



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: **2024-148777**

In the matter between:

RAMM SYSTEMS (PTY) LIMITED

Applicant

And

CITY OF CAPE TOWN

First Respondent

CITY MANAGER, CITY OF CAPE TOWN

Second Respondent

**CHAIRPERSON, SUPPLY CHAIN MANAGEMENT BID
ADJUDICATION COMMITTEE, CITY OF CAPE TOWN**

Third Respondent

**CTRACK FLEET MANAGEMENT SOLUTIONS (PTY)
LIMITED**

Fourth Respondent

RIAANA SAYED N.O.

Fifth Respondent

**Judgment: Delivered on 27 June 2025
(Electronically delivered to parties)**

Le Grange, J

Introduction:

[1] The genesis of this matter arose out of a tender for the supply and delivery of vehicle technology for the First Respondent (the City). The Bid Adjudication Committee (BAC) of the City, acting under delegated authority, decided in October 2024 to award the tender to the Fourth Respondent (Ctrack). The Applicant, (RAMM) was an unsuccessful bidder. Aggrieved by the award, RAMM submitted a document on 7 November 2024 titled “*Objection to award of tender 136S/2023/24 supply and delivery of vehicle tracking and recovery*” against the City’s decision. The City Manager considered the document as an objection as envisage by regulations 49-50 of the MSCM Regulations¹ (the Regulations). The independent person appointed under Regulation 50 declined to consider RAMM’s objection as it was submitted late. In terms of the Regulations objections are due 14 days after a decision to award a tender. RAMM submitted its document 20 days after the City’s decision.

The Dispute:

[2] RAMM contends, the document properly construed is an appeal and ought to have been dealt with as such under in s 62 of the Systems Act². According to the City, supported by the Fourth Respondent, (Ctrack), RAMM’s document was properly considered as an objection and correctly dismissed. At the heart of the dispute is the meaning to be attributed to the document.

Legal Framework:

¹ Municipal Supply Chain Management Regulations, promulgated under GN, GG 27636 dated 1 June 2005 as amended.

² Local Government: Municipal Systems Act 32 of 2000.

[3] It is trite that the Constitution³ requires organs of state in all spheres of government, including the City, to contract for goods and services in accordance with a scheme that is fair, equitable, transparent, competitive and cost effective. In that scheme, established rules must be consistently applied and adhered to bring about legitimate contracts for goods and services that are fair, equitable, transparent, competitive and cost effective. In the case of the City, the applicable constitutional, statutory and policy framework comprises *inter alia*: the MFMA⁴ and the relevant regulations thereunder, Municipal Supply Chain Management (MSCM) Regulations⁵; section 62 of the Systems Act; and the relevant organ of state's Supply Chain Management (SCM) policy, which in the City's case is the policy approved by the Municipal Council on 27 March 2008 and last amended by the Municipal Council on 5 December 2024. Two separate and distinct forms of dispute resolutions are located in the applicable scheme. The first, is by way of objections, complaints and queries. The second, is the right of appeal in terms of s 62 of the Systems Act.

[4] The Tender Document in this instance made provision for both and differentiated between objections and appeals. The heading of Clause 2.1.6 read as follows: '*Objections, complaints, queries and disputes/ Appeals in terms of s 62 of the Systems Act/ Access to court.*' In clause 2.1.6.1, the Tender Document informed tenderers of regulations 49 and 50 and that they may lodge an objection in writing within 14 days if aggrieved by any action or decision taken by the City in the implementation of its supply chain management system. In clause 2.1.6.2, the Tender Document provides for an appeal by referring to section 62 of the Systems Act. In addition, clause 2.1.6.7 prescribes a fee in the amount of R300.00 when submitting an appeal.

[5] Objections, under regulations 49 and 50, have five relevant features. First, it must be lodged within 14 days⁶. Secondly, independent and impartial persons who are not directly involved in the municipality's supply chain management must deal with

³ section 217(1)

⁴ Local Government: Municipal Finance Management Act, 32 of 2000

⁵ Published under General Notice 868 in Government Gazette 27636 of 30 May 2005 (as amended).

