IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION,

CASE NO: 205112/2025

In the matter between:

SNR ELECTRICAL CC Applicant

and

KING SABATHA DALINDYEBO LOCAL MUNICIPALITY First Respondent

NGAMELA PAKADE: MUNICIPAL MANAGER KING SABATHA DALINDYEBO MUNICIPALITY Second Respondent

MEC FOR FINANCE AND PROVINCIAL TREASURY FOR EASTERN CAPE PROVINCE Third Respondent

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JUDGMENT

PITT AJ

[1] The applicant was an unsuccessful bidder of a tender which was issued by the first respondent. There is a review application pending before the same court in respect thereof. The review application has not been pursued because of these proceedings to compel the third respondent to provide a report to the applicant. The report relates to an objection which the applicant made to the third respondent in respect of the awarding of the tender to another party by the first respondent.

[2] The applicant is SNR Electrical and Mechanical Contractors CC ("SNR"), a close corporation duly registered. The first respondent is the King Sabatha Dalindyebo Local Municipality ("KSDM"), a local government municipality for the district of Mthatha in the Eastern Cape. The second respondent is the Municipal Manager of the KSDLM, Mr Ngamela Pakade, who is cited in his capacity as the municipal manager and accounting officer of the KSDLM. The third respondent is the Member of the Executive Council for the Department of Finance and Provincial Treasury for the Eastern Cape Province ("the Provincial Treasury").

[3] The facts, according to SNR, are briefly as follows. The KSDLM issued an invitation for a tender to suitably qualified bidders. SNR submitted its bid for the tender but was not successful. On 5 May 2025, the KSDLM published on its website the outcome of the tender evaluation, as well as the successful bidder and unsuccessful bidders. SNR was one of the unsuccessful bidders.

[4] On 12 May 2025, SNR wrote to the KSDLM to communicate its intention to the rejection of its bid and the decision not to evaluate it further in

terms of the conditions and in the tender document. The KSDLM failed to provide reasons and furnish the requested documents.

[5] After the alleged failure, SNR launched an urgent application to interdict the implementation of the tender pending finalisation of the review application against the decision not to award the tender to SNR. The KSDLM only provided reasons for the elimination of SNR from the tender process during the exchange of affidavits in the review application. The BEC and BEC reports were provided to SNR, but SNR does not specify by whom. The Provincial Treasury is not a party to the pending review application.

[6] The review application 'has not proceeded beyond service of the notice of motion and founding affidavit and no further step has been taken by the parties in those proceedings'. This is because Madam Justice Roberson handed down an order by agreement 'directing the applicant to file its objection with the KSDLM in terms of regulation 50 of the Supply Chain Management Policy regulations.' SNR then subsequently filed their objection with the KSDLM on 20 June 2025. Paragraph 2 of the order issued by Madam Justice Roberson reads thus:

> *'2. It is recorded that the First Respondent* [KSDLM] *has given an undertaking to resolve the objection lodged by the Applicant* [SNR] *in accordance with section 108 of the First Respondent's Supply Chain Management Policy read with regulation 50 of the Municipal Supply Management Regulations.'*

[7] The KSDLM referred the objection by SNR to an independent person, who sent a response to the objection ("the outcome") to the attorneys of the KSDLM. The attorneys responded per letter which was emailed to the attorneys of SNR on 4 September that the independent person had considered the

objections by SNR and that the outcome was provided to SNR directly on 18 August 2025.

[8] SNR was not satisfied with the outcome of the objection by the independent person and escalated the dispute in terms of Regulation 50(5) of the Municipal Supply Chain Management Regulations to the Provincial Treasury on 2 September 2025. This escalation was also because SNR submit that the independent person did not have authority to evaluate SNR's tender beyond the parameters of the objection. On 3 September 2025, the Provincial Treasury advised SNR that it (Provincial Treasury) had finalised the objection and communicated same to the KSDLM and Municipal Manager.

[9] SNR responded on the same date that the failure to communicate the outcome of the objection to SNR was unlawful, and the Provincial Treasury was asked for the report. On 14 October 2025, the Provincial Treasury corresponded with SNR, advising that its role in the dispute was passive and that the law does not permit it to decide on behalf of the KSDLM, and that it cannot release the outcome to the objection to SNR unless directed to do so by a court order.

