

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



APPEAL CASE NUMBER: A374/2023
ORIGINAL CASE NUMBER: 93999/2015
DATE: 30 July 2025

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO	
(2) OF INTEREST TO OTHERS JUDGES: YES /NO	
(3) REVISED	
27/11/2025	
DATE	SIGNATURE

In the matter between:

MANYELETI CONSULTING SA (PTY) LTD

Appellant

and

SOMADODA PATRICK MAYIBONGWE FIKENI N.O.

1st Respondent

GCWALISILE CYNTHIA KABANYANE N.O.

2nd Respondent

MOROKA ISAAC BUTCHER MATUTLE N.O.

3rd Respondent

ZANDILE QUEENETTE LAVINIA MDHLADHLA N.O.

4th Respondent

MZAMO MICHAEL MLENGANA N.O.

5th Respondent

MATSHIPSANA MERIAM MOLALA N.O.

6th Respondent

TLHOSTE ENOCH MOTSWALEDI N.O.

7th Respondent

NANDISELE FLAVOUR THOKO MPUMLWANA N.O.

8th Respondent

PHELISA KHOMO N.O.

9th Respondent

RASHID AMOD SADECK PATEL N.O.	10 th Respondent
ZAKHELE ALEX TUMMY ZITHA N.O.	11 th Respondent
REMAINING TRUSTEES INDEPENDENT DEVELOPMENT TRUST	12 th Respondent

This order is made an Order of Court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court and is submitted electronically to the Parties/their legal representatives by e-mail. This Order is further uploaded to the electronic file of this matter on Case Lines by the Judge or his/her secretary. The date of this Order is deemed to be 2025.

JUDGMENT

DU PLESSIS, AJ (WITH MAKHOBHA J AND THOBANE AJ CONCURRING)

1.

- 1.1. Public procurement remains one of the primary points at which public administration meets the private economy. The lawful and transparent spending of public funds is a matter of legitimate public concern. The courts have repeatedly emphasised that section 217 of the Constitution 1996 demands a system that is fair, equitable, transparent, competitive, and cost-effective. Yet the intersection between the constitutional imperative of legality and the private-law doctrines of contract continues to generate difficult cases.
- 1.2. This appeal exemplifies that tension. It lies at the confluence of two well-established but sometimes competing lines of authority: on the one hand, Oudekraal Estates (Pty) Ltd v City of Cape Town 2004 (6) SA 222 (SCA) and its progeny, which hold that even an invalid

administrative act remains operative until set aside by a court; and on the other, Lepogo Construction (Pty) Ltd v Govan Mbeki Municipality [2015] 1 All SA 153 (SCA), which underscores that public bodies cannot be bound by acts performed outside their legal authority. The present matter requires this Court to determine where, on those principles, an “*appointment*” made after a tender had lapsed and unsupported by written authority properly falls.

2.

- 2.1. The appellant, Manyelethi Consulting (Pty) Ltd, instituted action in 2015 against the Independent Development Trust (“IDT”) (collectively the trustees of the IDT) claiming payment of R 18 930 560.40 for professional services allegedly rendered under tender PSP 03. The claim was founded on a “*letter of appointment*” dated 20 June 2012, said to flow from IDT Tender PSP03. It concedes there was no concluded agreement (no executed PSP contract), but says the appointment nevertheless conferred enforceable rights; alternatively, that a later “*compromise*” (Annexure POC10) fixed payment at R 17.1 million.
- 2.2. The respondents denied liability, contending that the tender had expired (1 May 2012) prior to the letter of appointment (20 June 2012), that the letter of appointment was issued irregularly and without authority, and that the appellant had not proved performance. The matter was tried in this Division before Bokako

AJ, who dismissed the claim with costs on 20 January 2023.

- 2.3. The present appeal, with leave granted, is directed against that judgment.

3.

- 3.1. The principal issues to be determined in this appeal arise from the opposing contentions of the parties as to the legal effect of the “*letter of appointment*” dated 20 June 2012 (Annexure “POC3”). The appellant contends that the letter constituted a valid and binding “*appointment*” that remained extant and enforceable until lawfully set aside by review proceedings, whereas the respondents maintain that the purported appointment was a nullity *ab initio*, made in contravention of the constitutional and statutory procurement framework governing the IDT, and therefore produced no legal rights or obligations capable of being “*set aside*.”
- 3.2. The appellant’s argument, grounded in the Oudekraal Estates (Pty) Ltd v City of Cape Town 2004 (6) SA 222 (SCA) line of authority, is that until such administrative act is reviewed and declared invalid, it stands and must be given effect to, relying further on Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd 2019 (4) SA 331 (CC) and MEC for Health, EC v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute 2014 (3) SA 481 (CC).
- 3.3. The respondents, by contrast, invoke the principles articulated in Lepogo Construction (Pty) Ltd v Govan Mbeki Municipality (623/13)

[2014] ZASCA 154 (29 September 2014) and Fraser & Chalmers (SA) (Pty) Ltd v Cape Town Municipality 1964 (3) SA 303 (C), contending that where prescribed procurement formalities have not been complied with, no lawful contract arises, no review is necessary and there is accordingly “*nothing to set aside*.”

