



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 4716/2024

In the matter between:

KIKA FURNITURE (PTY) LTD t/a FURNITURE FAIR

APPLICANT

and

THE UNIVERSITY OF THE FREE STATE

RESPONDENT

Neutral citation: *Kika Furniture (Pty) Ltd t/a Furniture Fair v The University of the Free State* (4716/2024) [2025] ZAFSHC 342 (31 October 2025)

Coram: Daffue et Daniso JJ

Heard: 28 July 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 16h00 on 31 October 2025.

Summary: Application for review – university resolved to suspend a supplier for a period of four years from its list of approved suppliers – service provider purposefully manipulated the university's procurement policy to ensure that it would always be the successful bidder – held that decision to suspend did not fall within the definition of administrative action, but even so, the decision was lawful, rational and proportional – review application dismissed.

ORDER

The applicant's application for review is dismissed with costs, including the costs of two counsel, the senior counsel's fees to be calculated on scale C and that of junior counsel on scale B.

JUDGMENT

Daffue J (Daniso J concurring)

Introduction

[1] There is no evidence to suggest that a service provider in the furniture business has not provided excellent service and good quality products to the university for many years. However, an investigation revealed that the service provider had manipulated the university's procurement processes purposefully with the assistance of some employees of the university in order to benefit financially. The university suspended the service provider from its list of registered service providers for a period of four years. This decision is the focal point of this judgment.

The parties

[2] The applicant is Kika Furniture (Pty) Ltd t/a Furniture Fair, a company that specialises in providing comprehensive furniture and interior design solutions. It regards itself as one of the leading providers of such services in the Free State Province.

[3] The respondent is the University of the Free State (the UFS), a juristic person and higher education institution registered in terms of the Higher Education Act 101 of 1997.

The relief sought and the provisional counter-application

[4] The applicant seeks the following relief in its notice of motion:

- '1. That the decision of the Respondent to suspend or remove the Applicant from its list of suppliers be reviewed and set aside.
2. That the Respondent be ordered to reinstate the Applicant on its list of suppliers, alternatively that the Applicant's submission for reinstatement to the Respondent's list of suppliers be referred back to a competent decision-making body of the Respondent.
3. That the costs of the application for review shall be paid by the Respondent in the event of it opposing the application.'

[5] The UFS not only opposes the relief sought, but also filed a conditional counter-application. In its conditional counter-application, the UFS alleges that in the event of the court finding that the decision to suspend the applicant from its list of suppliers falls to be set aside, the applicant's misconduct in deliberately manipulating the UFS' Procurement Policy for its own profit and gain is of such a serious breach of the fundamental conditions of its appointment that the UFS is entitled to terminate the appointment. In such an instance it shall exercise its election to terminate the applicant's appointment as registered supplier. This conditional counter-application is opposed by the applicant.

The pre-litigation history between the parties in a nutshell

[6] On 19 January 2010 the applicant was first registered as one of the UFS' suppliers. In 2023, the applicant and all other affected service providers were requested to complete a new application form. The applicant's application to become a registered supplier of the UFS was not considered by the Tender Committee as part of a formal tender adjudication process, but by the Supply Chain Management Office (Provisioning). In terms of the UFS' Procurement Policy, it was the responsibility of Provisioning to contract a pool of approved suppliers, all of whom had to commit themselves to the UFS in a memorandum of understanding.

[7] In order for purchases to be made by the UFS, at least two written quotations are required for purchases between R10 000 and R50 000. There is a prohibition on the splitting of purchases into smaller units of less than R10 000 to change the minimum requirements for quotations. Registered suppliers are re-evaluated at least every three years and the services of a supplier may be terminated in various circumstances, including where a supplier does no longer meet the requirements of the UFS.

[8] In June 2023, discrepancies relating to the applicant's sales practices were brought to the attention of the UFS' senior management. In some cases the UFS personnel received two quotes, one from the applicant as a registered supplier and one from a non-registered supplier, M&I Ingeboude Kaste. It appeared that the quotations by M&I Ingeboude Kaste would be obtained by the applicant whose quotes were always lower than that of M&I Ingeboude Kaste. As a result, the applicant's quotes were always accepted. The senior management *inter alia* became concerned about the relationship between the applicant and M&I Ingeboude Kaste. An internal audit investigation followed in July 2023.

