IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU NATAL DIVISION, PIETERMARITZBURG

Case No: 2025-207287

In the matter between:

MHLONGO TRANSCOIN SECURITY SERVICES (PTY) LTD	**APPLICANT**

and

THE MUNICIPAL MANAGER	**FIRST RESPONDENT**
THE UMKHANYAKUDE DISTRICT MUNICIPALITY	**SECOND RESPONDENT**
CALVIN & FAMILY SECURITY SERVICES (PTY) LTD	**THIRD RESPONDENT**
ONSELE01 SECURITY SERVICES (PTY) LTD	**FOURTH RESPONDENT**
MSENGE PROTECTION SERVICES (PTY) LTD	**FIFTH RESPONDENT**
MAKHULUKHULU WORKS (PTY) LTD T/A MAKHULUKHULU PROTECTION	**SIXTH RESPONDENT**

ORDER

The following order is made:

1. The application is dismissed.

2. The applicant is ordered to pay the costs of the first and second respondents for both the urgent application and the determination of the final review on scale C.

3. Such costs shall include the costs consequent to the employment of two counsel where so employed.

JUDGMENT

Siwendu J:

Introduction

[1] This urgent application was brought on 11 November 2025 by the applicant, Mhlongo Transcoin Security Services (Pty) Ltd (Mhlongo Transcoin), a private company which provides security services, and has its principal place of business in Kokstad, KwaZulu-Natal. At the time, Mhlongo Transcoin sought an interim interdict and other ancillary relief against the first respondent, Dr Siyabonga Robson Ntuli (Dr Ntuli), in his capacity as the Acting Municipal Manager of the second respondent, the uMkhanyakude District Municipality (the Municipality).

[2] Calvin & Family Security Services (Pty) Ltd, Onsele01 Security Services (Pty) Ltd, Msenge Protection Services (Pty) Ltd, and Makhulukhulu Works trading as Makhulukhulu Protection, are security companies who were cited as the third to sixth respondents, respectively. Other than Dr Ntuli, who deposed to

an affidavit on behalf of the Municipality opposing the relief sought by Mhlongo Transcoin, the remainder of the respondents did not oppose the application.

[3] Mhlongo Transcoin counts among its clients the Municipality and previously provided security services to the Municipality. It appears that a procurement dispute arose concerning the award of tender SCMU 19/2018/2019, which related to the provision of security services at the Municipality's offices, wastewater treatment works, water treatment works, fire services, Thusong Centre, as well as the provision of VIP Protection Services for the northern and southern regions.

[4] Mhlongo Transcoin instituted proceedings under case number 6729/2022 and, on 9 June 2022, obtained an order by consent against the Municipality. In terms of that order, tender SCMU 19/2018/2019 was awarded to Mhlongo Transcoin for a period of 36 months, at a contract value of R36 640 800 (excluding VAT).

[5] Although the order was granted by consent, it compelled the Municipality to provide Mhlongo Transcoin with a service level agreement (SLA) in respect of the tender within 20 days of its grant. The SLA was duly concluded, in terms of which Mhlongo Transcoin provided security services at 34 municipal sites, deploying approximately 89 security guards. The SLA was to commence on 1 August 2022 and terminate on 31 July 2025.

[6] In June 2025, the Municipality delivered a letter notifying Mhlongo Transcoin of the imminent termination of the 36-month contract awarded pursuant to the court order. However, on or about 31 July 2025, the Municipality extended the service contract for a further period of three months, commencing on 1 August 2025 and terminating on 31 October 2025.

[7] Parallel to the execution of the above contract, and prior to the notice of termination issued to Mhlongo Transcoin, the Municipality advertised a tender for the appointment of a panel of service providers to provide security services and VIP protection for a period of 36 months. This tender was advertised in February 2024 under bid number SCMU 015/2023/2024.