⁶ Regulation 49 of the Regulations. Section 419 of the Policy.

objections.⁷ Thirdly, the independent and impartial person appointed to resolve objections does not have the power to correct or set aside the decision of a municipality. Its main purpose is to mediate or conciliate a dispute between the party and the municipality.⁸ Fourthly, if an objection remains unresolved after 60 days, or if the independent person cannot resolve the objection, then the objection escalates to the provincial treasury. If the provincial treasury cannot resolve the objection, then the objection escalates to the national treasury.⁹ And lastly, the filing of an objection under regulation 49 and 50 does not constitute an internal remedy under section 7(2) of PAJA.¹⁰

[6] On the other hand, section 62 of the Systems Act, read with the City's SCM Policy, governs the submission of an appeal. That section in relevant parts, reads as follows:

62. Appeals. —

(1) A person whose rights are affected by a decision taken by a political structure, political office bearer, councillor or staff member of a municipality in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor or staff member, may appeal against that decision by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).

⁷ These persons are appointed by the accounting officer of the municipality. The appointed person must (i) strive to resolve promptly all objections received; and (ii) submit monthly reports to the accounting officer on all objections received, attended to, or resolved. Regulation 50(1) to (4) of the Regulations. Sections 420 to 422 of the Policy.

⁸ *Esda Properties (Pty) Ltd v Amathole District Municipality* 2014 JDR 1878 (ECG) para 11, endorsed in *DDP Valuers v Madibeng Local Municipality* 2015 JDR 2093 (SCA) para 21.

⁹ Regulation 50(5) and (6) of the Regulations. Sections 423 and 424 of the Policy.

¹⁰ *DDP Valuers* *ibid* at para 22.

*(3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
...*

[7] Appeals have thus four key features: First, it must be lodged within 21 days; appeals pertain only 'to the limited issue of whether the party appealing should have been successful'¹¹ as appeal authorities, under the Systems Act, do not have the power to make any just and equitable order¹². Secondly, an appeal may only seek a confirmation, variation, or revocation of the decision against which the appeal is lodged¹³. Thirdly, an appeal cannot detract from any rights that may have accrued because of the impugned decision.¹⁴ And, fourthly, an appeal constitutes an internal remedy under section 7(2) of the Promotion of Access to Justice Act (PAJA)¹⁵.

Background:

¹¹ Groenewald NO v M5 Development (Cape) Pty Limited 2019 (4) SA 331 CC at para 25.

¹² Astral Operations Ltd t/a Country Fair Foods v The Minister for Local Government, Environmental Affairs and Development Planning (Western Cape) 2023 (2) SA 102 (SCA) para 52: "The appeal authority has limited powers under s 62 of the Systems Act. It is for this reason that this Court found in Groenewald that '[i]n the context of a municipal tender, an appeal by a person whose tender was unsuccessful therefore does not entitle the appeal authority to reconsider all the tenders that were lodged'. An appeal authority under s 35 of the ECA has wider powers including the additional power to 'make such order as he may deem fit'. The challenges which faced the appeal authority in Groenewald are absent in this matter."

¹³ Section 62(3): "The appeal authority must consider the appeal, and confirm, vary or revoke the decision".

¹⁴ Section 62(3): "no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision."

¹⁵ Act, 32 of 2000 - Section 7(2) reads:

- "(a) Subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first been exhausted.
- (b) Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.
- (c) A court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice."

[8] Turning to the background facts underpinning this matter. On 7 October 2024, the BAC awarded the tender to Ctrack, subject to the finalisation of the appeal process under s 62 of the Systems Act and or finalisation of the process under section 33 of the MFMA.

[9] RAMM was notified on 18 October 2024, that its bid was unsuccessful. On the same day RAMM's national sales manager, Christine Welham, (Ms Welham) wrote to the City, recording that RAMM is considering appealing the award and requested a copy of the BEC report. The City provided the report the same day.

[10] Ms Welham, on 21 October 2024, wrote to the City seeking clarification regarding the closing date for objections. On 23 October 2024, Welham addressed another letter to the City, under the heading *'Re: Urgent Clarification of Objection Closing Date And Request for BEC Report Details for Tender 136S/2023/2024- Supply and Delivery of Vehicle Tracking and Recovery.'* In that letter, RAMM recorded the City's failure to inform them about their right to object to the award and wanted to enquire the exact deadline for submissions of any objections should they elect to pursue that avenue. RAMM also sought an unredacted version of the BEC report of the Evaluation of Tender Adjudication Points and Evaluation rates. According to RAMM, that information was crucial to understand the basis upon which their bid failed. According to RAMM an unredacted version would ensure transparency which would be of assistance, improving the quality of future submissions by them.