- 3.4. The respondents further submit that, applying the interpretative principles in Natal Joint Municipal Pension Fund v Endumeni Municipality 2012 (4) SA 593 (SCA) and KPMG Chartered Accountants (SA) v Securefin Ltd 2009 (4) SA 399 (SCA), the so-called “*appointment letter*” lacks the requisite consensus ad idem and does not, by its terms or context, evidence a concluded agreement. This despite the appellant conceding that the “*appointment*” letter is not an agreement.
- 3.5. Against this matrix, the appellant also complains that the court *a quo* erred in finding that the IDT derived no benefit from its services and failed to draw an adverse inference from the respondents’ failure to call witnesses to contradict the evidence of Mr Lamola, the CEO of the appellant.
- 3.6. The factual findings of the court *a quo* were that the appellant had failed to prove performance under any lawful mandate, that the “*compromise*” pleaded (Annexure POC 10) lacked mutual assent, and that there was no basis for relief or compensation.
- 3.7. It follows that the key issue before this Court is whether the letter of 20 June 2012 gave rise to any legally enforceable right, standing

until set aside, or whether, as the respondents contend; it was void *ab initio*, producing no legal effect and requiring no review for its invalidity to operate.

ASSESSMENT OF THE MERITS AND EVALUATION OF THE EVIDENCE

4.

The Appellate Standard

- 4.1. The approach to interference with factual findings is settled by R v Dhlumayo and Another 1948 (2) SA 677 (A) at 705–706 and reaffirmed in Santam Bpk v Biddulph 2004 (5) SA 586 (SCA) para 5. Unless the record reveals a material misdirection or the finding is plainly wrong, an appellate court will not substitute its own view for that of the trial judge who observed the witnesses.
- 4.2. From the initial pleadings, the following is clear:
 - 4.2.1. The IDT pleaded that the alleged appointment of the appellant under PSP 03 was fraudulent and void, arising from “*fraud, collusion and corruption*” between the appellant (represented by Mr Lamola) and Mr Stephen Ntsandeni, an IDT official.
 - 4.2.2. Because of that, any “*award*” of PSP 03 through the “*appointment*” was “*void ab origine and of no force and effect.*”
 - 4.2.3. The plea thus emphasised illegality through fraud and

collusion, not the expiry of the tender validity period.

4.2.4. It did not expressly plead the tender validity period (60 days) or the legal consequence of lapse before 20 June 2012.

4.3. So the initial defence was broadly that the appointment was fraudulent, irregular, and beyond authority, hence null and void.

4.4. On 31 March 2022, the day of the trial, the Defendant amended its plea and introduced a technical but decisive new ground:

4.4.1. that the tender offer had expired (lapsed) before the 20 June 2012 “*appointment*” letter, and therefore no valid tender could be accepted.

4.4.2. Specifically, it inserted the following allegations (as paraphrased from the record):

“The tender offer validity period [of tender PSP 03] was 90 days calculated from 1 March 2012. Accordingly the tender offer had lapsed on or before 1 June 2012.”

Accordingly by 20 June 2012 the tender had lapsed, and no valid offer existed to be accepted. The purported letter of appointment therefore did not create any rights or obligations.

4.5. The amendment thus:

4.5.1. Reframed the unlawfulness of the appointment from

being based solely on “*fraud and collusion*” to being based additionally on lapse of the tender offer under SCM rules;

4.5.2. Introduced the explicit reference to the 90-day validity period in clause 5.6.6 of the IDT SCM Procedures (evidence later revealed that the actual validity period is 60 days); and

4.5.3. Linked that expiry to the absence of a valid “*offer*” capable of acceptance on 20 June 2012.

4.6. In the court *a quo*, Bokako AJ summarised the amendment and its effect:

“During the course of the trial and on 31 March 2022, the defendants amended their plea to include a defence that the tender offer validity period was for 90 days calculated from 1 March 2012.”