[10] On 17 October 2025, SNR wrote back to the Provincial Treasury, explaining to it the importance of the outcome to SNR and that the refusal to release the report violates the rights of SNR and prejudices SNR from pursuing its review of the KSDLM's decision to eliminate SNR's tender. SNR gave the Provincial Treasury until 22 October 2025 "to reconsider its position", but no response was received.

[11] SNR complains that it is unable to proceed with its review application until the internal remedies contemplated in section 7 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) have been complied with or exhausted, and that the objection is the internal remedy contemplated in section 7.

[12] SNR further allege that the matter is urgent because our Courts have held that complaints about breach of the rule of law by an organ of state render the ensuing proceedings inherently urgent. It also submits that proceedings which seek to arrest or prevent an ongoing breach of the rule of law by an organ of state are inherently urgent. SNR submit further that review proceedings arising from the award and implementation of public tenders are treated as inherently urgent by our Courts because of their constitutional dimension and the risk of rendering subsequent relief academic.

[13] SNR maintains that the urgency of this application is intensified by the fact that the tenders were ultimately awarded between 18 and 21 August 2025, despite SNR’s objection under regulation 50 and its review application were still pending. If the matter is not heard urgently the KSDLM will complete the implementation of the unlawful awards, rendering any future judicial pronouncement academic and SNR’s rights illusory. SNR will not be able to exercise its rights under sections 33 and 34 of the Constitution to just administrative action and access to Court as the review remedy remains unavailable to it.

[14] SNR launched this application on urgent basis for a declaration to declare the refusal by Provincial Treasury to release the outcome of its objection as

irrational, unlawful, constitutionally invalid and set aside in accordance with PAJA. Ancillary to that, SNR wants this Court to direct the Provincial Treasury to issue the outcome of SNR's objection in respect of the tender within 5 days of the order, and that the Provincial Treasury pays the costs of the application, inclusive of the costs of two counsel on scale C.

[15] This Court is called upon to decide if the refusal by the Provincial Treasury to provide the outcome of the objection by SNR is unlawful, unreasonable or procedurally unfair in terms of PAJA. In addition, the Court must decide whether the dispute resolution mechanism created by regulation 50 of the Municipal Supply Chain Management Regulations constitutes an internal remedy contemplated in section 7 (2) of the PAJA.

[16] The application is opposed only by the Provincial Treasury. This is not surprising because the relief sought is only against the Provincial Treasury. What follows is the defence as set out by the Provincial Treasury in opposition of the relief sought by SNR.

[17] The application is not urgent as there is already a review application which is pending in the same court for the review of the tender. SNR is at liberty to invoke the discovery processes in terms of Rule 35 and interlocutory application in terms of Rule 6(1) of the Uniform Rules of Court under the pending review application.

[18] The application has no merit because the issue raised falls outside the purview of the Provincial Treasury. The Provincial Treasury does not hold any

constitutional or legislative mandate to issue advisory notices or advisory directives to private entities or service providers who are not organs of state.

[19] The gist of SNR's complaint is mainly premised on the provisions of the Municipal Finance Management Act 56 of 2003 ("the MFMA") and the regulations promulgated thereunder. The issues in dispute are also dealt with in the Supply Chain Management Policy ("SCMP") of the KSDLM, specifically sections 108 and 109. These sections also mirror regulation 50 of the Municipal Supply Chain Regulation as referred to by SNR in the founding affidavit.

[20] The relief sought by SNR is misplaced as regulation 50 is not an internal remedy within the meaning of PAJA. Also, nothing in regulation 50 and the KSDLM's SCMP requires the Provincial Treasury or the independent person to report to the service provider or aggrieved person. The mandate of the Provincial Treasury is to provide advisory and monitoring services to organs of state, and it does not have any power or authority to overrule organs of state or municipalities in respect of their decision-making powers. The role of the Provincial Treasury is merely to monitor and advise without usurping the authority of the institutions concerned.