[11] The City on 25 October 2024, responded by informing RAMM about the appeals process in terms of s 62 of the Systems Act, which was part of clause 2.1.6.2 of the tender conditions. It also provided information regarding the Evaluation of Tender Adjudication Points and Evaluation rates.

[12] On 1 November 2024, under the heading *Re: Clarification of Objection Deadline And Request for BEC Meeting Minutes - Tender 136S/2023/2024- Supply and Delivery of Vehicle Tracking and Recovery'* RAMM sought confirmation from the City that the

deadline date for submitting appeals against the award will be on 8 November 2024. The City did not respond to the letter.

[13] RAMM on 7 November 2024, submitted a 16 pages submission with the title; *Objection to Award of Tender 136S/2023/2024- Supply and Delivery of Vehicle Tracking and Recovery.* In the body of the submission at paragraph 3, RAMM complained about the short time they had to submit the objection within the 21day period and requested condonation if any further submissions were to be submitted. In paragraph 4 the following was recorded, *'RAMM is objecting to the Adjudication and Award of the tender on the basis that the City failed to comply with the Preferential Procurement Policy Framework Act, National Treasury's Procedures and the City's Supply Chain Policy.'*

[14] According to RAMM the tender was fundamentally flawed and requested that the tender be cancelled and readvertised to enable a more transparent and lawful outcome.

[15] On 8 November 2024, the City's legal advisor informed RAMM it is in receipt of its objection and the matter is receiving attention. On 18 November 2024, RAMM was informed, the Independent Person appointed in terms of Regulation 50 of the MSCM declined to consider its objection as it was not lodged within the prescribed 14-day period.

[16] Aggrieved by this outcome, RAMM wrote to the City disputing that its letter should have been regarded as an objection. RAMM heavily relied on the City's response dated 25 October and its letter of 1 November 2024 to contend that its letter of objection was always meant to be an appeal and was incorrectly characterized by the City as an objection.

Argument:

[17] The main submissions by RAMM's counsel can be summarised as follow: the Welham's are laypersons in law and used the words objection and appeal

interchangeably without understanding the material difference between the two procedures; In view of the correspondence between RAMM and the City the only mechanism that was available to RAMM was to challenge the BAC's decision by lodging an appeal in terms of s 62 of the Systems Act. It was further argued that the City in its own correspondence, understood RAMM was going to lodge an appeal. Furthermore, on a purposive interpretation the objection letter by RAMM in substance could only be interpreted as an appeal as it was rights based.

[18] Counsel for the City and Ctrack argued differently. They contented the text used, the context in which it appeared and the purpose of RAMM's document holistically considered do not support the argument that it was mischaracterized as an objection. According to Counsel for the City, RAMM's attempt to import meanings to the document to align with its purported intention is unsustainable. Counsel for Ctrack submitted that on any reasonable interpretation, RAMM's document constituted an objection as it was expressly recorded as such. Furthermore, the word 'objection' was used multiple times, and the word 'appeal' was not once used in the document. It was also contented that RAMM is not unfamiliar with tender litigation and reference was made to a matter where RAMM was a respondent and an applicant in a counter-application with the City¹⁶. It was further argued that it is implausible RAMM's representatives did not appreciate the difference between an appeal or an objection, and if they did then they could not have intended for the document to be an appeal.

Interpretation:

[19] The interpretation of written documents is trite¹⁷. It demands that a court consider the language used, the context in which it was used and the purpose of the provision. The Supreme Court of Appeal (SCA) restated these principles in Capitec Bank Holding

¹⁶ City of Cape Town v RAMM Systems (PTY) LTD and another Case No. 11437/2022 delivered on 10 August 2023

¹⁷ Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA)

Limited v Carol Lagoon Investments 194 (Pty) Ltd¹⁸, emphasising that the starting point is the language of the document itself, and continued as follows:

‘....the triad of text, context and purpose should not be used in a mechanical fashion. It is the relationship between the words used, the concepts expressed by those words and the place of the contested provision within the scheme of the agreement (or instrument) as a whole that constitutes the enterprise by recourse to which a coherent and salient interpretation is determined.

