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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case No.: 008581-2023

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED: **NO**
15 Sep 2025

In the matter between:

DAVEYTON HEALTH HOLDINGS (PTY) LTD

Applicant

and

CITY OF EKURHULENI METROPOLITAN MUNICIPALITY

First Respondent

METROPOLITAN MUNICIPALITY: CITY OF EKURHULENI

**Second
Respondent**

REGISTRAR OF DEEDS

Third Respondent

J U D G M E N T

PILLAY, AJ

Introduction

1. In the main application, Daveyton Health Holdings (Pty) Ltd, the applicant, seeks an order of specific performance compelling transfer of a property which it purchased from the first respondent (“the Municipality”) in May 2016. The property concerned is Erf 2[...], Daveyton, Extension 7 Township, Daveyton, which is about 5,0981 hectares in extent (“the Property”).
2. The Municipality opposes the application and brings a counter-application in which it seeks an order reviewing and setting aside the sale agreement concluded between the applicant and the Municipality during May 2016. The Municipality also tenders the repayment of the purchase price to the applicant as well as any ancillary amounts paid.

The facts

3. It is common between the parties that:
 - 3.1. The immovable property forming the subject matter of these proceedings, is owned and currently registered in the name of the Municipality
 - 3.2. In August 2014, the applicant, made an unsolicited bid for the property. As part of that bid, the applicant indicated that it intended to establish a private hospital on the property in question.
 - 3.3. On 26 February 2015, the Municipal Council adopted a resolution as follows

“That, having taken into account the requirements of Regulation 7 of the Assets Transfer Regulations, 2006 and amended, the proposed transfer of Erf 2[...], Daveyton Extension 7 Township Daveyton, approximately 5 0981 ha in extent (indicated on the attached sketch – plan marked Annexure “A) BE APPROVED and that the said immovable capital asset be SOLD for purpose of a private hospital, subject to the standard conditions contained in the Council’s Land Disposal Framework and Guidelines and Supply Chain Management Policy as well as the further conditions outlined in the report.

That the City Manager or nominee BE AUTHORISED to do the necessary to give effect to the above.”

4. I pause to mention that there was a dispute between the parties as to whether this resolution was taken on 26 February 2015 or 2016. While the Municipality initially contended that it was taken in 2016, by the time the matter was argued, they accepted that the decision was taken on 26 February 2015.
5. On 17 May 2016, the applicant and the Municipality’s representative and concluded a written sale agreement. The applicant duly paid the full purchase price under the agreement.
6. The immovable property was not transferred to the applicant. Instead, what transpired is, inter alia, the following:

5.1 In February 2022, the Municipality received complaints relating to the sale of the property. It was also informed that the matter had been referred to the public protector;

5.2 On 13 June 2022, Gauteng Treasury sent an initial response to the Municipality's request for feedback. The content of this response is significant and can be gleaned from the subsequent letter from GPT dated 20 March 2024. According to that subsequent letter, in the initial response, the Municipality was informed by Gauteng Treasury that the unsolicited bid was not undertaken in accordance with section 113 of the MFMA and Municipal Supply Chain Management Regulation 37. It also advised that the Municipality should advertise the sale of land through a competitive bidding process to award it to the highest scoring bidder.

5.3 On 3 August 2022, the applicant received an email from the Municipality's attorney's notifying them that they received instructions to pend the transfer until further notice;

5.4 On 3 February 2023, this application was instituted;

5.5 On 17 March 2023, the Municipality's attorneys addressed a without prejudice letter to the applicant's attorneys indicating that they are instructed to proceed with the transfer of the property. On the same date, the applicant's attorneys accepted the offer subject to the provision of a reasonable timeline for registration of transfer and a tender for wasted costs;

5.6 On 20 March 2023, the Municipality's attorneys confirmed the settlement agreement and indicated that transfer was anticipated to take between 2 to 3 months. They also tendered wasted costs on a party and party scale.

5.7 On 26 June 2023, the Municipality's attorneys requested information to enable the Municipality to proceed with transfer from the applicant's attorneys. They also sought the payment of transfer costs.

5.8 On 29 November 2023, the applicant made payment of transfer costs of R83 281.

5.9 On 19 December 2023, the Municipality's Real Estate Department addressed a letter to the National Treasury requesting comments on the unsolicited bid. The letter recorded the following:

5.9.1 The Municipality received an unsolicited bid to purchase Council-owned property;

5.9.2 On 26 February 2015, the Council approved in principle that the property in question be sold for purposes of a private hospital;

5.9.3 The unsolicited bid was considered in terms of Land Disposal Framework and Guidelines as well as the Supply Chain Management Policy adopted by Council;

5.9.4 Members of the public and other interested bidders were invited to submit comments to the unsolicited bid in terms of section 21A of the Municipal Systems Act and no comments or representations were received;

5.9.5 In view of the fact that no comments or representations were received, the requirement to submit the matter to National or Provincial Treasury Departments fell away;

5.9.6 A deed of sale was accordingly concluded and the seller paid the price in full. Attorneys were instructed to attend to the transfer of the property'

5.9.7 Subsequently, illegal occupants using the property for church purposes also applied to purchase the property. They however raised allegations of corruption against Municipal officials and the doctors who purchased the property. They also approached the Public Protector to intervene.

