IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, MAKHANDA)

CASE NO.: 735A/2025

Reportable	**Yes/No**

In the matter between:

MANYOBO GROUP **Applicant**

and

WINNIE MADIKIZELA-MANDELA LOCAL MUNICIPALITY **First Respondent**

THE MUNICIPAL MANAGER **Second Respondent**

NIKHWE GROUP **Third Respondent**

JUDGMENT

Cengani- Mbakaza AJ

Introduction

[1] By way of notice of motion, filed of record and served to the respondents, the applicant seeks an order in the following terms:

1. That the decision taken by the first respondent to award the tender to the third respondent be reviewed and set aside for being procedurally unfair and/unreasonable, alternatively on the grounds of legality;

2. That any contract pursuant to the award of the tender be declared to be of no force and effect and be set aside;

3. That the tender process/ bidding be re-evaluated so that the procedure for the consideration and subsequent award of the tender be started afresh;

4. Costs.

[2] The respondents oppose the application.

The parties

[3] The applicant is Manyobo Group CC ("Manyobo"), a juristic person, a close corporation duly incorporated and registered in terms of the Close Corporation Act 69 of 1984.

[4] The first respondent is Winnie Madikizela-Mandela Local Municipality ("the Municipality"), an organ of the state in terms of s 2(a) of the Municipal System's Act 32 of 2000, a category B municipality as envisaged under s 155 (1) of the Constitution[1], regulated in accordance with Municipal Structures Act 117 of 1998.

[5] The second respondent is the municipal manager of Winnie Madikizela-Mandela Local Municipality ("the municipal manager"), an accounting officer duly empowered to exercise administrative functions on behalf of the first respondent.

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[1] The Constitution of the Republic of South Africa, 1996

[6] The third respondent is Nikhwe Group ("Nikhwe"), a company and a juristic person incorporated in accordance with the company laws of the Republic of South Africa.

The salient facts

[7] In his papers, the municipal manager explains that dump sites are poorly managed by inexperienced staff. They are generally characterised by indiscriminately disposed heap of uncovered waste. Also common are open burning, stagnant pools of polluted water, infestation by rats, scavenging by domestic animals and rag-picking through the waste by scavenging communities.

[8] This has a major impact not only on the scavengers but also on the employees as well. There are major risks and impacts of waste disposal sites and ground water sources, rendering them unfit for human consumption.

[9] Because of the risks associated with this nuisance, *inter alia,* the Municipality outsources this service. This is because it does not have employees responsible for addressing this hazard on a daily basis. For this reason, the bid advertisement was crucial to addressing the issue.

[10] It is undisputed that the name of the project in the matter at hand is "Maintenance Ext.3 Disposal Site' under contract number WMM-LM 22/10/25/02 EDS" (the impugned bid). The Municipality advertised the impugned 'Request for bid' (RFB) as follows:

> 'Bid (*sic*) are hereby invited from suitably qualified and accredited service providers who are interested to submit their tender responses for the above-mentioned project for Winnie-Madikizela Mandela Local Municipality.
>
> …Bids should score a minimum point of 70% on the functionality evaluation in order to be considered for further evaluation.

The bids will be evaluated on the 80/20 or 90/10 scoring system.'

[11] The RFB also listed circumstances that would render the bids non-responsive due to non-compliance. These are: A completed original document issued by the Municipality, a copy of Entity Registration Documents, certified ID copy(ies) of Director(s) (not older than 3 months), proof of CSD registration, SARS Valid PIN Printout, BID documents MBD, MBD04, MBD6.1, MBD6.2, MBD6.4, MBD8 and MBD9.

[12] Furthermore, the RFB specified that failure to submit billing clearing certificate or statement of municipality accounts would render the bid non-responsive. Moreover, it was a mandatory requirement that in case of a joint venture, an original valid tax compliance document be submitted. The evaluation criteria was 80 or 90= Price, 20 or 10=Specific goals as MBD 6.1. The minimum threshold for the local content of the project was 100%.

[13] On 8 June 2023, before the impugned bid was advertised, Manyobo was awarded a contract for a period of 18 months pursuant to a different contract titled "Rehabilitation and Maintenance for the Dumping site tender", under a different contract number. Manyobo' s appointment was rate-based, with a VAT-inclusive appointment.