.....*Endumeni* is not a charter for judicial constructs premised upon what a contract should be taken to mean from a vantage point that is not located in the text of what the parties in fact agreed. Nor does *Endumeni* licence judicial interpretation that imports meanings into a contract so as to make it a better contract, or one that is ethically preferable.”

Discussion:

[20] With the abovementioned stated principles, the question now is whether the document submitted by RAMM, is in substance an appeal as envisaged by the Systems Act.

[21] The starting point must be the 16-page document submitted by RAMM. In its founding papers RAMM alleges the document was drafted by its director, Lindsay Welham, and assisted by its sales manager Ms. Christene Welham. According to Welham’s, they did not understand, as lay people in law, the material difference between the words ‘objection and ‘appeal’. I will return to this issue later.

[22] The document’s title reads, “*Objection to Award of Tender 136S/2023/2024-Supply and Delivery of Vehicle Tracking and Recovery*. In paragraph 1, the City was notified by RAMM that the letter is the company’s formal notification of its ‘*objecting to the award of Tender 136S/2023/24*.’ Paragraph 2 dealt with the request that RAMM be

¹⁸ 2022 (1) SA 392 (SCA) at para 43.

provided for an unredacted BAC report. In Paragraph 3, RAMM requested condonation for further submissions as the BAC report was 77 pages long and *‘in order to submit this objection within the 21-day period’* was not able to unpack all the submissions. In paragraphs 4, RAMM recorded that the City has a statutory obligation to ensure that the award was lawful rational and procedurally fair. It further recorded that *‘RAMM is objecting to the Adjudication and Award of the tender on the basis that the City failed to comply with the Preferential Policy Framework Act, National Treasury’s Procedures and the City’s Supply Chain Policy.’*

[23] Paragraphs 5 to 21 dealt with the City’s apparent failure to comply with the prescribed regulations. In Paragraph 21.1, a submission was made that the Tender was fundamentally flawed and consequently its adjudication did not comply with the prescribed regulations, policies, and procedures.

[24] Paragraphs 22 to 69 dealt with the ostensible failure by the City to adjudicate the tender based on quality, reliability, viability and durability. In the concluding paragraphs 70 and 71, RAMM recorded inter alia the following *‘... These procedural breaches not only violate the tender conditions but also introduce significant risk to the legitimacy of the award’.... Given these substantive issues it is clear that the tender process has not adhered to the necessary legal and procedural requirements..... and it is justified to request the cancellation of Tender 136S/2023/24’.*

[25] On a plain reading of the document it is evident that the scribes had knowledge and a deep understanding of the tender process. The word ‘objection was repeatedly used in the document. Besides the reference to the 21-day period in clause 3, the document itself offers no indication that RAMM was filing an appeal as envisaged by the Systems Act. The title of the document points squarely in the direction that RAMM elected to file an *‘Objection to Award of Tender’*. The clauses¹⁹ attacking the City’s apparent failure to comply with prescribed regulations, policies, procedures and to properly adjudicate RAMM’s bid, do not speak exclusively to the requirements of an

¹⁹ Clauses 1-69

appeal. The same applies to the final two paragraphs. A tender cannot be cancelled on appeal. It can only be confirmed, varied, or revoked.²⁰ Yet, RAMM requested that the Tender be cancelled. Viewed in context the clauses do not advance a construct that the document is plainly an appeal in substance.

[26] RAMM's contention that the challenge against the lawfulness of the award cannot properly be addressed under Regulations 49 and 50 and the City appreciated that fact, is unsustainable. An objection can never be regarded as futile. It can initiate a speedy dispute resolution process between the objector and the City. This mediation may result in the BAC exercising its power to cancel the entire tender as demanded by RAMM²¹. To suggest the City all along knew and appreciated RAMM submitted an appeal is also unconvincing. In its letter dated 23 October, RAMM requested an unredacted version of the BEC report to supposedly improve the quality of future submissions. This correspondence can hardly be regarded as a 'plain understanding' of RAMM's intention to submit an appeal. It is correct that in correspondence RAMM used the word 'appeal' twice, but it also used the word 'objection' seven times. RAMM admitted it used the words interchangeably but that is of no help to its case. The correspondence in context is at best vague, the document on a proper reading not.