5.9.8 The alleged corruption was fully investigated by the Municipality and the Public Protector and found to be baseless.

5.10. On 29 February 2024, the Municipality's attorneys address a letter to the applicant's attorneys stating that they are awaiting positive comments from National and Provincial Treasury.

5.11. On 20 March 2024, Gauteng Treasury responded that they had already provided comments but, in view of the latest request from the Municipality, deemed it prudent to review the matter with a view to determining whether they would reach the same conclusion. As part of the review, the GPT raised the following issues

5.11.1. No evidence was presented that the product or service offered in terms of the bid is a demonstrably or proven unique innovation concept as per MSCM Reg 37(2)(a)

5.11.2. MSCM Regulations 37(7)(b) requires the Bid Adjudication Committee to consider any written comments and recommendations of the National Treasury or the relevant provincial treasury. However, no evidence that suggests that such comments were deliberated upon during the meeting held on the 15th of February 2016 as per the requirement of MSCM Reg 37(4), (5) and (7). Furthermore, the request for comments were submitted to the provincial treasury only after the decision to award was taken by the BAC on 15

February 2016 and ratified by the Accounting Officer.

5.11.3. MSCM Regulation 37(6) requires that a meeting of the Bid Adjudication Committee (BAC) to consider the unsolicited bid be open to the public. In addition to that, our assessment further revealed that after the unsolicited proposal was received, the (BAC) was not held or open to the public as provided in the Regulation.

7. Based on these reasons. the GPT cannot confirm compliance with MSCM Regulation 37 on the unsolicited bid. The Municipality was accordingly advised by the GPT to comply with the requirement of the MSCM Regulation 37 on the unsolicited bid.

8. In light of this correspondence from GPT, the Municipality brought a counter-application in which the following relief is sought:

9.1. Condonation for the late filing of the answering affidavit and the delay in issuing the counter-application;

9.2. Reviewing and setting aside the deed of sale written agreement;
and

9.3. Declaring that the deed of sale written agreement be declared of no force or effect.

Issues to be determined

10. The opposition by the Municipality to the relief sought in the main application is confined to attacking the legality of the deed of sale written agreement. The import of this is that, if the counter-application is not successful, the Municipality has no opposition to the relief sought in the main application. For this reason, argument during the hearing of this matter was confined to addressing the merits of the counter-application for self review.

Discussion

Delay

11. The counter-application impugning the validity of the review application was instituted on 3 June 2024, more than eight years after the conclusion of that agreement. Thus the first issue for consideration is whether this delay is reasonable or not.
12. In *Merafong*¹ and *Gijima*², the Constitutional Court articulated the reasons for requiring reviews to be instituted without undue delay include to ensure certainty; to promote legality and to curb the potential prejudice that would ensue if the lawfulness of the decision remains uncertain.

¹ Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others 2008 (5) SA 171 (CC)

² State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd 2018 (2) SA 23 (CC)

13. In *Camps Bay Rate Payers' and Residents' Association*³ the SCA held that a party applying for condonation must provide a full and honest explanation for the whole period of the delay. This was affirmed by the Constitutional Court in *Buffalo City Metro Municipality*⁴.
14. The Municipality accepted that it did not provide an explanation for the first five years after the deed of sale agreement was concluded but relied on the judgment of the Constitutional Court in *Merifon*⁵ in which the Constitutional Court held, in para 46 thereof that

“Whilst I agree with the criticism levelled against the Municipality for its inordinate delay in taking steps to deal with its conduct in concluding an invalid agreement, this has no bearing on the eventual outcome of the matter. The unexplained long delay in reviewing its unlawful conduct does not cure the invalidity and unenforceability of the agreement. Inexcusable as it is, the long delay and failure by the Municipality to review its unauthorised conduct also does not automatically deprive it of the option of a reactive challenge. Since *Merafong*⁶ and *Tasima*⁷, it is now clear that a reactive challenge “should be available where justice requires it to be” and that an organ of state is “not disqualified from raising a reactive challenge merely because it is an organ of state”.