[9] On 2 August 2023, two UFS employees met with directors of the applicant who were told that the applicant's manner in quoting for work resulted in a manipulation of the UFS' Procurement Policy. This was neither denied, nor disputed. On 3 August 2023, a special audit report was compiled in terms whereof it was recommended that the UFS institute immediate sanctions against the applicant due to its deliberate circumvention of its Policy and Procedure for Purchases. The UFS referred the issue to its Tender Committee who met on 15 August 2023. Consensus was reached that the UFS could not conduct further business with the applicant due to its unethical behaviour. On 25 August 2023, the UFS informed the applicant of its decision to temporarily suspend the applicant from its list of suppliers pending finalisation of all internal investigations into procurement irregularities. Hereafter, several further investigations and internal meetings took place.

[10] Correspondence followed between the UFS and the applicant's attorneys. On 15 May 2024, the UFS advised the applicant of the decision to finally remove/suspend it from its list of suppliers due to the seriousness of the misconduct unveiled. In this letter the UFS allowed the applicant an opportunity to place mitigating factors before it. On 22 May 2024, the applicant addressed a letter to the UFS titled 'Letter of Apology'. It conceded its failure to comply with the UFS' Procurement Policy and requested that consideration be given to its reinstatement on the list of suppliers. The UFS yet again reconsidered the issue. On 15 July 2024, the applicant was informed that the UFS' Tender Committee had resolved, considering the applicant's 'criminal activity', that it be suspended from the list of suppliers for a period of four years, effectively from 13 June 2024. After a query by applicant's attorneys, the UFS confirmed the decision in its letter of 2 August 2024. This triggered the review application.

Common cause facts

[11] The following is either common cause and/or was conceded by the applicant and/or cannot be seriously disputed:

- a. the applicant was aware of the UFS' procurement policy and the requirement of two written quotations for purchases between R10 000 and R50 000;
- b. M&I Ingeboude Kaste was not a registered supplier of the UFS, but notwithstanding that, the applicant obtained second written quotations from M&I Ingeboude Kaste, well-knowing that its quotations were merely obtained to further the applicant's interests; these quotations were also submitted to the UFS; in all instances, the quotations by M&I Ingeboude Kaste were higher than those of the applicant and therefore ensuring that the applicant would always receive the UFS' business;
- c. some UFS personnel were involved and/or acted in concert with the applicant;
- d. in some instances, quotations/invoices were split to ensure that the R10 000 threshold was not reached; and
- e. the applicant benefited financially as a result of the processes embarked upon.

The remedy sought: a review of an administrative decision versus contractual remedies.

[12] The parties are not *ad idem* as to the pathway followed by the applicant to claim relief. The applicant submits that it is entitled to succeed as its application falls squarely within the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). It submits that the UFS' Tender Committee's decision to suspend it is unlawful as it acted beyond its lawful authority. Secondly, no rational decision was taken as there were no clearly established terms that guided the decision-making process; consequently, an arbitrary decision was taken. In the third instance, the four years' suspension is not proportional to the mitigating factors and the long-standing relationship between the parties, especially bearing in mind the applicant's prior record of delivering quality products and services.

[13] The UFS holds a different view. It denies that the applicant is entitled to review its decision. Although dealing with the applicant's submissions pertaining to a PAJA review, the UFS submits that the relationship between it and the applicant as one of its registered suppliers is premised on contract. The UFS' Policy and Procedures for Purchases is applicable. In terms thereof, although no written memorandum of understanding, or service level agreement was concluded with the applicant, it was subject to an implied

and/or tacit condition that the applicant would be ethical in all its dealings with the UFS, adhere to the Policy and Procedures for Purchases and avoid any conduct contrary to the essential purpose of the policy to ensure equitable, fair, transparent, competitive and cost-effective procurement.

[14] The UFS submits that, by sourcing second quotations from a non-registered supplier in these specific instances which were always lower than the applicant's quotations and the splitting of quotations to ensure that they were below R10 000 in some instances, the applicant deliberately manipulated the Procurement Policy for its own profit and gain. Its misconduct is in breach of the fundamental conditions of its appointment, entitling the UFS to terminate its appointment as registered supplier.