[21] Regulation 50 gives an aggrieved party a choice of either lodging a dispute in terms of regulation 50 of launch an application in court. SNR has opted for the latter with this application. This is despite SNR already having launched an application for review of the same tender, which application is still pending.

The law

[22] Regulation 50 provides the following:

'*50. Resolution of disputes, objections, complaints and queries. —*

(1) The supply chain management policy of a municipality or municipal entity must provide for the appointment by the accounting officer of an independent and impartial person not directly involved in the supply chain management processes of the municipality or municipal entity —

(a) to assist in the resolution of disputes between the municipality or municipal entity and other persons regarding —

(i) any decisions or actions taken by the municipality or municipal entity in the implementation of its supply chain management system; or

(ii) any matter arising from a contract awarded in the course of its supply chain management system; or

(b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

(2) A parent municipality and a municipal entity under its sole or shared control may for purposes of subregulation (1) appoint the same person.

(3) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.

(4) The person appointed must —

(a) strive to resolve promptly all disputes, objections, complaints or queries received; and

(b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.

(5) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if —

> *(a) the dispute, objection, complaint or query is not resolved within 60 days; or*
>
> *(b) no response is received from the municipality or municipal entity within 60 days.*
>
> *(6) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.*
>
> *(7) This regulation must not be read as affecting a person's rights to approach a court at any time.'*
>
> *[12] The overarching statutory provision, s 7(2) of the PAJA, provides the following:*
>
> *'(2)(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*.'

[23] Both counsel referred to the case of *DDP Valuers (PTY) Ltd v Madibeng Local Municipality*[1], a decision of the Supreme Court of Appeal. Central to the case was regulation 50. The SCA referred to the decision of *Reed and others v The Master of the High Court and others*[2], in which Plasket J defined the term 'internal remedy' when used in administrative law as follows:

> *'[T]he composite term "internal remedy" . . . is used to connote an administrative appeal – an appeal, usually on the merits, to an official or tribunal within the same*

[1] (233/2015) [2015] ZASCA 146 (1 October 2015).
[2] [2005] ZAECHC 5; [2005] 2 All SA 429 (E) para 25.

administrative hierarchy as the initial decision-maker – or, less common, an internal review. Often the appellate body will be more senior than the initial decision-maker, either administratively or politically, or possess greater expertise. Inevitably, the appellate body is given the power to confirm, substitute or vary the decision of the initial decision-maker on the merits. In South Africa there is no system of administrative appeals. Instead internal appeal tribunals are created by statute on an ad hoc basis.'

[24] The SCA went further in paragraph [19] and held that where the dispute remains unresolved within a period of 60 days, or no response is received from the municipality within that period, the aggrieved party may refer the dispute to the relevant provincial treasury, the third respondent *in casu,* and failing which it may be escalated to the national treasury. The SCA also held that no procedure is provided on how these objections and complaints would be resolved save to state that if the impartial person is unable to resolve the dispute, the aggrieved party may refer the dispute to the provincial treasury. If the provincial treasury cannot resolve the dispute, the complaint or objection must be referred to the national treasury. The regulation is silent as to how and by whom the dispute would be resolved at these levels and on further action if the national treasury has not resolved the dispute.

[25] It is common cause that the matter was referred to the Provincial Treasury, and that SNR was not provided with the outcome of its objection. It is also common cause that the SNR did not refer the objection to the national treasury subsequent to the provincial treasury's failure to provide the outcome to SNR.

[26] The SCA held further that the decision of Plasket J in *ESDA Properties (Pty) Ltd v Amathole District Municipality*[3] is correct. In this case, the Court was faced with provisions similar to those of reg 50, i.e. ss 108 and 109 of Amathole District Municipality Supply Chain Management Policy, 2012, and held as follows in paras 10-11:

'In my view it was, for two reasons, not obligatory for ESDA to have first utilised this mechanism before applying for the review of the award of the tender.