4.7. The amendment was not opposed. The appellant had full opportunity to deal with the point. The evidence of Mr Lamola confirmed the relevant dates. The Court accordingly allowed the amendment.

4.8. The judge *a quo* then relied *inter alia* on that amended defence as one of the central grounds for dismissal, holding that:

“By 20 June 2012, when the letter of appointment was issued, the tender offer had already lapsed; there was no valid offer to accept.”

AN ASSESSMENT OF THE EVIDENCE

5.

The Evidence of Mr Solly Lamola

- 5.1. Mr Lamola, the managing director of the appellant, was its principal witness. He testified that the appellant had, pursuant to a lawful tender process designated PSP 03, been appointed as transactional adviser to the IDT under a letter of appointment dated 20 June 2012. He asserted that the appellant duly performed the work described in the letter, for which it rendered invoices (POC 4 – POC 8) covering the period January 2014 – March 2014. He said the IDT accepted those services, and that the failure to pay was unjustified.
- 5.2. Under cross-examination, his version could not withstand scrutiny.
- 5.3. First, chronology and internal inconsistency. The invoices relied upon by the appellant reflected work allegedly done between March and May 2012, predating the very letter on which the cause of action rests. When confronted with this inconsistency he conceded that the work fell outside the scope of the alleged appointment. That admission contradicted his pleaded case that performance occurred pursuant to the appointment of 20 June 2012.
- 5.4. Second, the absence of written task orders. Mr Lamola accepted that no task orders or written instructions were ever issued by the IDT. He said that instructions were “*telephonic or orally from Mr Ntsandeni.*” The NEC 3 Professional Services Contract, however,

required every assignment to be authorised by a written task order. His concession that none existed, or could be provided, destroyed the factual basis of his claim that he acted under the IDT's authority.

- 5.5. Third, scope and geographical incongruity. The tender spreadsheet (RFP-X) which he produced listed 93 projects across several provinces, including Department of Justice and Mpumalanga schools - plainly unrelated to the KZN and Eastern-Cape projects pleaded in the particulars of claim. He conceded that some of that work pre-dated PSP 03 and involved different clients. These contradictions demonstrated that the invoices aggregated unrelated work. His only stated reaction for pre-June 2012 work, was the alleged existence of an earlier, separate appointment by the IDT – an explanation the record shows was never supported by documentation or credible corroboration.
- 5.6. Fourth, knowledge of SCM requirements. He professed ignorance of the IDT's "*tender periods and all that*". This one may accept includes the 60-day validity period and dual-signature rule. He admitted never having seen any Bid Adjudication Committee approval or Form of Acceptance before the trial. His ignorance of these basic procurement requirements undermined the assertion that he believed the appointment lawful.
- 5.7. Fifth, documentary corroboration. When asked to produce reports, e-mails, or deliverables evidencing performance, he was unable to do so. He acknowledged that the RFP-X schedule and his invoices

were prepared after the fact. There was thus no contemporaneous proof of any services rendered.

5.8. Sixth, payments received. He conceded that payments to the appellant related to the Clarinet and Netherlands school projects under an earlier appointment (PSP 02) and were made before 20 June 2012. That admission confirmed the respondents' version that any monies paid were unrelated to PSP 03.

5.9. Finally, the trial judge recorded that Mr Lamola's recollection of dates was poor, that he altered years during his testimony and that no written task orders or instructions existed. None of his concessions were trivial; each struck at the core of the case he was required to prove.

5.10. In the result, Mr Lamola's evidence failed to establish the existence of any binding appointment, lawful instruction, or verified performance. His concessions under cross-examination were fatal to the appellant's claim, and the trial court was plainly justified in rejecting his version as unreliable.

The Evidence of Mr Tshepo Teffo

5.11. Mr Teffo, an employee of Lamola and occasional consultant of the appellant, was called to corroborate the tender process. He testified that he signed and submitted the tender documents on behalf of the appellant and assumed that the IDT had validly awarded the contract. His participation ended after submission of the bid.

5.12. In cross-examination he admitted that he did not read the tender

documents or the NEC 3 contract data before signing them.

5.13. He acknowledged that the documents he signed still bore references to “DCS 02,” an earlier project, and that he made no effort to correct those references. He further conceded that the appellant’s submission lacked mandatory attachments such as a tax-clearance certificate, VAT certificate, and professional-indemnity insurance, and that he was unaware these were required. He had no knowledge of any Task Orders, instructions, or payments issued after the alleged appointment, and no personal involvement in any project work.