Evaluation of the evidence and submissions by the parties

[15] I provided a summary of the events that led to the UFS' decision to suspend the applicant. I shall herein later consider whether the dispute can be categorised as a review in terms of PAJA. Mr WA Van Aswegen on behalf of the applicant, submitted that this is indeed the case, whilst Mr N Snellenburg SC, who appeared with Mr JMC Johnson on behalf of the UFS, submitted that it acted in accordance with its right as the innocent party to terminate the contractual relationship between the parties based on the serious breach of contract by the applicant as the guilty party. It is the UFS viewpoint that the decision taken by it to suspend the applicant stemmed from the parties' contractual relationship and that it was not taken in terms of any legislation or empowering provisions as required under the definition of administrative action in PAJA.

[16] The Policy and Procedures for Purchases requires that registered suppliers shall be re-evaluated at least every three years and if changes occur at a supplier that justify re-evaluation, this should be done sooner. A supplier's services may be terminated in various circumstances, including where the supplier no longer meets the requirements of the UFS.

[17] I am satisfied that in the absence of any express policy, or specific empowering provision, the UFS has the inherent power to make decisions regarding its registered suppliers to ensure that its Policy and Procedure for Purchases is neither contravened, nor defeated. Notwithstanding the submissions by Mr Van Aswegen, I am satisfied that

the Tender Committee was the forum best suited to consider the matter and make a decision on behalf of the UFS. The UFS made it clear, as also submitted by its counsel, Mr Snellenburg SC, that it does not want to do any further business with the applicant because of a serious breach of trust.

[18] Already in *Chirwa v Transnet Limited and Others*¹ (*Chirwa*), Ngcobo J, writing for the majority, made the point that not all conduct by State functionaries entrusted with public authority is administrative action. It is not only the identity of the person exercising the function, but the nature of the function, that must be considered. The learned justice continued as follows:²

'The subject matter of the power involved here is the termination of a contract of employment for poor work performance. The source of the power is the employment contract between the applicant and Transnet. The nature of the power involved here is therefore contractual. The fact that Transnet is a creature of statute does not detract from the fact that in terminating the applicant's contract of employment, it was exercising its contractual power. It does not involve the implementation of legislation which constitutes administrative action. The conduct of Transnet in terminating the employment contract does not, in my view, constitute administration. It is more concerned with labour and employment relations. The mere fact that Transnet is an organ of State which exercises public power does not transform its conduct in terminating the applicant's employment contract into administrative action. . . '

[19] In *Steenkamp v Provincial Tender Board of the Eastern Cape*³ (*Steenkamp*), Harms JA emphasised that not everything is administrative law with reference to the invitation to tender, the evaluation of the tenders and the award of the tender. He stated the following in this regard:⁴

' . . . The evaluation of the tender is, however, a process governed by administrative law. Once the tender is awarded, the relationship of the parties is that of ordinary contracting parties, although in particular circumstances the requirements of administrative justice may have an impact on the contractual relationship.' (Emphasis added.)

The SCA judgment in *Steenkamp* was unsuccessfully taken on appeal to the

¹ *Chirwa v Transnet Limited and Others* [2007] ZACC 23; 2008 (4) SA 367 (CC); 2008 (3) BCLR 251 (CC); [2008] 2 BLLR 97 (CC); (2008) 29 ILJ 73 (CC).

² *Ibid* para 142.

³ *Steenkamp v Provincial Tender Board of the Eastern Cape* [2005] ZASCA 120; [2006] 1 All SA 478 (SCA); 2006 (3) SA 151 (SCA).

⁴ *Ibid* para 12.

Constitutional Court.⁵

[20] In *Cape Metropolitan Council v Metro Inspection Services Western Cape CC and Others*⁶ (*Cape Metropolitan*), the local authority cancelled an agreement on the grounds of fraud. The Supreme Court of Appeal held that the cancellation was not 'administrative action' under the Constitution, entitling the other party to procedural fairness before termination. I quote:⁷

'The appellant is a public authority and, although it derived its power to enter into the contract with the first respondent from statute, it derived its power to cancel the contract from the terms of the contract and the common law. Those terms were not prescribed by statute and could not be dictated by the appellant by virtue of its position as a public authority. They were agreed to by the first respondent, a very substantial commercial undertaking. The appellant, when it concluded the contract, was, therefore, not acting from a position of superiority or authority by virtue of its being a public authority and, in respect of the cancellation, did not by virtue of its being a public authority, find itself in a stronger position, than the position it would have been in, had it been a private institution. When it purported to cancel the contract, it was not performing a public duty or implementing legislation; it was purporting to exercise a contractual right founded on the consensus of the parties, in respect of a commercial contract. In all these circumstances it cannot be said that the appellant was exercising a public power. S 33 of the Constitution is concerned with the public administration acting as an administrative authority exercising public powers not with the public administration acting as a contracting party from a position no different from what it would have been in, had it been a private individual or institution.' (Emphasis added.)

