred irregular expenditure – the impugned appointment and the unlawful payments were made deliberately or negligently in violation of the SCM policy – which the Municipality was enjoined to recover.

The position above adopted by the SCA is based on the wording and purpose of section 32 of the MFMA. The application of this provision further complicates the issue of profits from unlawful procurement contracts because once the municipality has used section 32(1)(c) of the MFMA to recover irregular expenditures, the business actor can still retain the profit made from the irregular contract. It is worth noting that municipalities do not

---

101 This issue has been dealt with by courts in a number of cases such as *Black Sash Trust v Minister of Social Development (Freedom Under Law Intervening)* 2017 5 BCLR 543 (CC); *RAiN Chartered Accountants Incorporated v South African Social Security Agency* 2021 11 BCLR 1225 (CC); *Siyangena Technologies (Pty) Ltd v PRASA* (487/2021) [2022] ZASCA 149 (1 November 2022); the *Govan Mbeki Municipality* case.

102 Du Plessis and Fuo 2024 *SAJS* 3.

103 *Mbambisa v Nelson Mandela Bay Metropolitan Municipality* 2025 3 SA 112 (SCA) paras 23-52.

always suffer losses where irregular expenditure was incurred. Sometimes, municipalities receive value for the money spent and it is an irregularity in the decision to incur expenditure that is the problem. The private party who delivered the goods or services may not always be at fault when this happens. Not everyone providing goods and services to a municipality knows the inner workings of its supply chain management policies. However, section 32 of the MFMA does not preclude a municipality from using other remedies in law against private business actors who knowingly provide goods and services on an unlawful contract. If a municipality were also allowed to recover excessive profits from unlawful procurement contracts after successfully applying section 32(1)(c) of the MFMA, this would lead to the municipality's profiting from the situation. This raises questions about justice and fairness. The most plausible route seems to be for a municipality to elect to either apply section 32(1)(c) of the MFMA or to sue for a refund of excessive profits made from an unlawful procurement contract. However, given the mandatory wording of section 32(1)(c) of the MFMA, municipalities may not have any option but to comply with it.

4 Conclusion

As indicated in 3.1 above, the Constitutional Court attempted to consolidate its evolving jurisprudence on state self-review in the *Buffalo City* case. The aim of this contribution was to reflect on what the judgment of the SCA in *Govan Mbeki Municipality v New Integrated Credit Solutions (Pty) Ltd* 2021 4 SA 436 (SCA) adds to the existing jurisprudence on state self-review and to show gaps that still need to be addressed by courts. This note demonstrates that the unanimous decision of the SCA in the *Govan Mbeki* case correctly and heavily relied on the Constitutional Court jurisprudence in the *Buffalo City* case. The main contribution the SCA adds to the jurisprudence on state self-review is that, as part of assessing delays and deciding on whether to condone them or not, courts can now ask organs of state to show the steps they took against delinquent officials, such as disciplinary action and, where appropriate, criminal proceedings. This is a strong requirement that may dissuade municipal officials from instituting frivolous large-scale self-review applications that falsely seek to give the impression that they are self-correcting unlawful procurement decisions. In order to approach courts for self-review, municipalities should show that they took action to ensure consequence management against delinquent persons. This contribution identifies two main gaps in the jurisprudence on state self-review. Firstly, it shows that there is still no prescribed timeframe within which self-review cases should be brought to court. Although courts have indicated that they should be instituted within a reasonable timeframe, judicial discretion still plays a pivotal role in assessing and condoning delays. A specified timeframe in law could bring about more certainty.

Secondly, the issue of profits from unlawful contracts is still developing in the jurisprudence of courts. As indicated in this contribution, the law is not clear on the percentage of profits that can be recovered from contractors that were complicit in unlawful procurement contracts. More litigation is required to resolve this issue.

Bibliography

Literature

Ambe 2016 *Research Journal of Business and Management*
Ambe IM "Public Procurement Trends and Developments in South Africa" 2016 *Research Journal of Business and Management* 277-290

Ambe and Badenhorst-Weiss 2012 *Journal of Transport and Supply Chain Management*
Ambe IM and Badenhorst-Weiss JA "Procurement Challenges in the South African Public Sector" 2012 *Journal of Transport and Supply Chain Management* 242-261

Boonzaier 2018 *SALJ*
Boonzaier L "A Decision to Undo" 2018 *SALJ* 642-677

Cachalia 2022 *SAJHR*
Cachalia R "Resuscitating the PAJA in State self-Review? *Compcare Wellness Medical Scheme v Registrar of Medical Schemes*" 2022 *SAJHR* 70-91

Du Plessis and Fuo 2024 *SAJS*
Du Plessis A and Fuo O "When the Law Struggles to Deliver: Reflections on Service Delivery Law Reform in South Africa, 1996-2024" 2024 *SAJS* 1-4