[27] Moreover, the appeal process is not unknown to RAMM. Since August 2023 RAMM must have been aware what a s 62 of the Systems Act appeal entails. In that year RAMM was the first respondent in a matter where the City, as applicant, sought to self-review a tender that was awarded to RAMM²². The City duly informed RAMM at the time that an appeal had been lodged against the award²³. The court found the award was invalid and unlawful as RAMM endeavored to vary the tender specifications, unbeknown to the BAC, by incorporating its compliance statement in the agreement to secure the tender for itself on terms most favourably to it.

²⁰ Section 62(3): "The appeal authority must consider the appeal, and confirm, vary or revoke the decision".

²¹ See s 280 of the City's Policy empowers the BAC to cancel a tender in limited circumstances,

²² City of Cape Town v RAMM Systems (PTY) LTD and another Case No. 11437/2022 delivered on 10 August 2023.

²³ Ibid, para 16.

[28] Objections under regulations 49 and 50, are also not foreign to RAMM. In warranting it examined and accepted all the conditions of the tender²⁴ RAMM knew or ought to have known the distinct differences between objections and appeals. The City has thus no obligation to alert or enquire from a bidder whether its submission is an objection or an appeal. That Responsibility, in terms of the Tender, falls squarely on an aggrieved bidder who elects to challenge an award. However, despite the City's reference to an appeal in terms of the System's Act, RAMM persisted in referring to its document as an objection. The City accepted it as such and on 8 November 2024 informed RAMM, its legal advisor is attending to the objection. The City was therefore clearly dealing with an objection. RAMM did not take issue with the City's letter. It will be most unfair to other bidders and contrary to PMFA, National Treasury Procedures and the City's Supply Chain Policy to expect the City to import meaning to documents from email correspondence. Such an approach will not only undermine established rules that needs to be consistently applied to bring about legitimate contracts that are fair, equitable, transparent, competitive and cost effective, but will also be contrary to the established process of interpretation which is objective and not a subjective matter²⁵. Put differently, read holistically, the correspondence relied upon by RAMM did not import the characteristics of an appeal into the document. The City was therefore legally obliged to consider the document as an objection.

[29] Turning to RAMM's contention its representatives are laypersons in the law and did not appreciate the difference between objections and appeals. This contention is misplaced. RAMM is a sophisticated commercial entity and not a novice in the world of tendering. It has previously litigated in tender matters.²⁶ In the founding affidavit the director of RAMM admitted Ms Welham assisted in completing the document. The director and sales manager are not your ordinary persons in a company. These are senior positions. Mr. Welham signed the Form of Offer and Acceptance and knew or

²⁴ Clause 2.2.21 Claims arising from submission of tender

The Tenderer warrants that it has:

(a) Inspect the Specifications and read and fully understood the Conditions of the Contract.

²⁵ Endumeni supra at para 23.

²⁶ See City of Cape Town v RAMM System, supra

ought to have known the distinct difference between appeals and objections. Moreover, the objection referenced numerous pieces of legislation, legal principles, including PAJA, showing that the Welham's has a deep understanding of the inner workings of tendering. Ms Welham's response to the City's rejection letter is a further indication that she is not ignorant or clueless regarding the difference between appeals and objections. To now claim they did not understand and appreciate the difference between the words 'objection' and 'appeal' is simply untenable as the material known to them at the time of producing the submissions paints a different picture.

[30] In view of all the above-mentioned reasons, the language used in the document, the meaning in the context in which it was used and having regard to the purpose of the provisions of objections and appeals the only coherent and salient interpretation is that RAMM's 16-page document was an objection. RAMM used the wrong time periods, and its objection was out of time and late.

[31] In terms of regulation 49 and 50, the independent and impartial person correctly adjudicated that the mechanism exercised by RAMM was indeed an objection and filed out of time.

[32] It follows the relief sought by RAMM, in its Amended Notice of Motion cannot succeed.

[33] In the result the following order made.

1. The Application is dismissed with costs.
 2. The Applicant to pay the costs of the First to Fourth respondents, including the costs of two counsel where so employed on Scale C.
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Appearances:

Applicant: Adv. D Borgstrom, SC assisted by Adv. L Ferreira

Instructed by: Maurice Phillips Wisenberg Attorneys

First, Second and Third

Respondents: Adv. T Sarkas

Instructed by Cluver Markotter Attorneys

Fourth Respondent Adv. R Patrick, SC assisted by Adv. E Cohen

Instructed by Gio Engelbrecht Attorneys