[21] in *Logbro Properties CC v Bedderson NO and Others (Logbro)*,⁸ Cameron JA explained and distinguished *Cape Metropolitan*, stating that it is 'not authority for the general proposition that a public authority empowered by statute to contract may exercise its contractual rights without regard to public duties of fairness'. The learned justice opined that 'the case establishes the proposition that a public authority's invocation of a power of cancellation in a contract concluded on equal terms with a major commercial undertaking, without any element of superiority or authority deriving from its public position, does not

⁵ *Steenkamp NO v Provincial Tender Board of the Eastern Cape* [2006] ZACC 16; 2007 (3) SA 121 (CC); 2007 (3) BCLR 300 (CC).

⁶ *Cape Metropolitan Council v Metro Inspection Services Western Cape CC and Others* [2001] ZASCA 56; 2001 (3) SA 1013 (SCA); 2001 (10) BCLR 1026 (A).

⁷ *Ibid* para 18.

⁸ *Logbro Properties CC v Bedderson NO and Others* [2002] ZASCA 135; [2003] 1 All SA 424 (SCA); 2003 (2) SA 460 (SCA) para 10.

amount to an exercise of public power’.

[22] *Cape Metropolitan* was also not followed in *South African National Parks v MTO Forestry (Pty) Ltd and Another*⁹ (SANParks). I quote:¹⁰

[25] *Logbro* highlighted that *Cape Metropolitan Council* is no authority for a general principle that a public authority empowered by statute to contract may always exercise its contractual rights without regard to public duties of fairness. More importantly, the court in *Logbro* stressed the distinguishing factors in that case that underpinned the court’s decision. It noted that the tender and employment cases were not relevant to the facts in *Cape Metropolitan Council* because of the equal power of the contracting parties in that case.

[26] The reliance by the appellant on *Government of the Republic of South Africa v Thabiso Chemicals* does not take the matter any further. Unlike in this case, the dispute, in *Thabiso*, as well as in *Cape Metropolitan Council* turned on the contract entered into between the two parties. The pivotal issue in *Thabiso* was the limited factual determination into whether the facts relied on by the Government in cancelling a tender could sustain the cancellation under the relevant clause in the contract. *Thabiso* did not concern the effect that the exercise of a power sourced in a contract would have on the public and its interests.’ (Emphasis added.)

[23] In *SANParks*,¹¹ Navsa JA and Davis AJA, although in complete agreement with the majority judgment, stated as follows:

[35] . . . notwithstanding a contractual right of provincial government to withdraw a tender, the relationship between the public authority and the private tendering party was governed by the principles of administrative law. . . . In the circumstances in *Logbro* [unlike that in *Cape Metropolitan*], there was not yet an equality of arms between the private party tendering to provide services to the provincial government and the latter. That case involved litigation between competing parties in a tender process. It concerned a challenge to the award of the tender.

[36] The ambit of *Cape Metro*, confirmed in *Logbro*, was as follows: the Metropolitan Council cancelled a contract with a private contractor. The main issue was whether the cancellation in terms prescribed by the contract involved administrative-law principles. On the facts of that case, this court held that the cancellation did not constitute administrative action. It was this distinction that *Logbro* sought to make.’ (Emphasis added.)

⁹ *South African National Parks v MTO Forestry (Pty) Ltd and Another* [2018] ZASCA 59; 2018 (5) SA 177 (SCA).

¹⁰ *Ibid* paras 25 and 26.

¹¹ *Ibid* paras 35 and 36.

