THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 2024-099436

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED

31 March 2026 [redacted]

Date Signature

In the matter between:

KIPP CONSULTING ENGINEERS (PTY) LTD Applicant

and

THE CITY OF TSHWANE MUNICIPALITY Respondent

JUDGMENT

ELS AJ

[1] The main issue that has to be determined in this matter is whether or not a full and final settlement amount includes or excludes VAT, in circumstances where it is common cause that the relevant amount is for services rendered and the Settlement Agreement is silent on the issue of VAT.

[2] The applicant ("Kipp") and the respondent ("the Tshwane Municipality") previously concluded three separate Service Level Agreements ("SLA's") in terms of which the Tshwane Municipality undertook to effect a total payment to Kipp in the amount of R37,260,000.00 for consulting engineering services.

[3] In arbitration proceedings, instituted by Kipp, it claimed payment of a total amount of R19,410,808.11 from the Tshwane Municipality based on three outstanding invoices. Each of the invoices was in respect of each of the three SLA's. In each of the three invoices VAT was included. The total amount claimed (R19,410,808.11) thus included VAT. In its statement of defence, the Tshwane Municipality disputed any entitlement of Kipp to claim payment of any of the invoices. In a counterclaim instituted by the Tshwane Municipality, it claimed an amount of R119,591,864.84 from Kipp.

[4] On 2 February 2024, during the arbitration proceedings, the parties concluded a written Settlement Agreement. In clause 4 of the Settlement Agreement, the following is reflected:

> "*4. The parties confirm the following:*
>
> *4.1 the respondent shall pay the claimant the sum of R10,598,913.53 by no later than 30 (thirty) days from date of signature hereof in full and final settlement of all claims forming the subject matter of the claimant's claim in this arbitration;*
>
> *4.2 the respondent's counter-claim will be postponed sine die;*
>
> *4.3 each party shall pay its own costs.*"

[5] Pursuant to a request from the Tshwane Municipality, Kipp issued a VAT invoice dated 15 February 2024. In terms of this invoice the amount claimed from the Tshwane Municipality was set out as follows:

"*Net amount no payable*	*R9,216,446.55*
15% VAT now payable	*R1,382,466.98*
Total now payable	*R10,598,913.53*"

[6] In the aforesaid invoice dated 15 February 2024 it was indicated by Kipp that the account number for the invoice was "*Final Settlement*". The issued invoice was

in accordance with the view of the Tshwane Municipality i.e. that the settlement amount of R10,598,913.53 included VAT.

[7] On 27 February 2024 Kipp's attorneys addressed an e-mail to the attorneys representing the Tshwane Municipality. In this e-mail reference was made to a new VAT invoice where 15% VAT was added to the amount of R10,598,913.53. On the same day an e-mail exchange took place between the respective attorneys. First, the attorney representing the Tshwane Municipality stated the following:

> "*You would recall that the Settlement Agreement stipulated that the city would pay R10,598,913.53 as the full and final settlement. There was no provision for VAT and as such same cannot be included at this stage.*"

[8] In response to the aforesaid e-mail, the attorney representing Kipp stated the following:

> "*We agree that no provision for VAT was made however, this was an omission, however our client is VAT registered and entitled to charge for VAT and your client if VAT registered will claim it back.*"

[9] In a further letter dated 15 March 2024, the attorney representing Kipp stated the following:

> "7. *There are also two further issues:*
>
> 7.1 *interest a tempore mora at the rate of 11.25% per annum on the sum of R10 598 913.53 as from 2 March 2024 to date of payment;*
>
> 7.2 *the agreement inadvertently did not refer to VAT, which was simply a pure omission, but is of necessity implied as your client is obliged to pay the VAT and to claim such back. Our client is obliged to pay over the VAT which it will do and if required furnish proof thereof.*
>
> 8. *We accordingly intend to approach the Learned Arbitrator to insert the words (plus VAT) and for her to sign her award.*"

[10] The view expressed by Kipp made it clear that, according to Kipp, the failure to mention the issue of VAT in the settlement was an omission.

[11] It is common cause between the parties that the Tshwane Municipality proceeded to effect payment to Kipp, on 18 March 2024, in the amount of R10,598,913.53. On 25 March 2024 the attorney representing Kipp said the following in an e-mail addressed to the attorney representing the Tshwane Municipality:

> "*Further, we kindly would like to find out whether your client will be paying our client the VAT for the sum of R10 598 913.53 which is the sum of R1 589 837.02.*
>
> *Should your client not pay our client the VAT by close of business 31 March 2024, we hold instructions to make the arbitration settlement an order of court and proceed as per our letter dated 15 March 2024 to request the High Court to order that your client pays our client the sum of R1 589 837.02 and costs.*"

[12] According to Kipp, the Tshwane Municipality is liable to pay VAT on the amount of R10,598,913.53 (in the amount of R1,589,837.02) based on the following:

[12.1] The written SLA's concluded between the parties contain the following provision:

> "*9.3 All amounts and other sums payable in terms of this Agreement and Schedules hereto will be stipulated exclusive of VAT, unless expressly stated otherwise.*"

[12.2] No VAT was payable on the settlement amount, but, because a VAT invoice was requested by the Tshwane Municipality, it triggered the obligation to pay VAT on the settlement amount; and

[12.3] Kipp relies, in addition to the aforesaid, on section 31(2) of the Arbitration Act, 42 of 1965 ("the Arbitration Act") for the relief claimed in the notice of motion.