[8] On 8 August 2024, the Municipality published a notice of Intention to Award Bids under bid number SCMU 015/2023/2024, to 26 security service providers. On 26 August 2024, Mhlongo Transcoin was formally informed that its bid was successful and that it had been appointed to the panel for a period of 36 months. It accepted the appointment in writing on 10 September 2024, as required by the letter of appointment. The appointment was expressly made subject to the conclusion and signing of an SLA, in accordance with the General Conditions of Contract, 2010, as promulgated by the National Treasury.

[9] Mhlongo Transcoin alleges that on 31 October 2025, it was instructed to vacate the sites previously allocated to it and was informed that the Municipality intended to hand over those sites to the third to sixth respondents, while requiring it to 'share' five of the sites with them. At the time, the exact details were unknown, and the request for information made by Mhlongo Transcoin's attorney on 31 October 2025 to the Municipality and the Municipal Manager went unanswered. It states, however, that it was informed that the Municipality would not follow a formal competitive procurement process, as it intended to utilise security guards from companies already appointed to the panel of service providers. It alleges the arrangement was to remain in place until the expiry of the panel appointments in 2027.

[10] The urgent application was issued on 3 November 2025 and served on the Municipality and the Municipal Manager by electronic mail. It was also served on the sixth respondent 4 November 2025 by the Sheriff but not on all the respondents. The respondents were afforded until Wednesday, 5 November 2025, to indicate their intention to oppose the application, and until 6 November 2025 at 16h30 to deliver their opposing affidavits. As previously stated, only the Municipality and Dr Ntuli oppose the application.

[11] Although the Municipality and Dr Ntuli had filed a 'preliminary answering affidavit' on 11 November 2025, the matter was not ripe for hearing. There was no replying affidavit by Mhlongo Transcoin. The truncated period for the filing of answering affidavits was thereafter extended by a court order to 21 November 2025. The Municipality subsequently filed a supplementary affidavit, and the applicant was granted leave to file its replying affidavit on or before 25 November 2025. The application was thereafter adjourned for hearing on 1 December 2025.

The relief

[12] Mhlongo Transcoin's case changed substantially between the launching of the urgent application and the hearing. Initially, its primary complaint was directed at the decision to appoint the third to sixth respondents as security service providers for the sites previously guarded by it.

[13] As Part A of the application, it sought an interim interdict restraining the Municipality from implementing or proceeding with the appointment of security guards or security services, whether in terms of a notice of award of bids, monthly contracts, or monthly invoices, in respect of the sites previously guarded by it, pending the determination of Part B, which it construed as 'a legality review'.

[14] In Part B, it sought a final order in the following terms:

(a) declaring the decision to appoint the third to sixth respondents in respect of the sites previously guarded by the applicant, and any agreements concluded pursuant thereto, to be constitutionally invalid, unlawful, and set aside;

(b) directing the disgorgement and repayment of any amounts paid by the Municipality to the third to sixth respondents pursuant to such appointments;

(c) ordering the Municipality to conduct a points-scoring evaluation of each member of the existing security services panel and to allocate work on the basis that preference be given to the highest-scoring tenderer on the panel; and

(d) directing the Municipality to pay the costs of the application, including the costs occasioned by the urgent application.

[15] Prior to the hearing on 1 December 2025, Mhlongo Transcoin amended its relief. It claims the amendments were precipitated by the averments in the preliminary and answering affidavits. It consolidated the orders previously sought in Parts A and B and now seeks a final order:

(a) setting aside the decision to appoint the fourth respondent as a security service provider for the sites previously guarded by the applicant; and

(b) restraining the Municipality from implementing or proceeding with the appointment of security guards or security services, whether in terms of a notice of award of bids, monthly contracts, or monthly invoices, in respect of the sites previously guarded by the applicant.