[14] Manyobo accepted the contract on 21 June 2023. On 04 December 2023, it was advised that the contract was extended for a further three months. The project, as per extension granted, would end on 28 February 2025.

[15] While its contract was still in existence, Manyobo submitted its full tender documents in respect of the impugned bid. On 17 February 2025, the impugned bid was awarded to Nikhwe. On the same day, Manyobo lodged an object to the tender with the Municipality but received no response.

[16] Manyobo contends that since it had already successfully completed a previous tender in the same specific field with the same entity, the Municipality ought to have awarded the tender to it, not Nikhwe.

[17] It argues that it was not only a prospective bidder, but had also already been awarded the project and there was no notice of termination. Therefore, so it is contended, there was a breach of the Constitutional imperatives of the tender in relation to procurement processes.

[18] In contrast, the case for the Municipality and Nikhwe hinges on the fact that Manyobo failed to submit a SARS TAX PIN printout, which would have enabled the Municipality to verify its tax compliance directly with SARS. Briefly, both the Municipality and Nikhwe deny that there was a breach of the Constitutional imperatives.

[19] Nikhwe adds that Manyobo failed to comply with a basic requirement of the tender and has itself to blame for the exclusion. Amongst other points, it is avers that Manyobo claimed its VAT number was registered to a different entity, according to SARS. Furthermore, the particular plant and equipment Manyobo claimed ownership of was registered in the name of a different entity.

Issues

[20] The issues for determination are whether the disqualification of Manyobo in the tender process was “procedurally unfair”, “unlawful” and “unreasonable” and whether Manyobo ought to have been appointed as a successful tenderer.

The legal framework and discussion

[21] This application is launched in terms of PAJA. Manyobo seeks an alternative order contending that even if PAJA were held inapplicable, the decision remains reviewable under the principle of legality.

[22] The Constitutional Court (CC) in *Fedsure Life Assurance Ltd v Greater Johannesburg TMC*[2] affirmed that the principle of legality requires that all public power be lawful, rational and procedurally fair.

[23] The *Gijima*[3] principle sets out a clear distinction between the reviews in terms of PAJA and those contemplated under the principle of legality. In its interpretation, the CC concluded that s 33 of the Constitution created rights enjoyed only to private persons, and that the bearer of the obligations under that section is the state.[4]

[24] The CC added that, given such interpretation, the language of s 6 of the PAJA does not extend to an organ of the state seeking to review its own administrative action. In short, this means that PAJA would not be applicable in self-review matters. Those reviews would be dealt with under the principle of legality.[5]

[25] To recapitulate on this point, s 33 of the Constitution guarantees everyone's right to just administrative action that is "lawful", "reasonable" and "procedurally fair". It is by now axiomatic that s 33 of the Constitution is further implemented through s 6 of PAJA which empowers the persons, including the juristic persons affected by an administrative action to approach the court for a judicial review.

[26] Upon being satisfied, on the basis of facts and the law, that the administrative action was "unreasonable", "unlawful" and "procedurally

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[2] 1999 (1) SA 374 (CC); see also *Pharmaceutical Manufacturers Association of SA in re: Ex part President of the* RSA 2000 (2) SA 674 (CC).

[3] *State Information Technology Agency SOC Limited v Gijima Holdings (Pty) Limited* (CCT254/16) [2017] ZACC 40; 2018 (2) BCLR 240 (CC); 2018 (2) SA 23 (CC) (14 November 2017).

[4] *Supra* para 29.

[5] *Supra* paras 30-31.

unfair”, the court is required to consider and apply the remedies provided for in terms of s 8 of PAJA, where necessary.

[27] A multitude of cases has pronounced that the solicitation, evaluation and award of public tenders constitute “administrative action” within the meaning of s 33 of the Constitution.[6] In this instance, considering the fact the contentious issues hinge, *inter alia,* on the procedural fairness of the administrative action involving a competitive bid, PAJA is applicable.