5.14. The trial court described him as honest but uninformed - a witness whose evidence was candid yet immaterial. His concessions corroborated the respondents’ version that the bid was defective and the appointment irregular. His testimony added nothing of substance to the appellant’s case and, if anything, strengthened the respondents’ narrative of procedural non-compliance.

The Evidence of Mr Tshepo Rapetswa

5.15. Mr Rapetswa, the IDT’s Acting Head: Legal and Compliance, was the only witness for the respondents. His function was to explain the procurement framework, the IDT’s internal delegations, and the legal significance of the documents relied on by the appellant.

5.16. He confirmed that the letter dated 20 June 2012 was issued and that no formal Professional Service Provider (PSP) contract or service-level agreement followed, as was expressly required by the letter

itself. He testified that the letter was signed solely by Mr Ntsandeni. Under the IDT's SCM policy all contracts required dual signatures and prior Bid Adjudication Committee approval, neither of which existed.

- 5.17. He further explained that the scope of work and fee structure were never approved or defined. The tender documents contemplated that services would be rendered only when the IDT issued written Task Orders, each specifying deliverables, timelines, and the fee formula. No such task orders were ever issued to Manyelethi. He emphasised that the appellant's invoices could not be matched to any approved project budget and that no record existed of authorised instructions. The few payments made were processed under earlier, unrelated projects and later recorded as irregular expenditure.

Cross-examination

- 5.18. Counsel for the appellant sought to undermine Mr Rapetswa's evidence on four fronts: that he was not personally involved in 2012; that the letter of appointment appeared regular on its face; that the IDT made certain payments; and that the IDT never launched review proceedings.
- 5.19. He readily conceded that he was not personally present during the 2012 events and that his knowledge derived from the official records. He agreed that, outwardly, a letter on IDT letterhead might appear regular to a contractor, but maintained that internal

authorisation was absent and that external appearance could not convert an unlawful act into a lawful one. He accepted that payments had been made, but stated that they were irregular and later categorised as fruitless expenditure. He further acknowledged that no formal review had been brought to set aside the appointment, explaining that the IDT regarded the letter as a nullity requiring no review.

5.20. These limited concessions did not detract from his central evidence that:

5.20.1. the letter of appointment was *ultra vires* the IDT's procurement delegations;

5.20.2. no Task Orders or approved scope and fee structure existed; and

5.20.3. all payments were unauthorised.

5.21. Bokako AJ recorded that "*nothing emerged in cross-examination to dislodge his evidence,*" and accepted him as a credible and reliable witness.

Comparative Assessment

5.22. Taken together, the evidential picture is clear. The appellant's witnesses were unable to establish the existence of a lawful appointment or to substantiate the performance allegedly rendered. Mr Lamola's testimony was internally contradictory and evasive; Mr Teffo's was candid but immaterial. By contrast, Mr Rapetswa's evidence was documentary, consistent with the IDT's SCM

framework, and unshaken under cross-examination.

- 5.23. Counsel for the Appellant criticises the respondent's counsel's conduct in the court *a quo* for "*giving evidence from the bar*" and for not calling available IDT witnesses (notably Mr Ntsandeni). He also submits the court *a quo* wrongly preferred "*unsupported submissions*" including allegations of fraud, to the "only direct evidence" (Lamola and Teffo), denying fraudulent conduct in obtaining the letter of appointment.
- 5.24. Counsel must not give evidence from the bar. But what matters is whether the court *a quo* decided facts on counsel's say-so. The judgment *a quo* did not turn on fraud. It turned on lack of authority and non-compliance with formalities. The fraud cases referred to by the Appellant therefore do not advance the appeal. The ratio rested on documents and the appellant's own version: no executed PSP, no task orders, and invoices that do not align with PSP03 in time or subject. Even if one accepted every word of Mr Lamola and Mr Teffo, their testimony cannot conjure a contract where procurement formalities were a precondition to validity.
- 5.25. One of the appellant's complaints on appeal is that the court *a quo* erred in not drawing an adverse inference against the respondents for failing to call Mr Mokhethi and Mr Ntsandeni, both former IDT officials.
- 5.26. It was argued that these individuals were central to the events of 2012 and could have confirmed the appellant's version of its

appointment under PSP 03.