[16] Ancillary to this relief, Mhlongo Transcoin seeks:

(a) an order setting aside any agreement concluded between the Municipality and the fourth respondent pursuant to the deviation process;

(b) an order directing the disgorgement and repayment of any amounts paid by the Municipality to the fourth respondent pursuant to the appointment and implementation of such agreement; and

(c) an order directing the Municipality to conduct a points-scoring evaluation of each member of the existing security services panel and to allocate work on the basis that preference be given to the highest-scoring tenderer on the panel.

[17] The material change introduced by the amended relief in the replying affidavit is that Mhlongo Transcoin now challenges the appointment of Dr Ntuli and whether he is the lawful Acting Municipal Manager to bring the case on behalf of the Municipality. It correctly did not persist with the challenge at the hearing which ought to have been brought in terms of Uniform rule 7. The only dispute brought under Uniform Rule 7 pertained to the authority of the attorneys acting on behalf of the Mhlongo Transcoin, which was not pursued after requisite authority was confirmed.

[18] Mhlongo Transcoin disputed the validity and/or lawfulness of the Municipality's Supply Chain Management Policy 2024/2025 (SCM Policy) on the grounds that the Municipality failed to establish whether the policy was adopted by a resolution of the municipal council or that notice thereof was published in the *Government Gazette*. It now impugns the decision taken on 20 October 2025, pursuant to a procurement deviation process in clause 37 of the SCM policy to appoint the fourth respondent. The order declaring that decision constitutionally invalid and unlawful, and the prayer to have the appointment set aside, are materially premised on these complaints.

[19] The respondents did not oppose the amendment of the relief. They expressly abandoned their initial opposition based on urgency grounds. However, they opposed the application on the basis that Mhlongo Transcoin's contract, which was entered into pursuant to the court order referred to above, terminated by effluxion of time. Dr Ntuli alleges that the extension of the contract after its

expiry will be the subject of an internal investigation, as the Municipality cannot account for the reasons for the extension.

[20] The Municipality alleges that there were 'serious irregularities' arising from the contract concluded with Mhlongo Transcoin pursuant to the court order. Although the court order stipulated a total contract price of approximately R36 million over the 36-month period, the Municipality paid approximately R84 million, representing an increase of more than 131% above the contract value.

[21] According to Dr Ntuli, Mhlongo Transcoin was contracted to provide 33 security guards; however, municipal records reflect that it had been billing the Municipality for 78 security guards from September 2022 onwards. No records could be found authorising either the increase in the contract price or the increase in the number of security guards from 33 to 78. These allegations are the subject of the investigation.

[22] The Municipality avers that on or about October 2024, following the tender, and the publication of the appointment of the 26 security companies referred to above, it selected the third, fourth, fifth, and sixth respondents from the panel to provide security services at municipal sites that were not being serviced at the time. It based the selection on the price criterion, as reflected in their bid documents. The companies on the panel submitted their quotations for security services based on the ordinary flat rate prescribed by the Private Security Industry Regulatory Authority (PSIRA) for the provision of security guards, rendering their bids cost-effective.

[23] It agreed that it decided to appoint any of the panel members to provide security services at the sites previously serviced by Mhlongo Transcoin on a

short-term basis. It contended that the panel often services a frequent urgent need for security and VIP protection services, either at construction and infrastructure project sites or at municipal offices during periods of protracted strike action. Thus, the panel of 26 entities, of which Mhlongo Transcoin is a part, is for use on a needs and emergency basis. The procurement of the fourth respondent was thus on a short-term basis pending the completion of the Municipality's internal processes and was adopted to mitigate the risk of potential harm.

[24] In essence, the Municipality does not deny that, on or about 30 October 2025, it appointed the fourth respondent, by way of a procurement deviation process, to provide security services at the sites previously serviced by Mhlongo Transcoin for a period of two months, from 1 November 2025 to 31 December 2025. It claims the appointment is sanctioned by clause 55 of the SCM policy which permits it to appoint service providers from the duly constituted panel. Its stance is that security services constitute an essential service, and that the absence thereof would render the Municipality and its infrastructure vulnerable on multiple levels. The deviation is permissible in terms of the SCM policy.