The first is that ss 108 and 109 do not create an internal appeal or review in which the decision-maker has the power to confirm, substitute or vary the decision complained of. Instead, it creates a dispute resolution mechanism in which a person, with no decision-making powers, is appointed to assist the parties to resolve their dispute, acting, it would appear, as a mediator or conciliator. This is not an internal remedy contemplated by s 7(2) of the PAJA. The second reason is that s 109(6) provides in express terms that a party has a choice of either using the dispute resolution mechanism or approaching a court. In other words, it does not operate to prevent a party from approaching a court "at any time".'

[27] The Provincial Treasury relies on the submission that regulation 50 does not provide an internal remedy because the Provincial Treasury does not have powers to declare the decision of the municipality invalid and set it aside, and that section 7(2) of the PAJA is not an internal remedy. In *DDP Valuers*, which is similar in facts to this case, it was held that "*the appellant as an unsuccessful tenderer would have been entitled to appeal under s 62. However, the Municipality had already awarded the contract to the second respondent and the parties had already signed an agreement to that effect resulting in the rights accruing to the second respondent. It follows that the appellant could not resort to that procedure in order to comply with s 7(2) of the PAJA*."

[3] [2014] ZAECGHC 76; 2014 JDR 1878 (ECG).

[28] Similarly, *in casu*, the KSDLM has already awarded the contract to the successful bidder. SNR has also not sought to resort to the procedure in order to comply with s 7(2) of the PAJA.

[29] The Provincial Treasury admits that the internal remedies complained of have long been overtaken by events and are of no relevance. I agree with this. This point can not be taken further in the circumstances.

[30] The gist of the refusal of the Provincial Treasury to provide the report is that it is not empowered to communicate with private persons or entities, nor that it has any power or authority to overrule organs of state or municipalities in respect of their decision-making powers, and that it reports only to organs of state. It was also submitted that the role of the Provincial Treasury is to monitor and advise without usurping the authority of the institutions. No authority was provided for this assertion by *Mr Mayekiso* on behalf of the Provincial Treasury. Instead, he relies on the mandate of his client, being to provide advisory and monitoring service to organs of state.

[31] The Provincial Treasury further make the assertion that regulation 50 does not set out the manner in which complaints, queries or objections will be dealt with, and what is clearly stipulated in regulation 50 is that the appointed person submits monthly reports to the accounting officer of the municipality. This may be so, but this would defeat the purpose of referring objections to the Provincial Treasury in terms of the regulation 50 mechanism if the Provincial Treasury does not communicate the outcome of the objection to the party that escalated the objection in terms of that regulation. Surely those who

promulgated this regulation did not intend for the provincial treasury to report to another entity other than the one which referred the objection to it.

[32] The Provincial Treasury admits that it produced an outcome to the objection and provided it to the KSDLM. The reason for this is that there is no authority which directs or compels the Provincial Treasury to provide the outcome of an objection by a complainant. This is despite the fact that it was SNR which sought the outcome of the objection from the Provincial Treasury and not the KSDLM.

[33] SNR escalated the objection to the Provincial Treasury after it was not satisfied with the outcome of the objection by an independent person. KSDLM was also provided with the outcome by the Provincial Treasury and did not provide it to SNR either. The reasons provided by KSDLM are that it had provided the outcome of the objection by the independent person and SNR did not appeal the findings in that outcome, it considered the internal processes finalised. Although KSDLM is correct on this aspect, the outcome which it refers to is in respect of the independent person and not the one from the Provincial Treasury, which these proceedings are about.

[34] KSDLM is cited as a party to these proceedings. However, the relief of providing the outcome to SNR is not sought against KSDLM, but only against the Provincial Treasury. This is unfortunate because the original objection was lodged with KSDLM. SNR is also aware that the outcome of the objection by the Provincial Treasury was provided to KSDLM. However, if the Provincial Treasury produced an outcome to the objection raised by SNR, why not simply give it to SNR? The answer lies in the response by the Provincial Treasury that

it does not fall within its mandate to communicate with private persons, but only with organs of state. Surely this defeats the purpose of a private person escalating an objection to the provincial treasury after it was not satisfied with the outcome by the municipality. If the provincial treasury can accept an objection from a private person, it should be able to provide that private person with the outcome of its objection.

