



SPECIAL TRIBUNAL

EST: ACT 74 OF 1996

TO: ALL MEDIA

20 April 2021

OR TAMBO DISTRICT MUNICIPALITY'S R4, 8 MILLION "COVID-19 DOOR-TO-DOOR CAMPAIGN" DECLARED UNLAWFUL

The Special Tribunal has granted an order declaring that the R4, 8 million contract entered into between the OR Tambo District Municipality in the Eastern Cape and Phathilizwi Training Institute (Phathilizwi) for the procurement of services for a Covid-19 related door to door campaign (the contract) under Tender No: ORTDSMU 05-18/19 to be unlawful. The Special Tribunal also declared the contract to be invalid and set it aside.

The Special Investigating Unit (SIU), which brought the application for the setting aside of the contract, contended before the Special Tribunal that Phathilizwi was awarded the contract without following procurement procedures prescribed in terms of section 217 (1) of the Constitution of the Republic of South Africa. The SIU also contended that in January 2019, the OR Tambo District Municipality awarded a tender to Phathilizwi under the above tender number to conduct education workshops on behalf of the municipality for a period of 12. This contract expired at the end of January 2020. At the beginning of February 2020, Phathilizwi requested OR Tambo municipality to extend the contract by another 6 months. However, the municipality extended the contract by another 24 months. During the extended period, the Phathilizwi conducted a Covid-19 related door to door campaign on behalf of OR Tambo municipality notwithstanding that the campaign fell outside the scope of the tender, which had been awarded for the education campaign. Phathilizwi subsequently rendered two invoices to the OR Tambo municipality, one dated 21 May 2020 for an amount of R3 036 000. 00 and the second dated 25 May 2020 for an amount of R1 821 600. 00 as payment for services rendered in relation to the Covid-19 door to door campaign. During its investigations, the SIU could not verify that the door to door campaign had indeed been conducted.

Advocate Tshilivhali Kwinda for the SIU argued that it was not in the best interest of justice and the public that Phathilizwi Training Institute be paid the amount claimed under these circumstances.

The Special Tribunal granted the order by default as Phathilizwi failed to file papers opposing the SIU's application despite being given an extension of time in terms of the order granted by the Special Tribunal on 19 March 2021. Advocate Kwinda informed Judge Lebogang Modiba who presided over the matter that ten minutes prior to the hearing of the matter on 20 April 2021, he received an email from

Phathilizwi's attorney, serving the SIU with opposing papers. Advocate Kwinana requested Judge Modiba to proceed to consider the application on an unopposed basis because Phathilizwi's conduct demonstrates that it does not take the proceedings seriously. It failed to file opposing papers on the date set out in the SIU application. This resulted in the SIU enrolling the application on an unopposed basis on 19 March 2021. On that day, Phathilizwi's legal representative appeared at the Special Tribunal hearing and requested more time to file opposing papers. The Special Tribunal granted an order in terms of which Phathilizwi would file opposing papers on xxx. That day passed without Phathilizwi complying with the order of the Special Tribunal. Phathilizwi subsequently requested the SIU to agree to a further extension of time, to which the SIU did not agree.

Judge Modiba considered that Phathilizwi failed to comply with the Special Tribunal's order of 19 March and that although Phathilizwi only served the papers on the day of hearing, it had not filed the opposing papers with the Special Tribunal. Phathilizwi's legal representatives were not in attendance, apparently as they could not catch a flight to appear physically at the Special Tribunal in Johannesburg. However, they did not request the Special Tribunal to hear the matter virtually. Judge Modiba therefore considered that the application remained unopposed.

Judge Modiba further ordered that tax invoices issued to Phathilizwi are invalid and should not be paid by the OR Tambo District Municipality. She also ordered Phathilizwi to pay the costs of the application.

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