[24] In *Government of the Republic of South Africa v Thabiso Chemicals (Pty) Ltd*¹² (*Thabiso Chemicals*), the respondents sued the appellant in the High Court for damages arising out of the alleged wrongful cancellation by the State Tender Board of a contract for which the respondent had been the successful tenderer. The appellant had established that the respondent provided incorrect information in the tender process which it relied upon to cancel the contract and consequently the appeal succeeded. The court held as follows:¹³

'What remains are observations originating from comments by the court a quo which seem to support the notion that the contractual relationship between the parties may somehow be affected by the principles of administrative law. These comments gave rise to arguments on appeal, for example, as to whether the cancellation process was procedurally fair and whether Thabiso was granted a proper opportunity to address the Tender Board in accordance with the *audi alteram partem* rule prior to the cancellation. Lest I be understood to agree with these comments by the court a quo, let me clarify: I do not believe that the principles of administrative law have any role to play in the outcome of the dispute. After the tender had been awarded, the relationship between the parties in this case was governed by the principles of contract law . . .' (Emphasis added.)

[25] It is common cause that the UFS did not employ a formal tender process in terms whereof potential suppliers were invited to tender in order to be included on a list of registered suppliers. The applicant voluntarily and successfully applied for inclusion on the UFS' list of registered suppliers. No written memorandum of understanding or service level agreement was entered into between the parties. The applicant's appointment was subject to the most basic of implied and/or tacit conditions as submitted by Mr Snellenburg SC, to wit that it would be ethical in all its dealings with the UFS, adhere to the Policy and Procedure for Purchases and avoid any conduct contrary to the essential purpose of the policy to ensure equitable, fair, transparent, competitive and costs effective procurement.

[26] The applicant is, in its own words, a major service provider in the furniture industry. Bearing in mind the further facts and circumstances, I am satisfied that there was no unequal power in the appointment of the applicant or relating to the terms upon which it was to render services.

¹² *Government of the Republic of South Africa v Thabiso Chemicals (Pty) Ltd* [2008] ZASCA 112; 2009 (1) SA 163 (SCA); [2009] 1 All SA 349 (SCA).

¹³ *Ibid* para 18.

[27] I agree with the UFS that the strategy adopted by the applicant amounted to a deliberate and unethical manipulation of the UFS' procurement processes that were in place to ensure equitable, fair, transparent, competitive and cost-effective procurement. This was in essence admitted by the applicant in its letter of apology.

[28] The applicant's reliance on *Mzanzi Fire and Security (Pty) Ltd v Durban University of Technology and Others*¹⁴(*Mzanzi*) is without substance. This judgment is clearly distinguishable on the facts. In *Mzanzi* the issue was whether the procurement of security services by the Durban University of Technology (DUT) constituted 'administrative action' as contemplated by PAJA. In accepting the now trite principle that a university is an organ of state, the court accepted that the DUT would have exercised a public power when contracting for the provision of security services.¹⁵ Totally distinguishable from the facts *in casu*, *Mzanzi* as the applicant submitted a responsive tender for the guarding services, but the guarding contract was ultimately awarded to another tenderer, cited as the third respondent in that application. The applicant contended that the tender process was irregular and tainted with fraud. Clearly, *Mzanzi* dealt with the exercise of the DUT's discretion in accepting the third respondent's tender. The present application has nothing to do with a tender process and the selection of tenderers to be placed on the UFS' panel of registered suppliers. It relates to the UFS' response to the applicant's conduct while already on the list of registered suppliers for a period of thirteen years. I repeat that the relationship between the parties is premised on contract.

[29] No formal contract was entered into between the applicant and the UFS and consequently, no cancellation clause or *lex commissoria* is applicable, entitling the UFS to cancel the contract due to the applicant's failure to perform.¹⁶ However, I am of the view that the applicant's breach of contract was sufficiently serious to afford the UFS a right to cancel the contract. A material term has been breached and Mr Snellenburg correctly submitted that the trust relationship between the parties has been damaged beyond repair. The UFS exercised its contractual power in line with the judgments in

¹⁴ *Mzanzi Fire and Security (Pty) Ltd v Durban University of Technology and Others* [2022] ZAKZDHC 12; [2022] 2 All SA 475 (KZD); 2022 (5) SA 510 (KZD).

¹⁵ *Ibid* para 35.