- 5.27. The record shows that the appellant itself initially indicated that it intended to call Mr Ntsandeni as a witness. He was, after all, the signatory of the disputed letter of appointment dated 20 June 2012 and had been a senior IDT official at the time.
- 5.28. However, when the trial commenced, the appellant's counsel informed the court that they would no longer call Mr Ntsandeni.
- 5.29. No request was made that the IDT ensure his attendance.
- 5.30. It was only after judgment went against the appellant that the failure of the respondents to call him was elevated to a supposed basis for appeal. The same applies to Mr Mokhethi, who was never mentioned in the respondents' original witness list.
- 5.31. The respondents dealt with the point comprehensively:
 - 5.31.1. Mr Mokhethi was a regional project manager with no role in the Bid Evaluation or Adjudication Committees. Mokhethi was extensively implicated *ex facie* the available documents and could hardly be expected to "own up" or confess to his offences.
 - 5.31.2. Mr Ntsandeni, by contrast, had indeed signed the 20 June 2012 letter, but he had left the IDT's employ by the time of trial and was facing internal disciplinary and criminal investigations relating to the very conduct at issue. The IDT regarded him as a discredited and unreliable witness whose evidence would be self-serving

and potentially inconsistent with the documentary record.

5.31.3. Counsel submitted that all material facts were proved through contemporaneous documentation - the SCM policy, delegation schedules, tender validity clauses, and task-order records—and through the oral evidence of Mr Rapetswa, the Acting Head: Legal and Compliance. Nothing of consequence could have been added by calling either of the absent officials.

5.32. The court *a quo* accepted these explanations and, in my view, was correct to do so, based on the following:

5.33. First, availability and control. It was established that Mr Ntsandeni had departed from the IDT's employ and was the subject of investigations. The IDT was not obliged to call a witness whose integrity was compromised and who was no longer under its control. As to Mr Mokhethi, his role was peripheral; he could not have advanced the factual inquiry into the lawfulness of the appointment.

5.34. Second, materiality. The issues that decided the case—whether the tender had lapsed, whether any delegation authorised the letter of appointment, and whether valid task orders existed—were determined on objective records, not on recollection. Neither Mokhethi nor Ntsandeni could have altered those facts. Their absence, therefore, was immaterial.

5.35. Third, onus and procedural fairness. The appellant bore the onus of proving the existence of a valid and enforceable contract. The

respondents were under no duty to fill evidential gaps in the appellant's case. Crucially, the appellant itself had initially proposed calling Mr Ntsandeni and later elected not to do so. Having abandoned that course, it cannot now shift the evidential burden by insisting that the respondents should have produced him. This alone disposes of the complaint.

- 5.36. Fourth, documentary sufficiency. The documentary record - the SCM delegation matrix, the BAC minutes, and the unsigned service-level agreement, was comprehensive and uncontested. It provided far more reliable evidence than the uncertain recollection of a discredited former official. The trial judge was entitled to prefer the objective evidence.
- 5.37. Finally, legal principle. As articulated in Munster Estates (Pty) Ltd v Killarney Hills (Pty) Ltd 1979 (1) SA 621 (A) at 624 A–C, an adverse inference may be drawn only where the witness was available to the party, his evidence would be material to the issue, and no explanation is given for his absence. Although they may have been available, none of the other conditions were satisfied here. Both witnesses were doubtful or peripheral, and cogent explanations were provided for not calling them.
- 5.38. The court *a quo*'s refusal to draw an adverse inference was entirely correct.

CONTRADICTIONS AND DOCUMENTARY WEAKNESSES

6.

6.1. The judgment catalogues material inconsistencies in Mr Lamola's testimony:

6.1.1. Invoices (Annexures POC 4–7) reflect work performed between March and May 2012, preceding the 20 June 2012 "*appointment*" letter. These invoices are the evidential hinge. The appellant's own annexures show that entries for at least two projects namely the Clarinet and Netherlands school projects are dated February–March 2012 (Annexures POC4–POC5) i.e., before the 20 June 2012 appointment and linked to projects outside PSP03; and that later entries (Annexures POC7–POC8) are narrated as "*transaction advisory*" in January–March 2014 without any accompanying task orders connecting that work to PSP03.

6.1.2. Several items relate to projects of other departments, inconsistent with the pleaded focus on the KZN and Eastern Cape programmes.

6.1.3. Under cross-examination, Mr Lamola conceded that no task orders or written instructions existed.

6.1.4. He produced no contemporaneous correspondence confirming authorisation.

6.2. These defects go to the heart of the claim. The appellant's own RFP-X schedule listed 93 projects, many unrelated to PSP 03, and

no corresponding payment vouchers or Treasury approvals were traceable.

- 6.3. The judge *a quo*'s conclusion that the appellant failed to discharge its onus was therefore justified.

THE LETTER OF APPOINTMENT

7.