[25] Part of Mhlongo Transcoin's complaint, however, was that the value of the contract far exceeded the R200 000 threshold contained in the SCM Policy for 2022/2023, as well as the R300 000 threshold in the current SCM Policy, and that this issue was not addressed in either of the answering affidavits. The prevailing paragraph 14*(d)*(i) of the SCM Policy expressly requires a competitive bidding process where the estimated transaction value exceeds R300 000 (VAT included).

[26] It criticised the Municipality's failure to plan, contending that this could not constitute a lawful justification for invoking a deviation or for relying on the essential nature of security services to circumvent a structured procurement process. It disputed that the provision of security services is an essential service

and contended that the appointment was made in violation of s 217 of the Constitution and the Local Government: Municipal Finance Management Act 56 of 2003 (MFMA). The submission was that the Municipality conceded this, and the consequence is that the fourth respondent was appointed without a competitive procurement process, and the violation is neither justifiable nor excusable.

Issues for determination

[27] Since the matter had secured a preferential hearing date following the order of 11 November 2025, and the respondents did not oppose the urgency of the application, urgency was no longer a live issue for determination. As already stated, Mhlongo Transcoin's initial complaint was directed at the decision to appoint the third to sixth respondents as security service providers for the sites previously guarded by it and it sought other ancillary relief related to their appointment.

[28] Although the amendment of the relief was not opposed by the respondents, Mhlongo Transcoin introduced a new basis for its legality challenge in its replying affidavit after it received the answering affidavit, directed at the decision to appoint the fourth respondent by utilising the procurement deviation process.

[29] Counsel for Mhlongo Transcoin emphasised during argument that its review is aimed at enforcing compliance with s 217 of the Constitution and the MFMA. The review thus raises several anterior legal and procedural questions consequent on the way Mhlongo Transcoin categorised the application as being a legality review and the final nature of the relief it seeks.

[30] It is necessary to correctly: (a) determine Mhlongo Transcoin's legal basis to bring the review, (b) establish whether it has *locus standi* to mount the

challenge, and thereafter, (c) consider the merits of the review and whether Mhlongo Transcoin has made out a case for the final interdict. As will appear in the judgment, it is not necessary to decide the merits of the review.

Legal basis for the review

[31] Counsel for Mhlongo Transcoin contended that it has the right to bring a legality review to enforce the Municipality's compliance with s 217(1) of the Constitution, the provisions of the MFMA and the SCM policy. The criticism by the respondents is that Mhlongo Transcoin disregarded the legislative framework enacted to give effect to the provisions of s 217 of the Constitution and sought to rely directly on the constitutional provision in breach of the principle of subsidiarity and the Promotion of Administrative Justice Act 3 of 2000 (PAJA). In addition, the respondents complain that Mhlongo Transcoin has 'especially eschewed reliance on PAJA'.

[32] The approach adopted by Mhlongo Transcoin requires this court to restate the settled legal position. It is so that our law has developed two streams of review, one based on the principle of legality and the other on PAJA. The Constitution recognises municipalities as a distinct sphere of government with original powers. In *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others*,[1] the Constitutional Court explained the nature of municipal powers and distinguished between legislative and administrative actions.

[33] When a municipality exercises its plenary legislative powers, such as making by-laws or setting rates and taxes, it is performing a legislative function. These actions are not administrative action and therefore do not fall within the

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[1] *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* [1998] ZACC 17; 1999 (1) SA 374 (CC).

scope of PAJA. They may only be challenged on constitutional grounds, such as legality or rationality.

[34] However, when a municipality applies or implements legislation or by-laws in specific cases, its conduct constitutes administrative action. In this regard, the Supreme Court of Appeal (SCA) in *Overstrand Municipality v Water and Sanitation Services South Africa (Pty) Ltd*,[2] confirmed that the procurement, appointment, and award of tenders for municipal services is administrative action.