[28] The provisions of s 217 of the Constitution which serve as a guide *in casu*, provide that when embarking on procurement processes, the organs of the state must do so on a fair, transparent, equitable, competitive and cost-effective basis.

[29] The Preferential Procurement Policy Framework Act[5] (PPPFA) and its subordinate regulations[7] aims to realise the Constitutional imperatives of s 217. Amongst other things, the regulations were created to establish pre-qualifying criteria for procurement processes.

The parties’ legal submissions

[30] Ms Brauns, Manyobo’s counsel, listed various grounds of review under several key themes. She emphasised the provisions of ss 6(2)(e)(iii) and 6(2)(f)(ii)(cc) of PAJA arguing that the Municipality prioritised formalism over substance and failed to apply the concept of materiality.

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[6] *Transnet Ltd v Goodman Brothers (Pty)Ltd* 2001 (1) SA 853 (SCA) para 39, para 9*;* see also *Logbro Properties CC v Bedderson NO* 2003 (2) SA 460 (SCA) and *Metro Projects CC v Klerksdorp Local Municipality* 2004(1) SA 16 (SCA).

[7] Act 5 of 2000.

[8] The Preferential Procurement Regulations, 2022.

[31] In amplification, she argued that the Municipality treated the missing SARS TAX PIN printout as a critical defect. She highlighted that by so doing, the Municipality applied an overly rigid approach in this regard.

[32] Counsel referenced to *Millennium Waste Management (Pty) Ltd v Chairperson, Tender Board: Limpopo Province* (Millenium Waste Management)[9] arguing that trial defects should not lead to disqualification especially when compliance can be verified without unfairly disadvantaging other bidders.

[33] The second issue concerns the evaluation criteria. Counsel argued that the Municipality misapplied the functionality criteria and overlooked key considerations. The third point is that the Municipality did not engage with Manyobo, denying it a chance to address concerns internally which goes against the procedural fairness principle. While the internal remedies do not negate judicial review, so it was argued, they underscore the Municipality's duty to act fairly in the procurement processes.

[34] Ms Mashiya, counsel for the Municipality and the second respondent as well as Mr Barker for Nikhwe, presented similar arguments. They contended that the National Treasurer's circulars are not binding and therefore there is no proof that the Municipality's council had adopted circular 90 as referenced by Manyobo's counsel.

[35] In addition, so it was contended, the regulations require tax compliance checks via SARS, so the National Treasurer's confirmation does not meet these requirements.

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[9] 2008 (2) SA 481 (SCA), also *Chairperson: Standing Tender Committee v JFE Sapela Electronics (Pty) Ltd* 2008 (2) SA 638 (SCA); *Logbro Properties CC v Bedderson NO* 2003 (2) SA 460 (SCA) and *Metro Projects CC v Klerksdorp Local Municipality* [2002] ZASCA 135; 2004 (1) SA 16 (SCA).

[36] Both counsel referenced to the SCA decision in *Dr JS Moroka Local Municipality v Betrum (Pty) Limited* (Dr JS Moroka Local Municipality)[10], arguing that the facts in this case are similar to those in *Dr JS Moroka Local Municipality*. They also pointed out that the judgments Manyobo's counsel relied on were decided before the *Dr JS Moroka Local Municipality* judgment.

Analysis

[37] Until the SCA decision in *Millenium Waste Management*[11], a tender was only considered acceptable if it meets the requirements set out in the RFB or tender specifications. This accorded with the definition of 'acceptable tender' as provided for in terms of s 1(i) of the PPPFA which provides:

'…any tender which, in all respects complies with the specifications and conditions of tender as set out in the tender document.'

[38] The SCA in *Chairperson: Standing Tender Committee v JFE Sapela Electronics (Pty) Ltd*[12], expressed its interpretation on the meaning of an 'acceptable tender' in the PPPFA and held that:

'[t]he definition of the acceptable tender in the PPPFA must be construed against the backdrop of the system envisaged by s 217(1) of the Constitution, namely one which is "fair", "transparent", "competitive" and "cost effective". In otherwords whether the tender in all respects complies with the specification and conditions set out in the "contract documents" must be judged against those values.'