- 7.1. The appellant's principal criticism of the judgment *a quo* concerns the conclusion that the "*letter of appointment*" dated 20 June 2012 (annexure POC3) did not give rise to a binding and enforceable contract between the appellant and the Independent Development Trust ("the IDT"). It is contended that the court *a quo* erred in finding an absence of consensus ad idem. According to the appellant, the letter constituted an unequivocal acceptance by the IDT of the appellant's tender under IDT PSP 03, and on its proper interpretation reflected the parties' mutual assent to the essential terms of appointment. The appellant further argues that any omission to execute a formal Professional Service Provider ("PSP") contract or to issue task orders is immaterial; that the parties' subsequent conduct, allowing the appellant to perform and invoice, objectively confirms their consensus; and that the court *a quo*'s insistence upon compliance with internal procurement formalities elevated form over substance. This despite conceding that the "*appointment*" is not an agreement between the parties.

7.2. Bokako AJ rejected these submissions. The court held that the letter of 20 June 2012 could not constitute a valid or enforceable contract because, on its face, it expressly recorded that it was subject to the conclusion of a formal PSP contract. That contract was never concluded. The judge *a quo* found that the tender PSP 03, which closed on 1 March 2012, had a prescribed validity period of sixty days; by 20 June 2012, the tender had therefore lapsed and no offer remained capable of acceptance. Moreover, the letter lacked the authorising signatures required by the IDT's Supply Chain Management policy, and the essential terms of scope, deliverables and remuneration were not settled. In consequence there was, objectively, no consensus between parties capable of giving rise to contractual obligations. The learned judge further held that any services allegedly rendered were performed without valid task orders and without lawful authority, and that an unlawful appointment could not be validated *ex post facto* by performance.

7.3. The respondents support the reasoning of the court *a quo*. They submit that the document upon which the appellant relies was, by its own terms, a provisional administrative step within an unlawfully tainted procurement process. It was issued after the tender validity period had expired and in direct contravention of the IDT's SCM prescripts. Consequently, even if the parties subjectively believed they were appointed, no lawful contract could arise. They contend further that the letter itself anticipated the conclusion of a future PSP agreement and thus negatives any inference of final consensus. In

short, the appellant sought to elevate a void act into a contract; the learned judge was correct to hold that the law will not recognise consensus founded upon illegality.

- 7.4. We find no misdirection in the approach of the court *a quo*. The issue was one of objective construction of the written instrument and not of subjective belief. The appellant's argument that consensus can be inferred from context, conduct, or the commercial sense of the transaction, is contrary to settled principle. In KPMG Chartered Accountants (SA) v Securefin Ltd 2009 (4) SA 399 (SCA) at paras [38]–[39], Harms DP reaffirmed that:

"The integration (or parol evidence) rule remains part of our law. If a document was intended to provide a complete memorial of a jurial act, extrinsic evidence may not contradict, add to or modify its meaning. Interpretation is a matter of law and not of fact and, accordingly, it is for the court, and not for witnesses, to determine the meaning of the document."

- 7.5. Applying that principle, the learned judge *a quo* correctly treated the "letter of appointment" as the document embodying the parties' alleged consensus and asked whether, *ex facie* the writing, it contained the essentials of a concluded agreement. It plainly did not. The letter itself envisaged the later execution of a formal PSP contract; it was therefore conditional and incomplete. Under KPMG, courts may not receive extrinsic evidence or post-contractual conduct to supplement or contradict such a document. The

appellant's reliance on subsequent dealings with IDT officials or alleged performance cannot create a contract that the written terms show was still to come into being.

7.6. Moreover, the tender process, which produced the letter, was itself void for non-compliance with section 217 of the Constitution, the Public Finance Management Act 1 of 1999, and the IDT's own SCM policy. In these circumstances, the appellant's assertion of "*consensus*" collapses: a meeting of minds cannot validate that which the law declares a nullity. Public bodies are bound to contract only through lawful procedures, and a defective process precludes any inference of enforceable agreement, however genuine the parties' subjective intentions may have been.

7.7. The complaint that the court a quo erred in finding no consensus is without merit.

ASSESSMENT OF THE LEGAL GROUNDS OF APPEAL

8.

8.1. The appellant argued that the court below erred by treating the appointment as void ab initio instead of presumptively valid until set aside, contrary to Oudekraal Estates (Pty) Ltd v City of Cape Town 2004 (6) SA 222 (SCA).

9.