[35] Another compliant by the Provincial Treasury is that the review application is already pending before this Court, and that SNR has the remedy of asking for the report from the KSDLM in terms of the discovery procedures of Rule 35 of the Uniform Rules. At the time of launching the application, SNR was not aware that the outcome to the objection had been provided to KSDLM by the Provincial Treasury. Rule 35 provides for a party to ask for documents or recordings from a party in whose possession such documents and recordings are, and which party is known to the one requesting such documents and recordings. The Provincial Treasury is not a party to the review application, but the documents can be discovered from the Provincial Treasury in terms of Rule 35.

[36] The Provincial Treasury also submits that the present proceedings are an interlocutory application ancillary to the pending review application. This therefore is an alternative to the discovery processes as it relates to the same review proceedings.

[37] In support of the urgency of the application, SNR submit that the urgency arises from the continuing unlawfulness of the respondents’ conduct and the irreparable prejudice suffered by SNR each day that the outcome by the

Provincial Treasury remains withheld. SNR relies on *East Rock Trading 7 (Pty) Ltd v Ekurhuleni Metropolitan Municipality*[4], in which it was held that urgency exists where the delay in relief will perpetuate illegality or render justice nugatory. The review application is still pending, and it challenges the illegality which SNR complains of. SNR does have remedies available to it in terms of Rule 35 in the review application.

[38] SNR further rely on *Chung-Fung (Pty) Ltd v Mayfair Residents Association*[5], where the court held that urgency is established where delay would perpetuate an ongoing violation of the rule of law or where the redress in due course would be illusory. The answer to this also lies in the preceding paragraph.

[39] Lastly, SNR submit that if all else fails, the Court should find that grounds of urgency exist in the interests of justice because of the nature of the rights involved.

[40] *Mr Mayekiso*, submitted differently on behalf of the Provincial Treasury. He submitted that SNR has failed to set out explicitly the circumstances which render the matter urgent. On this score, he referred to the provisions of Rule 6(12) of the Uniform Rules of Court and *Vena and Another v Vena and Others*[6]. The Provincial Treasury also submits that there is "*no threat, imminent danger or burning fire which has been outlined*" by SNR in their founding papers to justify urgency.

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[4] [2012] ZAGPJHC 176 – para 6.
[5] [2003] ZAGPJHC 1162 – PARS 54 and 61.
[6] 2010 (2) SA 248 (ECP), para 5.

[41] I agree with the Provincial Treasury that SNR has a remedy available in terms of Rule 35 by way of discovery in the review application, and which SNR has not exercised. Instead, SNR chose to approach this Court on urgent basis on a matter that is not urgent at all. The court roll is inundated with litigants who seek access to justice, and who have to wait for their turn to have their matters heard. For the above reasons, the application must therefore fail.

[42] On the issue of costs, SNR submitted that costs should be awarded in its favour, if it is successful in the application, such costs to include the costs of two advocates on scale C, except for on the day of the application being heard, as only one advocates appeared before Court. *Mr Ndamase* submitted that this is a highly complicated matter which required the involvement of two advocates. *Mr Ndamase* also submitted that, should the application not be decided in SNR's favour, the court should have regard to the *Biowatch* principles on the advancement of constitutional rights of SNR, and that each party pays its own costs. The Court does not agree that the *Biowatch* principle finds application in this case.

[43] *Mr Mayekiso* disagreed with this and asked that SNR pays the costs of the application if it does not succeed in the application. He also argued that this is a simple matter which did not require the use of two advocates. The Court agrees with this. SNR should have exercised and may still exercise its options in the pending review application in terms of Rule 35 to acquire the outcome from the KSDLM, which is in possession of the outcome to the objection. This right in terms of Rule 35 can also be exercised against the Provincial Treasury because SNR knows that the outcome is in possession of the said document.

Order

Accordingly, the court makes the following order:

1. The application is dismissed.
2. The applicant shall pay the costs of the application.

DV PITT

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Applicant	:	*Adv B Ndamase*
Instructed by	:	Dyushu Makebe Inc
		East London
Counsel for the Respondents	:	*Adv Mayekiso*
Instructed by	:	State Attorney
		East London

Heard on	:	11 November 2025
Date judgment delivered	:	13 November 2025