¹⁶ *Spies v Lombard* [1950] 3 All SA 355; 1950 (3) SA 469 (A); see also the dictum of Olivier JA in *Singh v McCarthy Retail Ltd* [2000] ZASCA 41; 2000 (4) SA 795 (SCA); [2000] 4 All SA 487 (A) (14 September 2000) para 15, relating to fairness and a value judgment to be made by the court as to whether the breach was so serious to allow the innocent party to cancel the contract.

Chirwa,¹⁷ *Steenkamp*¹⁸ and *Cape Metropolitan*¹⁹ *supra*. It was not performing a public duty or implementing legislation in the process. The mere fact that the UFS decided to implement a four year suspension and not to sever all ties permanently, *ie* to cancel the contract, does not assist the applicant's case.

[30] In the event that another court may find that I am wrong in finding that the relationship between the UFS and the applicant was premised on contract, I shall now deal with the submissions presented by the parties pertaining to review.

[31] Hoexter and Penfold describe the importance of procedural fairness as follows:²⁰ 'Procedural fairness . . . is concerned with giving people an opportunity to participate in the decisions that will affect them, and – crucially – a chance of influencing the outcome of those decisions. Such participation is a safeguard that not only signals respect for the dignity and worth of the participants, but is also likely to improve the quality and rationality of administrative decision-making and to enhance its legitimacy.'

The authors' explanation has been quoted with approval in the recent judgment of the Supreme Court of Appeal in the *IPA Foundation (NPC) v South African Pharmacy Council*.²¹ It is trite, as explained in *Zondi v MEC for Traditional and Local Government Affairs*,²² that procedural fairness must be determined in light of the specific circumstances of a particular case.

[32] I am satisfied that, bearing in mind all the investigations and internal processes undertaken, as well as the opportunities provided to the applicant to state its case, a fair and just process has been undertaken.

[33] In *Albutt v Centre for the Study of Violence and Reconciliation and Others*²³ the Constitutional Court reiterated the following:

[51] . . . Courts may not interfere with the means selected simply because they do not like them, or because there are other more appropriate means that could have been selected. But,

¹⁷ Fn 1.

¹⁸ Fn 3.

¹⁹ Fn 6.

²⁰ C Hoexter and G Penfold *Administrative Law in South Africa* 3rd ed (2021) at 502.

²¹ *IPA Foundation (NPC) v South African Pharmacy Council* [2025] ZASCA 148 para 34.

²² *Zondi v MEC for Traditional and Local Government Affairs* [2004] ZACC 19; 2005 (3) SA 589 (CC); 2005 (4) BCLR 347 (CC) paras 112-114.

²³ *Albutt v Centre for the Study of Violence and Reconciliation and Others* [2010] ZACC 4; 2010 (3) SA 293 (CC); 2010 (2) SACR 101 (CC); 2010 (5) BCLR 391 (CC) para 51.

where the decision is challenged on the grounds of rationality, courts are obliged to examine the means selected to determine whether they are rationally related to the objective sought to be achieved. What must be stressed is that the purpose of the enquiry is to determine not whether there are other means that could have been used, but whether the means selected are rationally related to the objective sought to be achieved. . . .’

[34] *In Democratic Alliance v President of South Africa and Others*²⁴ the Constitutional Court reiterated the following:

‘. . . The aim of the evaluation of the relationship is not to determine whether some means will achieve the purpose better than others but only whether the means employed are rationally related to the purpose for which the power was conferred. Once there is a rational relationship, an executive decision of the kind with which we are here concerned is constitutional.’

[35] Mr Van Aswegen submitted, based on the judgment in *Gray Moodliar Inc v Nelson Mandela Bay Metropolitan Municipality and Another*²⁵ (*Gray Moodliar*), that this Court should find in the applicant's favour. In that case a competitive tender process was followed for the appointment of law firms as service providers. The applicant was elected as part of the panel of attorneys to represent the municipality in respect of litigious and non-litigious matters. It provided its services in terms of a Service Level Agreement (SLA) which was supposed to endure for a period of 36 months. Prior to the expiry of the 36 months, the municipality's council resolved to terminate all existing mandates issued to the applicant in terms of the SLA.