[35] Counsel for Mhlongo Transcoin contended that it seeks to protect its right to the constitutionally sanctioned fair and transparent procurement process. Indeed, the genesis of the interdict was the appointment of the fourth respondent to the sites previously guarded by Mhlongo Transcoin. Despite it being settled law that the procurement of goods and services constitutes administrative action, Mhlongo Transcoin directly relied on a breach of s 217(1) of the Constitution.[3] The respondents' objection is well-founded. The principle of subsidiarity finds application, it having been iterated by the Constitutional Court in *My Vote Counts NPC v Speaker of the National Assembly and Others*[4] that:

'... a litigant cannot directly invoke the Constitution to extract a right he or she seeks to enforce without first relying on, or attacking the constitutionality of, legislation enacted to give effect to that right. This is the form of constitutional subsidiarity Parliament invokes here. Once legislation to fulfil a constitutional right exists, the Constitution's embodiment of that right is no longer the prime mechanism for its enforcement. The legislation is primary. The right in the Constitution plays only a subsidiary or supporting role.' (Footnote omitted.)

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[2] *Overstrand Municipality v Water and Sanitation Services South Africa (Pty) Ltd* [2018] ZASCA 50; [2018] 2 All SA 644 (SCA) para 35, which refers to the Constitutional Court's decision in *Steenkamp NO v Provincial Tender Board, Eastern Cape* [2006] ZACC 16; 2007 (3) SA 121 (CC) para 21.

[3] The provision states that '(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective'.

[4] *My Vote Counts NPC v Speaker of the National Assembly and Others* [2015] ZACC31; 2016 (1) SA 132 (CC) para 53.

[36] It is indeed so that Mhlongo Transcoin also relied on the MFMA, dealing with the procurement of goods and services, and the obligation of each municipality to have and implement a supply chain management policy, which gives effect to a fair, equitable, transparent, competitive and cost-effective procurement system, to impugn and impeach the decision by the Municipality appointing the fourth respondent and the deviation process through which it was appointed.

[37] The provision imposes an obligation for the development of a supply chain management policy. To this end, Mhlongo Transcoin relied on an unlawful deviation, and a breach of the mandated threshold of R200 000, which was more than the permissible value of the contracts sanctioned by the SCM policy (whether in the amount of R200 000 or R300 000). As will be seen later in the judgment, it is unnecessary to enter the debate to determine the issue in this case.

[38] For now it is sufficient to reinforce what has been expressed in several decisions, including the SCA decision in *Opposition to Urban Tolling Alliance v South African National Roads Agency Limited*[5] that '[w]hile it is true that the principle of legality is constitutionally entrenched, the constitutional enjoinder to fair administrative action, as it has been expressed through PAJA…'

[39] Mhlongo Transcoin could not directly rely on a breach of s 217 of the Constitution or the MFMA. Secondly, to the extent that it alleges there was an unlawful deviation, the correct pathway was to bring the review under any of the grounds listed in s 6(2) of PAJA, which gives effect to s 33 of the Constitution. The finding brings to the fore the second anterior question of *locus standi*.

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[5] *Opposition to Urban Tolling Alliance v South African National Roads Agency Limited* [2013] ZASCA 148; [2013] 4 All SA 639 (SCA) para 36.

Locus standi to bring the review challenge

[40] As confirmed by its counsel, Mhlongo Transcoin brought the interdict as an own interest litigant. This brought to the fore the liminal inquiry of its *locus standi,* generally decided first without reference to the merits.[6] As *locus standi* is a mechanism for access to the court directly controlled by the court, the issue was raised *mero motu* with counsel, based on the Constitutional Court's decision in *Giant Concerts CC v Rinaldo Investments (Pty) Ltd*,[7] which stated that:

'[33] … an own-interest litigant does not acquire standing from the invalidity of the challenged decision or law, but from the effect it will have on his or her interests or potential interests. He or she has standing to bring the challenge even if the decision or law is in fact valid. But the interests that confer standing to bring the challenge, and the impact the decision or law has on them, must be demonstrated.