[39] The SCA in *Millenium Waste Management*[13] adopted this approach. Briefly, the case concerned the award of a tender by the Department of Health and the second respondent (Social Development) for the services relating to disposal of health waste material in Limpopo Province. The unsuccessful

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[10] [2013] ZASCA 186; [2014] 1 All SA 545 (SCA).

[11] *Supra* fn 9.

[12] Ibid.

[13] Ibid.

tenderer asserted that its tender should not have been disqualified solely on the basis of its failure to endorse a signature on the last page of one of the required documents.

[40] The document referred to was a declaration of interest. Despite the lack of a signature on the last page of the document, the unsuccessful tenderer had initialled its page of the relevant document. The SCA reviewed the tender and held that the Committee ought to have exercised its discretion and condoned the unsuccessful tenderer's omission. The SCA added that such condonation would have served the public interest in that it would have facilitated a fair competition amongst the bidders.

[41] Reverting to the facts of this case, I do not agree with Manyobo's counsel that disqualifying the tender due to the omission of a SARS TAX PIN printout is a trivial defect. It is common cause that tax compliance has been long-standing requirements in terms of the procurement processes.

[42] Paper-based tax clearance certificates were phased out in 2015 and replaced by an electronic system where taxpayers including bidders are expected to provide a PIN to authorise third parties to verify tax compliance. The Supply Chain Management framework, specifically regulation 43, prohibits procurement from bidders who fail to submit proof of tax compliance.

[43] Pursuant to the Public Finance Management Act[15] and Local Government: Municipal Finance Management Act[16], accounting officers in all public entities are required to ensure that their institutions have effective, efficient and transparent systems for managing financial risk. These include financial risks associated with tax non-compliance which can lead to reputational damage and cash flow issues due to unexpected tax liabilities.

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[15] Sec 38, Act 1 of 1999.

[16] Section 62, Act 56 of 2003.

[44] It is therefore evident that the SARS TAX PIN is a mandatory requirement, serving to minimise these risks and those associated with the fraudulent tax compliant documents. While it is true that the Central Supplier Data Base (CSD) is one of the methods used for verifying tax compliance of a bidder, there is no evidence before this court to confirm that the Municipality's system was integrated with MunSoft and/or the National Treasury system and SARS. On that basis, any argument that the Municipality's RFBs were skewed lacks merit.

[45] Furthermore, the argument positing that the CSD was sufficient for tax verification lacks merit. Instead, this ought to have been submitted along with SARS TAX PIN printout as reflected in the RFB. In my view, the failure to submit a SARS TAX PIN printout could not have been easily condoned, as such condonation would have potentially compromised the fairness and transparency principles of the tender process.

[46] It is noteworthy therefore that the facts of this case and those of *Millenium Management Waste*[17] are distinguishable. Instead, the present case is on all fours with *Dr JR Maroka Local Municipality*[18] where the imperative nature of tax verification was endorsed.

[47] Most importantly, it must be acknowledged that it is not within the purview of this court to prescribe the terms of the RFB, as such authority has been delegated to the Municipality and this court cannot usurp the functions of the Municipality through a judicial decree.[19] Consequently, this application must fail.

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[17] *Supra* fn 9.

[18] *Supra* fn 9.

[19] *Dr Moroka Local Municipality* fn 9 above.

Costs

[48] This court finds no reason to deviate from the general rule which specifically entails that the winning party is entitled to costs.

Order

[49] Resultantly, the following order shall issue:

1. The application is dismissed.

2. The applicant shall pay costs of this application on Scale "B" as contemplated under Rule 67A read with Rule 69 of the Uniform Rules of Court. This shall include the costs of two counsel so employed.

N CENGANI-MBAKAZA

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the applicant	:	Adv LR Brauns
Instructed by	:	NETTELTONS
		Makhanda
Counsel for the 1st to 2nd respondents	:	Adv Z Mashiya
Instructed by	:	KB MABANGA INC.
		East London
		c/o Yokwana Attorneys
		Makhanda
Counsel for the 3rd respondent	:	Adv Barker
Instructed by	:	Cost Yeats Attorneys
		Makhanda
Heard on	:	06 November 2025
Judgment Delivered on	:	03 March 2026