Fombad "Corruption and the Crisis of Constitutionalism"
Fombad CM "Corruption and the Crisis of Constitutionalism" in Fombad CM and Steytler N (eds) *Corruption and Constitutionalism in Africa: Revisiting Control Measures and Strategies* (Oxford University Press Oxford 2020) ch 1

Fuo 2015 *Commonwealth Journal of Local Governance*
Fuo O "Role of Courts in Interpreting Local Government's Environmental Powers in South Africa" 2015 *Commonwealth Journal of Local Governance* 17-35

Fuo 2017 *De Jure*
Fuo O "Intrusion into the Autonomy of South African Local Government: Advancing the Minority Judgment in the *Merafong City* Case" 2017 *De Jure* 324-345

Fuo "Courts and Local Governments in South Africa"
Fuo O "The Courts and Local Governments in South Africa" in Fessha YT and Kossler K (eds) *Federalism and the Courts in Africa: Design and Impact in Comparative Perspective* (Routledge London 2020) ch 5

Hoexter and Penfold *Administrative Law*
Hoexter C and Penfold G *Administrative Law in South Africa* 3rd ed (Cape Town Juta 2021)

National Treasury *Public Sector Supply Chain Management Review*
National Treasury *Public Sector Supply Chain Management Review* (National Treasury Pretoria 2015)

Ngcobo *Informal Economy for Local Economic Development*
Ngcobo N *The Informal Economy for Local Economic Development in South Africa: A Constitutional Law Approach* (LLM-dissertation North-West University 2021)

Pooe, Mafini and Makhubele 2015 *IBER*
Pooe RI, Mafini C and Makhubele DT "Investigating Municipal Procurement Challenges in South Africa: A Qualitative Study" 2015 *IBER* 67-77

Rautenbach and Venter *Constitutional Law*
Rautenbach IM and Venter R *Constitutional Law* 7th ed (LexisNexis Butterworths Durban 2018)

Steytler and De Visser *Local Government Law*
Steytler N and De Visser J *Local Government Law of South Africa* (LexisNexis Butterworths Durban 2009-) ch 15

Case law

Airports Company South Africa SOC Ltd v Imperial Group Ltd 2020 4 SA 17 (SCA)

Altech Radio Holdings (Pty) Limited v City of Tshwane Metropolitan Municipality 2021 3 SA 25 (SCA)

Black Sash Trust v Minister of Social Development (Freedom Under Law Intervening) 2017 5 BCLR 543 (CC)

Buffalo City Metropolitan Municipality v ASLA Construction (Pty) Ltd 2019 6 BCLR 661 (CC)

BW Bright Water Way Props (Pty) Ltd v Eastern Cape Development Corporation 2019 6 SA 443 (ECG)

City of Cape Town v Aurecon South Africa (Pty) Limited 2017 6 BCLR 730 (CC)

City of Cape Town v Robertson 2005 2 SA 323 (CC)

City of Tshwane Metropolitan Municipality v New GX Enviro Solutions and Logistics Holdings (Pty) Ltd (53694/20) [2021] ZAGPPHC 390 (21 June 2021)

Department of Transport v Tasima (Pty) Ltd 2017 2 SA 622 (CC)

Economic Freedom Fighters v Speaker of the National Assembly 2018 3 BCLR 259 (CC)

Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council 1999 1 SA 374 (CC)

Govan Mbeki Municipality v New Integrated Credit Solutions (Pty) Ltd (unreported) case number 121/2020 of 7 April 2021

Govan Mbeki Municipality v New Integrated Credit Solutions (Pty) Ltd 2021 4 SA 436 (SCA)

Khumalo v Member of the Executive Council for Education: KwaZulu-Natal 2014 3 BCLR 333 (CC)

Khumalo v Member of the Executive Council for Education, Kwa-Zulu Natal 2015 5 SA 57 (CC)

Koth Property Consultants CC v Lepelle-Nkumpi Local Municipality Ltd 2006 2 SA 25 (T)

Mbambisa v Nelson Mandela Bay Metropolitan Municipality 2025 3 SA 112 (SCA)

MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye and Lazer Institute 2014 3 SA 481 (CC)

Municipal Manager: Quakeni v FV General Trading CC 2010 1 SA 356 (SCA)

RAiN Chartered Accountants Incorporated v South African Social Security Agency 2021 11 BCLR 1225 (CC)

Sakhisizwe Local Municipality v Tshefu 2020 2 All SA 299 (ECG)

Siyangena Technologies (Pty) Ltd v PRASA (487/2021) [2022] ZASCA 149 (1 November 2022)

Special Investigation Unit, Matzikama Local Municipality v DUNECO CC (unreported) case no WC/05/22 of 23 June 2023