[34] …

[35] Hence, where a litigant acts solely in his or her own interest, there is no broad or unqualified capacity to litigate against illegalities. Something more must be shown.'

[41] The majority judgment of the Constitutional Court in *Areva NP Incorporated in France v Eskom Holdings SOC Ltd and Others*[8] affirmed the principle espoused in *Giant Concerts* and held that a court 'should, as a general rule, dispose of the matter without entering the merits and that it should only enter the merits in exceptional cases or where the public interest really cries out for that'.

[42] The connection between PAJA and the dictum in *Giant Concerts*[9] is evident. Had Mhlongo Transcoin brought the review under PAJA, it would still have been required to establish that the decision taken by the Municipality has a

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[6] C Hoexter and G Penfold *Administrative Law in South Africa* 3 ed (2021) at 676

[7] *Giant Concerts CC v Rinaldo Investments (Pty) Ltd and Others* [2012] ZACC 28; 2013 (3) BCLR 251 (CC) (*Giant Concerts*).

[8] *Areva NP Incorporated in France v Eskom Holdings SOC Ltd and Another* [2016] ZACC 51; 2017 (6) SA 621 (CC) para 41.

[9] *Giant Concerts* para 41.

direct external effect on its rights or interests to bring it within the definition of administrative action, as set out in s 1 of PAJA. That is a jurisdictional requirement for a review.

[43] It is clear from the principles that Mhlongo Transcoin has no broad legal standing to litigate against procurement irregularities or illegalities unless it demonstrates that the decision to appoint the fourth respondent affects its interests or legal rights. In the parlance of the authorities referred to above, that right or interest cannot be inferred but must be demonstrated from the facts of the case. Mhlongo Transcoin has not pleaded a case to demonstrate its rights or interests which have been affected.

[44] On the contrary, it did not dispute that the contract for the security services, which it subsequently procured by means of a court order in June 2022, came to an end by effluxion of time. It did not allege that the contract was unlawfully terminated. Moreover, Mhlongo Transcoin did not dispute the legitimacy of the constitution of the panel of security service providers or that it remains a member of the panel of security service providers from which the Municipality may select as and when required from time to time.

[45] Notwithstanding that the respondents allege there is a dispute of facts on the papers in respect of which SCM policy applies, the breach of the threshold mandated by the SCM policy is patent from the papers, but that averment alone is not sufficient to demonstrate a decision which has a direct or external effect on the interest or a right accruing to Mhlongo Transcoin without more.

[46] As the respondents contend, there appears to be an assumption that Mhlongo Transcoin will resume servicing the sites that it did prior to 31 October 2025. I agree that there is no legal basis on which it can claim any entitlement to

be retained to provide services for those sites after the contract has run its course nor can it claim a right to contract with the Municipality. The failure to demonstrate a right or an interest means it lacks the requisite *locus standi* to bring the review. This alone is dispositive of Mhlongo Transcoin's case. The conclusion is inescapable that without a demonstrable right or interest (for its *locus standi*), and/or an allegation of a decision which has a direct and external effect on its rights, Mhlongo Transcoin would not have met the requirement of a clear right entitling it to a final interdict.

[47] Although the above finding is dispositive of the review, I am duty-bound to highlight two additional factors material to the determination of the review, as evident from the papers. The first is the undisputed averment by the respondents that the appointment of the fourth respondent expired on 31 December 2025, albeit through a deviation process in breach of the threshold value. As pointed out at the hearing, any relief setting aside the appointment would have been rendered moot by the time of handing down judgment.

[48] The second element pertains to the ripeness of the review and the duty to exhaust internal remedies. Paragraph 48 of the 2023/2024 SCM Policy, on which Mhlongo Transcoin relies, provides for dispute resolution and states that:

'48. **Resolution of disputes, objections, complaints and queries**

...