[13] In terms of clause 9.4 of the SLA's, it was the obligation of Kipp to submit valid tax invoices to the Tshwane Municipality. The statement of claim instituted by Kipp in the arbitration proceedings, was annexed to the answering affidavit of the Tshwane Municipality's answering affidavit. It is clear from the statement of claim that Kipp claimed payment of the three separate invoices in the amounts of R1,802,981.90, R8,016,426.73 and R9,591,399.48. Each of the VAT invoices in support of the aforesaid amounts were annexed to the statement of claim. It is clear from these VAT invoices that the amount claimed by Kipp was a VAT inclusive amount.

[14] In my view, what is contained in clause 9.3 of the SLA does not mean that VAT is somehow automatically excluded when the parties conclude a "*full and final settlement*".

[15] In the heads of argument, delivered on behalf of Kipp, the following was said in support of the submission that VAT became payable when the Tshwane Municipality requested a VAT invoice:

> "*16.5 On 15 February 2024, the respondent's legal representative addressed an e-mail to the applicant's legal representative, amending the terms of the Settlement Agreement and making the rendering of a VAT invoice by the applicant a prerequisite to payment.*
>
> ...
>
> *24. Accordingly, it was clearly not an express term of the Settlement Agreement that VAT was to be paid. This*

requirement (the payment of VAT) was, however, self-imposed post facto by the respondent by making the issuing of a VAT invoice on the part of the applicant a sine qua non for payment.

25. *The fact that the respondent's attorney on 15 February 2024 requested a VAT invoice could only mean that:*

    25.1 *VAT became payable whereas previously it was not in terms of the Settlement Agreement;*

    25.2 *VAT was now required to be added to the settlement amount claimed by the applicant in terms of a VAT invoice;*

    25.3 ...

    25.4 *it is the respondent that created an obligation to pay VAT by making the issue of a VAT invoice as a prerequisite to the applicant being paid;*

    25.5 *the Settlement Agreement thus on the respondent's version did not and could not of itself create a causa for payment by the respondent;*

...

27. *This request for a VAT invoice in effect constituted an amendment to the Settlement Agreement. Once a VAT invoice was requested VAT became payable and the only question left to be answered was by whom.*"

[16] These submissions were made, notwithstanding the following statement in paragraph 61 of the founding affidavit:

"*That VAT was payable cannot be contentious.*"

[17] Whether or not VAT is payable depends on the provisions of the Value-Added Tax Act, 89 of 1991 ("the VAT Act"), not on what the parties decide upon.

[18] In terms of section 20 of the VAT Act a registered vendor, making a taxable supply "*must within 21 days of the date of that supply issue a tax invoice ...*".

[19] In paragraphs 49 and 50 of the founding affidavit, the following was stated:

> "49. *The Settlement Agreement as drafted by the parties respective legal representatives did not expressly deal with the question of VAT at all, neither does it state that the settlement amount is inclusive of VAT.*
>
> 50. *It is totally silent in regard to the question of VAT and accordingly in terms of clause 9.3 of the SLA the settlement amount is deemed to be exclusive of VAT.*"

[20] In my view, the first issue to decide on is the proper interpretation of the Settlement Agreement. More in particular, the question is whether or not the full and final settlement amount includes or excludes VAT, where it is clear that Kipp claimed payment of invoices on which VAT was payable. If parties agree on a settlement amount (in respect of services rendered by a VAT vendor) which is reflected as a full and final settlement amount, it includes VAT, unless it is expressly stated otherwise by the parties. This is further confirmed by section 64(1) of the VAT Act that provides as follows:

> "*64(1) Any price charged by any vendor in respect of any taxable supply of goods or services shall for the purposes of this Act be deemed to include any tax payable in terms of section 7(1)(a) in respect of such supply, whether or not the vendor has included tax in such price.*"

[21] Section 31(2) of the Arbitration Act reads as follows:

> "*31(2) The court to which application is so made, may, before making the award an order of court, correct in the award any clerical mistake or any patent error arising from any accidental slip or omission.*"

[22] In my view the failure to include the payment of VAT in a full and final Settlement Agreement is not at all a clerical mistake or patent error that arise from any accidental slip or omission. In my view Kipp attempts, in this application, to recover an amount from the Tshwane Municipality in addition to the amount already

agreed upon in the full and final Settlement Agreement. It follows, in my view, that Kipp is not entitled to the relief claimed.

[23] In the premises the application is dismissed with costs, including the cost of counsel on scale C.

[redacted]

APJ ELS

ACTING JUDGE OF THE HIGH COURT

DELIVERED: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines.

For the applicants:	RA Solomon SC M Gumbi
Instructed by:	Michael Raphela Attorneys
For the respondent:	F Kabini
Instructed by:	Mahumani Incorporated
Date of hearing:	5 August 2025
Date of judgment:	31 March 2026