- 9.1. The evidence established that:
 - 9.1.1. the tender PSP 03 had lapsed before 20 June 2012;
 - 9.1.2. no Bid Adjudication Committee resolution or approval memorandum existed;
 - 9.1.3. the signatory lacked delegated authority; and
 - 9.1.4. no task orders or budgets followed.
- 9.2. On these facts, the “letter of appointment” was *ultra vires* and legally ineffective. The Oudekraal doctrine presupposes an existing administrative act; it cannot resuscitate a non-existent one.
- 9.3. In Lepogo Construction (Pty) Ltd v Govan Mbeki Municipality (623/13) [2014] ZASCA 154 (29 September 2014), the Supreme Court of Appeal dealt squarely with a case almost identical to the present. The contractor, like the appellant here, relied on a letter of appointment issued by municipal officials. The SCA held that, because statutory procurement formalities had not been complied with, no *vinculum juris* ever came into existence.
- 9.4. Ponnann JA stated at para [4] (p 79-4) that the municipality denied liability “*inter alia, because one of its former employees, through his fraudulent conduct, purported to appoint Lepogo when he lacked the authority so to do.*”
- 9.5. The Court emphasised that s 217(1) of the Constitution and the Local Government: Municipal Finance Management Act 56 of 2003 require that an organ of state “*contract for goods or services ... in*

accordance with a system which is fair, equitable, transparent, competitive and cost-effective" (para [5], p 79-4). Because those statutory and policy requirements were not followed, the letter of appointment was void. The SCA concluded at para [12]–[13] (p 79-6–79-7) that the purported appointment, even though reduced to writing and acted upon, *"was without lawful authority"* and could not bind the municipality.

- 9.6. The ratio is directly applicable. Like Lepogo, the appellant's *"letter of appointment"* was issued outside the IDT's prescribed supply-chain procedures. The court *a quo* therefore correctly found that no lawful and binding contract arose.
- 9.7. The principle of strict compliance with the written tender instrument was long ago settled in Fraser and Chalmers (SA) (Pty) Ltd v Cape Town Municipality 1964 (3) SA 303 (C). Van Winsen J held that the tender conditions themselves defined the contractual boundary, and that a court must give effect to the language used and not to equitable considerations or supposed intentions extrinsic to the document.

At p 306 E–F the learned Judge observed:

"Unless the terms of the contract expressly or by necessary implication free the Council of the liability imposed upon it by sec 81(1), the obligation must lie where it is placed by the Legislature. ... It is common cause that the contract in question does not do so expressly, but it is contended that it does so implicitly...."

and at p 307 B–C he continued:

“The conditions of tender go on to provide that if the tenderer does not choose to contract on that basis then the price which he has quoted in the tender is the one to which he is bound. ... As I read these latter provisions they are intended to convey that if the tenderer does not choose to enter into a contract embodying clause 15 then he can enjoy none of the benefits of adjustment of prices which would have followed had that clause been embodied in the contract.”

- 9.8. Fraser thus requires that courts give primacy to the text of the tender conditions themselves and exclude extraneous or equitable variations. The “*letter of appointment*” on which the appellant relies expressly stipulated that a formal PSP contract would follow; under Fraser, that written term is decisive.
- 9.9. The appellant sought to invoke notions of “*consensus by conduct*.” However, Pillay and Another v Shaik and Others 2009 (4) SA 74 (SCA) confines the doctrine of quasi-mutual assent to situations where the parties’ conduct unequivocally manifests consent within a lawful framework. It cannot override statutory formality.
- 9.10. Farlam JA, delivering the unanimous judgment of the Court, described the doctrine:

“Contract – formalities – whether agreements of sale between parties invalid because prospective seller did not sign – application of doctrine of quasi-mutual assent.”

and at para [4]–[5] recorded that although the developers had not signed, their conduct in marketing and allocating units “*constituted acceptance by conduct, instead of signature.*”

9.11. The crucial distinction lies in the fact that Pillay involved private parties and no statutory requirement for written form. Here, by contrast, s 217 of the Constitution, the PFMA and the IDT’s SCM policies prescribe a formal, written and authorised contract. As the court *a quo* correctly held, where legislation demands formal execution, quasi-mutual assent cannot apply.

9.12. The interpretive method adopted by the court *a quo* accords with the now-settled approach in Natal Joint Municipal Pension Fund v Endumeni Municipality (920/2010) [2012] ZASCA 13 (15 March 2012). Wallis JA (para [18], p 79-85) formulated the modern test:

“Interpretation is the process of attributing meaning to the words used in a document ... having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. ... A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document.”

9.13. The court *a quo*, applying that very approach, considered the letter of appointment within its statutory context, the constitutional procurement framework and the IDT’s internal procedures and concluded that it was a conditional communication of intended

appointment, not a concluded contract. The appellant's attempt to rely on isolated wording, divorced from that context, offends the Endumeni methodology.