[36] The court in *Gray Moodliar*²⁶ considered the terms of the SLA and held that the case was distinguishable from the facts in *Cape Metropolitan* in which case the public authority cancelled the contract on the basis of the respondent's breach thereof in accordance with its clear contractual entitlement to do so. The learned judge accepted the reasoning in *Logbro*²⁷ and held that even if the municipality wanted to cancel the SLA, it could exercise its powers only with due regard to the principle of fairness. Therefore, the mandates to the applicant could not be withdrawn for an improper or unjustified reason.

²⁴ *Democratic Alliance v President of South Africa and Others* [2012] ZACC 24; 2012 (12) BCLR 1297 (CC); 2013 (1) SA 248 (CC) para 32.

²⁵ *Gray Moodliar Inc v Nelson Mandela Bay Metropolitan Municipality and Another* [2019] ZAECGHC 65; [2019] 10 BLLR 1163 (ECG).

²⁶ *Ibid* paras 40 and 41.

²⁷ *Logbro* fn 8.

[37] The learned judge in *Gray Moodliar*²⁸ concluded that, bearing in mind the facts of that case, the decision was irrational and had to be set aside. I do not deem it necessary to deal with the facts in *Gray Moodliar* in more detail, save to say that it is apparent from those facts that the municipal council's decision was based on incorrect findings of fact. *In casu*, the common cause facts as identified herein distinguishes this matter from *Gray Moodliar*. Consequently, it is not necessary to make any comments pertaining to the approach by the learned judge in arriving at the eventual conclusion.

[38] Although the decision to suspend the applicant for four years appears to be harsh, it is apparent from the minutes of the Tender Committee meeting that its members were *ad idem* about the period of suspension. I repeat that the Tender Committee was the best body to consider the issue and that the applicant's version that it acted unlawful and beyond its lawful authority is rejected.

[39] In order to consider rationality in a review application, the relationship between the means chosen and the ultimate goal to be achieved by the decision-maker must be assessed. Put differently, there must be a rational relationship between the decision and the purpose for which the power was conferred. It is not open to this Court to interfere with the means selected by the UFS simply because we do not like them, or consider that better means could have been utilised.²⁹ A high degree of deference shall be afforded to the decision-maker. Rationality is neither about justification, nor the cogency of reasons as confirmed by the Constitutional Court in *Nu Africa Duty Free Shops (Pty) Ltd v Minister of Finance and Others*.³⁰

[40] I am satisfied that the issue of proportionality does not assist the applicant at all. The applicant's misconduct is so serious that the UFS as the innocent party could have terminated the contractual relationship and sever all ties permanently. Much has been said about the UFS' reference to 'criminal activity' in suspending the applicant. One does not have to be convicted to be accused of criminal activity. The word 'criminal' is defined as meaning *inter alia* 'of the nature of or involving a crime punishable by law, wicked,

²⁸ *Gray Moodliar* fn 25 para 58.

²⁹ *Albutt v Centre for the Study of Violence and Reconciliation and Others* [2010] ZACC 4; 2010 (3) SA 293 (CC); 2010 (2) SACR 101 (CC); 2010 (5) BCLR 391 (CC) para 51.

³⁰ *Nu Africa Duty Free Shops (Pty) Ltd v Minister of Finance and Others* [2023] ZACC 31; 2023 (12) BCLR 1419 (CC); 2024 (1) SA 567 (CC) para 114.

deplorable or against the public good'.³¹

[41] Finally, I conclude that the Tender Committee did not act *ultra vires* in arriving at its objectively rational decision which was taken after adopting a fair process.

Conclusion

[42] In conclusion, the applicant's remedy vested in contract and its reliance on a review of the decision to suspend it falls to be dismissed with costs. Therefore, it is not necessary to consider the conditional counter-claim.

Order

[43] The applicant's application for review is dismissed with costs, including the costs of two counsel, the senior counsel's fees to be calculated on scale C and that of junior counsel on scale B.



J P DAFFUE
JUDGE OF THE HIGH COURT

I concur


 The Honourable Justice N S DANISO
 2025-10-2
 JUDGE OF THE HIGH COURT
 N.S. Daniso

³¹ The New Shorter Oxford English Dictionary vol 1, p 549.

Appearances

For the Applicant:	WA van Aswegen
Instructed by:	Peyper Attorneys, Bloemfontein
For the Respondent:	N Snellenburg SC and JMC Johnson
Instructed by:	Poswa Inc, Bloemfontein.