



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

CASE NO: 3852/2020P

In the matter between:

FRANCE SIBUSISO NXUMALO N.O.	First Applicant
NHLANHLA MARGARET NXUMALO N.O.	Second Applicant
NTOMBIFUTHI PRETTY DALINDABA N.O.	Third Applicant
MALUSI SKHUMBUZO NXUMALO N.O.	Fourth Applicant
BONGUMUSA MUNTUKAYISE NXUMALO N.O.	Fifth Applicant

And

MEC FOR TRANSPORT, COMMUNITY SAFETY AND LIASON	First Respondent
HEAD OF DEPARTMENT OF TRANSPORT, KWAZULU-NATAL	Second Respondent

ORDER

PURSUANT TO THE HEARING OF THE APPLICANTS' APPLICATION FOR LEAVE TO APPEAL ON 5 MAY 2026, THE FOLLOWING ORDER IS MADE:

1. The applicants' application for leave to appeal is refused.
2. The applicants, jointly and severally, in their capacities for the time being of the Flymon Zakhele Nxumalo Family Trust, are to pay the costs of the application for leave to appeal on scale B of the applicable tariff.

JUDGMENT

VAN ROOYEN AJ

[1] Following a judgment delivered on 5 March 2026 in terms of which the applicants' application was dismissed with costs, the applicants applied for leave to appeal the full judgment. The application for leave to appeal was heard on 5 May 2026. Ms Mdlalose appeared for the applicants and Ms Mzibuko-Mudau appeared for the respondent.

[2] The crux of the application for leave to appeal revolved around the contention that I erred in finding that the respondents had provided detailed reasons for their decision in a letter dated 25 June 2020, "*whereas it was a regurgitation of the tender document*". Coupled to this was my alleged error in finding that the applicants had failed to exhaust internal remedies by not appealing the decision to allocate routes and buses to the Trust. This contention is fortified by the allegation that there was no appeal mechanism available for the Trust "*as this was a decision made after the prescribed appeal period*".

[3] Another court would not come to the conclusion that the respondents had failed to provide reasons for their decision on request nor that the Trust had failed to exhaust internal appeal remedies.

[4] The applicants knew that the Trust had an internal appeal remedy and the deponent on behalf of the Trust in fact went on oath to deny that reasons were provided by the Department. The applicants failed to put up the letter of 25 June 2020 in which the Department provided reasons for its decision to allocate routes and the number of buses to the Trust. The aforesaid deponent continues on oath to say that, had the reasons been provided timeously, the Trust would have lodged an appeal, thereby preventing an award to the tenderers.

[5] The Trust may not have been satisfied with the reasons but that did not mean that they did not have an internal remedy which it knew it could exercise. The denial that reasons were given also called into question the honesty of the deponent trustee.

[6] There was no dispute between the parties at the hearing of the application for leave to appeal that the KwaZulu-Natal Supply Chain Management Policy

Framework constituted “*any other law*” envisaged by Section 7(2)(a) of the Promotion of Administrative Justice Act, 3 of 2000.

[7] The Trust failed to exhaust an internal appeal remedy which it was aware it had. Another court would not come to the conclusion that there were exceptional circumstances on which to exempt the applicants from first having to exhaust their internal remedies in the interests of justice.

[8] The contract expired in June 2025. The applicants sought an order directing the respondents to award the applicants routes that would put the applicants on par with the favoured bidder for the balance of the contract, within three months of the order. Another court would not find that the latter relief sought has not become moot.

[9] Another court would not find that there were exceptional circumstances for the awarding of compensation in terms of Section 8(1)(c)(ii)(bb) of the Act. Another court would agree that the remedy of an award for compensation is linked to the setting aside of administrative action and can only be made in exceptional circumstances. The administrative decision was not set aside in terms of the Act and an order for compensation could thus not follow.

[10] As a result, I make the following order:

10.1 The applicants’ application for leave to appeal is refused.

10.2 The applicants, jointly and severally, in their capacities as trustees for the time being of the Flymon Zakhele Nxumalo Family Trust, are to pay the costs of the application on scale B of the applicable tariff.

VAN ROOYEN AJ

Date reserved: 5 May 2026

Date delivered: 29 May 2026

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Ref: PG/an/D1200/50/50