State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd 2018 2 BCLR 240 (CC)

Tetra Mobile Radio (Pty) Ltd v MEC, Department of Works 2008 1 SA 438 (SCA)

Legislation

Constitution of the Republic of South Africa, 1996

Local Government: Municipal Finance Management Act 56 of 2003

Local Government: Municipal Systems Act 32 of 2000

Public Procurement Act 28 of 2024

Preferential Procurement Policy Framework Act 5 of 2000

Prevention and Combating of Corrupt Activities Act 12 of 2004

Promotion of Administrative Justice Act 3 of 2000

Government documents

GN R32 in GG 40553 of 20 January 2017 (*Preferential Procurement Policy Regulations*)

GN R868 in GG 27636 of 30 May 2005 (*Municipal Supply Chain Management Regulations / MSCM Regulations*)

International instruments

United Nations Convention Against Corruption (2005)

Internet

AGSA 2020 https://www.agsa.co.za/Portals/0/Reports/MFMA/201819/GR/MFMA%20GR%202018-19%20Final%20View.pdf

Auditor-General of South Africa 2020 *Not Too Much to Go Around, Yet Not the Right Hands at the Till: Consolidated General Report on Local Government Audit Outcomes MFMA 2018-2019* https://www.agsa.co.za/Portals/0/Reports/MFMA/201819/GR/MFMA%20GR%202018-19%20Final%20View.pdf accessed 14 June 2023

National Treasury 2016 https://mfma.treasury.gov.za/Circulars/Documents/MFMA%20Circular%2083%20-%20eTender%20Portal%20-%2018%20July%202016.pdf

National Treasury 2016 *MFMA Circular No 83: Advertisement of Bids and the Publication of Notices in Respect of Awarded Bids, Cancelled Bids, Variations and Extensions of Existing Contracts on the e-Tender Publication Portal* https://mfma.treasury.gov.za/Circulars/Documents/MFMA%20Circular%2083%20-%20eTender%20Portal%20-%2018%20July%202016.pdf accessed 24 August 2025

National Treasury 2020 https://mfma.treasury.gov.za/Circulars/Documents/Forms/AllItems.aspx?RootFolder=/Circulars/Documents/MFMA%20Circular%20102%20-%20Emergency%20Procurement%20in%20Response%20to%20National%20State%20of%20Disaster&FolderCTID=0x012000E772703726E2A8479752CF24A134692B&View=%7b06AB24E7-1C64-4A80-A0FA-273E6A829094%7d
National Treasury 2020 *MFMA Circular No 102: Emergency Procurement in Response to National State of Disaster* https://mfma.treasury.gov.za/Circulars/Documents/Forms/AllItems.aspx?RootFolder=/Circulars/Documents/MFMA%20Circular%20102%20-%20Emergency%20Procurement%20in%20Response%20to%20National%20State%20of%20Disaster&FolderCTID=0x012000E772703726E2A8479752CF24A134692B&View=%7b06AB24E7-1C64-4A80-A0FA-273E6A829094%7d accessed 24 August 2025

National Treasury 2020 https://mfma.treasury.gov.za/Circulars/Documents/MFMA%20Circular%20No%20103%20-%20Preventative%20Measures%20in%20Response%20to%20COVID%2019%20-27%20May%202020.pdf
National Treasury 2020 *MFMA Circular No 103: Preventative Measures in Response to the Covid-19 Pandemic that Resulted in the National State of Disaster* https://mfma.treasury.gov.za/Circulars/Documents/MFMA%20Circular%20No%20103%20-%20Preventative%20Measures%20in%20Response%20to%20COVID%2019%20-27%20May%202020.pdf accessed 24 August 2025

Ramaphosa 2020 https://www.businesslive.co.za/fm/opinion/2020-08-24-read-in-full-president-cyril-ramaphosas-letter-to-anc-members-about-corruption/
Ramaphosa C 2020 *President Cyril Ramaphosa's Letter to ANC Members About Corruption* https://www.businesslive.co.za/fm/opinion/2020-08-24-read-in-full-president-cyril-ramaphosas-letter-to-anc-members-about-corruption/ accessed 14 June 2023

List of Abbreviations

AG / AGSA	Auditor-General of South Africa
GMLM	Govan Mbeki Local Municipality
IBER	International Business and Economics Research Journal
MFMA	Local Government: Municipal Finance Management Act 56 of 2003
MSCM	Municipal Supply Chain Management
NICS	New Integrated Credit Solutions (Pty) Ltd
PAJA	Promotion of Administrative Justice Act 3 of 2000

SAJHR	South African Journal on Human Rights
SAJS	South African Journal of Science
SALJ	South African Law Journal
SCA	Supreme Court of Appeal