9.14. When these authorities are read together, they reveal a coherent body of principle that vindicates the findings of the court *a quo*:

9.14.1. Strict compliance with procurement formalities is mandatory.

9.14.2. The written instrument governs, and no extrinsic or equitable claim can override its terms.

9.14.3. Consensus by conduct cannot substitute for compliance with statutory or policy-prescribed formalities.

9.14.4. Interpretation is objective, contextual, and purposive, requiring that the document be construed within its legal and factual setting.

9.15. The judge *a quo*'s conclusion that no valid or binding contract existed is accordingly unimpeachable.

ALTERNATIVE CLAIM: COMPROMISE AND JUST AND EQUITABLE RELIEF

10.

10.1. The appellant's particulars of claim contained, in the alternative to the alleged contractual entitlement, a plea that an agreement of compromise had been reached with the IDT whereby its invoices

would be paid. This rested on internal communications in 2014 and the signing of the payment certificate by certain IDT officials.

- 10.2. The court *a quo* rejected that contention, finding that no valid compromise was ever concluded. Even if an informal understanding was reached between the appellant and individual IDT officials, such understanding could not override the statutory *and policy framework governing IDT's financial obligations*.
- 10.3. That finding is consistent with the Lepogo Construction (*supra*) principle that unlawful acts by officials cannot be ratified or validated through subsequent correspondence or compromise. In Lepogo (*supra*) para [4]–[5] (p 79-4) Ponnann JA held that the official “*lacked the authority so to do*” and that no subsequent conduct could bind the Municipality. The same applies here: the IDT officials who signed the so-called “*settlement*” letters had no delegated authority to contract outside the approved procurement process.
- 10.4. In paragraphs 60 to 63 of the appellant’s heads, the appellant cites Sekoko Mametja Incorporated Attorneys v Fetakgomo Tubatse Local Municipality (Case No. 60/2021) [2022] ZASCA 28 (18 March 2022) and Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd [2019] ZACC 15; 2019 (4) SA 331 (CC); 2019 (6) BCLR 661 (CC), without explaining the relevance of these authorities to the dispute before this Court. Properly interpreted, both decisions address the narrow remedial jurisdiction under section 172(1)(b) of the Constitution to award just and equitable compensation, but only

after a declaration of constitutional invalidity has been made pursuant to a properly-constituted legality review. In *Sekoko*, the Supreme Court of Appeal ordered compensation solely because the municipality had benefited from services lawfully rendered, and because “*no fault lay at the door of Sekoko Attorneys*” in circumstances where the court had already held the award invalid.

- 10.5. In Buffalo City, the Constitutional Court preserved accrued rights only after declaring the underlying contract unconstitutional, emphasising that such preservation “*does not permit a party to obtain further rights under the invalid agreement.*” These authorities therefore do not assist the appellant: they clarify that just-and-equitable compensation is exceptional, arises only within the framework of a review accompanied by a declaration of invalidity, and presupposes either lawful performance or accrued rights, which the appellant neither pleaded nor proved, and do not arise on the facts of this matter.

COSTS

11.

- 11.1. Neither in the court *a quo* nor in this Court were any cogent reasons advanced why the usual rule that costs follow the result should not apply. The appeal is a straightforward commercial dispute arising from a claim for payment under an alleged appointment; it raises no public-interest or constitutional issues that would justify a departure

from the general principle.

- 11.2. The court *a quo*, correctly applied the ordinary rule. It observed that the litigation was private in nature, that the Biowatch principle had no application, and that the respondents, as a public entity, were entitled to defend the claim to protect public funds. There is no basis upon which this Court could interfere with that exercise of discretion.
- 11.3. The costs of the appeal must therefore follow the outcome. The appellant, having been unsuccessful, is liable for the respondents' costs, including the costs of two counsel where so employed.

12.

For the reasons advanced above, the following order is made:

- 12.1. The appeal is dismissed.
- 12.2. The judgment and order of Bokako AJ dated 20 January 2023 are confirmed.
- 12.3. The appellant is to pay the costs of the appeal, including the costs of two counsel where engaged.


DU PLESSIS AJ


MAKHOBHA J
I AGREE



THOBANE AJ
I AGREE

**APPELLANT'S COUNSEL
ADV P MARX**

Instructed by Marc Sischy
Tracy Sischy Attorneys

**RESPONDENTS' COUNSEL
ADV SJ BEKKER SC
ASSISTED BY ADV IE TSHOMA**

Instructed by Majang Inc Attorneys

Judgement delivered on: 27/11/2025