(2) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes to assist in the resolution of objections and complaints between the municipality and any other person regarding:

a) the implementation of the procurement process in terms of the supply chain management system; or

b) any matter arising from the implementation of the procurement process in terms of the supply chain management system.'

[49] On the other hand, the 2024/2025 SCM Policy, on which the respondents rely, provides for dispute resolution mechanisms.

(a) Clause 50 deals with objections and complaints in respect to the implementation of the supply chain and states that:

'persons aggrieved by decisions or actions taken in the implementation of this supply chain management system may lodge within 14 days of the decision or action, a written objection or complaint to the municipality against the decision or action.'

(b) Clause 51(1) deals with dispute resolutions and states that:

'The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes to assist in the resolution of objections and complaints between the municipality and any other person regarding –

(a) to assist in the resolution of disputes between the municipality and other persons regarding-

(i) any decisions or actions taken in the implementation of the supply chain management system…'

In my view, Clause 48 (2) the 2023/34 SCM policy on which Mhlongo Transcoin relies contemplates a similar dispute resolution mechanism.

[50] Although not squarely raised at the hearing, it is worth noting that litigants in tender disputes, which constitute administrative action, frequently approach the courts without first exhausting internal remedies. In doing so, they often overlook the distinction articulated in *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining & Development Co Ltd and Other*[10] between common-law review and review under PAJA. In *Dengetenge,* the court held that:

'At common law a party aggrieved by an administrative decision was not generally obliged to exhaust internal remedies before approaching a court on review. Where internal remedies are

[10] [2013] ZACC 48; 2014 (5) SA 138 (CC) para 115:

provided for, the choice was that of the aggrieved party either to pursue those remedies before going to a court of law or to proceed directly to seek the review of the offending decision in court. The promulgation of PAJA has changed all this. It is now compulsory for an aggrieved party to exhaust internal remedies before approaching a court for review, unless such party is exempted from this duty by a competent court.' (Footnote omitted.)

[51] Having found that the appropriate pathway for the review was PAJA, and not a legality review, s 7(2)(a) of PAJA applied. Mhlongo Transcoin was therefore required to exhaust internal remedies and to avail itself of the legislated dispute-resolution procedure before approaching this Court for final relief. That obligation arose irrespective of which SCM policy prevailed.

Conclusion

[52] For the reasons stated above, Mhlongo Transcoin is not entitled to a final interdict and the ancillary relief it seeks: first, it misconstrued the basis on which to premise the review in law; and second, it lacks *locus standi* to broadly vindicate procurement irregularities on grounds of illegality. It has failed to demonstrate that the decision to appoint the fourth respondents has a direct external effect on its rights or interests or on any other grounds cognisable under PAJA.

Costs

[53] With regard to costs, there is no reason why the usual rule that costs follow the result should not apply. As to the appropriate scale of the costs, I take into account (a) the haste with which the urgent application was brought, (b) the truncated periods afforded to the respondents to file their papers, (c) the applicant's persistence in seeking final relief in circumstances where the pathway to relief was not properly considered and its legal rights and interests not clearly demonstrated, and (d) the failure to pursue the dispute-resolution mechanisms provided for in the applicable SCM policy.

[54] In the result, I make the following order:

1. The application is dismissed.

2. The applicant is ordered to pay the costs of the first and second respondents for both the urgent application and the determination of the final review on scale C.

3. Such costs shall include the costs consequent to the employment of two counsel where so employed.

[redacted]

NTY SIWENDU J

Heard on: 1 December 2025

Delivered on: 20 January 2026

Appearances

For the applicant: R F DeVilliers with S M Van Vuren

Instructed by: Kally & Co Inc

Locally represented by: Stowell and Company

For the respondent: C J Pammenter SC with M Mazibuko-Mudau

Instructed by: Nompumelelo, Hadebe Inc

Locally represented by: Ngwane Attorneys