³ *Camps Bay Rate Payers' and Residents' Association v Harrison* [2010] 2 All SA 519 (SCA)

⁴ *Buffalo City Metro Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 (CC)

⁵ *Merifon (Pty) Limited v Greater Letaba Municipality and Another* (CCT 159/21) [2022] ZACC 25; 2022 (9) BCLR 1090 (CC) (4 July 2022)

⁶ *Supra*

⁷ *Department of Transport and Others v Tasima (Pty) Ltd* 2017 (2) SA 622 (CC)

15. However, the above paragraph from the *Merifon* judgment cannot be interpreted as meaning that it is no longer required that state functionaries put forward a full explanation for any delay in bringing reactive challenges. Certainly, this paragraph does not detract from the established line of Constitutional Court and Supreme Court of Appeal authority which establishes that a full explanation for delay is required and a court has a discretion as to whether or not any undue delay should be condoned.

16. The Municipality contended that the delay in seeking the review was not of its own doing due to essentially two reasons:

16.1. Correspondence between the parties which shows that the Municipality has a clear intention to follow the law and to transfer the property; and

16.2. The counter-application is brought as a result of the comments received from the Gauteng Provincial Treasury ("GPT") and the view adopted by the Municipality on consideration of same.

17. However, the Municipality does not provide a full explanation for the entire period of delay. Not only is the lengthy delay of eight years before the deed of sale agreement was challenged not properly explained, but absolutely no explanation is given for the delay since June 2022 when the Municipality was first advised of the concerns of GPT (which now forms the basis for the self-review). To make matters worse, despite being aware of these concerns, the Municipality pushed ahead with the implementation of the deed of sale agreement including entering

into a settlement agreement which sought to ensure to the expeditious transfer of the property in question.

18. I accordingly find that the delay by the Municipality is unreasonable and that a case has not been made out for condonation.

The merits of the counter-application

19. In any event, even on the merits, I find that the Municipality has not established that the conclusion of the deed of sale was unlawful. In this regard it is noted that the GPT had raised three issues which included the following:

19.1. No evidence was presented that the product or service offered in terms of the bid is a demonstrably or proven unique innovation concept as per MSCM Reg 37(2)(a)

19.2. No evidence was presented that comments were deliberated upon during the meeting held on the 15th of February 2016 as per the requirement of MSCM Reg 37(4), (5) and (7).

19.3. The (BAC) was not held or open to the public as provided in the Regulation.

20. The founding affidavit in the counter-application does not properly address these issues in that:

20.1. The founding affidavit stops short of making the assertion that the product or service offered in terms of the bid was not demonstrated nor proven to be unique;

20.2. The evidence indicates that the Council did not refer comments to National Treasury because none were received. Indeed, on a proper reading of regulation 37(2)(a) the duty to refer to National Treasury only arises in circumstances where comments are received on the unsolicited bid. In the present matter, none were received at the relevant time. Comments were only submitted long after the BAC had made its recommendation and a decision accepting that recommendation had been taken; and

20.3. No allegation is made in the founding affidavit that the BAC was not open to the public.

21. I accordingly find that the Municipality has failed to establish a factual foundation for its claim that the deed of sale was unlawful.

Remedy

22. In these circumstances, the counter-application stands to be dismissed with costs. It also follows that the main application for specific performance must succeed with costs.

23. I note that the applicant seeks costs on a punitive scale. However, in my view, the facts in this matter do not warrant punitive costs. I accordingly award costs on a part and party scale.

Order

24. The following order is thus made:

24.1. The counter-application is dismissed;

24.2. The first and second respondents are directed to take all necessary steps, give all necessary instructions to the first respondent's conveyancers, and to sign all necessary documentation, to procure and effect the transfer of, and registration of the transfer of, the property, described as ERF 2[...] DAVEYTON EXTENSION 7 TOWNSHIP, DAVEYTON, measuring approximately 5,0981 hectares in extent to the applicant

24.3. The Sheriff of this Court is authorised to sign all documents relating to the transfer of the property to the applicant in the event of the First and Second Respondents refusing and/or neglecting to take all necessary steps, give all necessary instructions to the first respondent's conveyancers, and sign all necessary documents to give effect to the aforesaid registration and/or transfer of the property into the name of the applicant within 30 (thirty) days from the date of issue of this order.

24.4. The first respondent is to pay the costs of:

- 24.4.1. The main application, on scale B of rule 69 of the Uniform Rules of Court, including the costs of two junior counsel;
- 24.4.2. The counter-application on scale B of rule 69 of the Uniform Rules of Court, including the costs of two junior counsel;
- 24.4.3. The costs of the unopposed application set down for hearing on 4 June 2024 before Judge Mahalelo, in which costs were reserved, with reference to Scale A of rule 69 of the Uniform Rules of Court.

K PILLAY
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

For the Applicant: Adv D Smith and Adv M Madi instructed
by Nyapotse Incorporated

For the 1st Respondent: Adv E Sithole instructed by DDV &
Chiba Attorneys

Date of hearing: 21 July 2025

Date of judgment: 15 September 2025

