



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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Tekoa Consulting Engineers (Pty) Ltd v Alfred Nzo District Municipality and Others
(1094/2023) [2025] ZASCA 180 (28 November 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it upheld an appeal from the Eastern Cape Division of the High Court, Makhanda, and the Municipality was ordered to pay costs, including those of two counsel.

This matter arose from a disputed municipal tender issued by the Alfred Nzo District Municipality (the Municipality) for the establishment of a panel of service providers, including consulting engineers and contractors, responsible for the planning, design, and construction of Water Services Infrastructure Grant (WSIG) projects. The appellant, Tekoa Consulting Engineers (Tekoa), submitted a bid but was disqualified by the Municipality's Bid Evaluation Committee (BEC) for failing to provide proof of registration with the Construction Industry Development Board (CIDB). The tender was ultimately awarded to the third to sixth respondents. Tekoa applied to the high court to review and set aside both its disqualification and the award of the tender, arguing that the tender requirements were vague, unlawful, and not compliant with the applicable procurement legislation. The high court agreed and set aside the tender process. The Municipality appealed to the full court, which overturned the high court's decision and dismissed Tekoa's review. Tekoa then sought and obtained special leave to appeal to the SCA.

By the time the matter reached the SCA, the tender work had already been completed, raising the issue of mootness. Tekoa conceded that the appeal had no practical effect on the specific tender but argued that the SCA should still determine the merits due to the presence of a discrete legal issue of public importance regarding the legality of vague tender conditions and the application of s 217 of the Constitution. The Municipality, by contrast, contended that no

subsisting contractual relationship exists between it and the third to sixth respondents due to the passage of time and therefore any declaration of unlawfulness issued by this Court will have no practical effect and will not comply with s 17(1)(b) of the Superior Courts Act. The Municipality further argued that there was no distinct legal issue of public interest that would affect future matters for this Court to exercise its discretion under s 16(2)(a) of the Superior Courts Act, as it would not be in the interests of justice to do so.

The SCA, per Hughes JA, held that although the tender had already been completed, the matter nonetheless warranted determination despite its mootness. The Court emphasised that the issues raised, particularly the proper interpretation of turnkey tender requirements, have broader implications for public procurement. The Court held that there was a need for organs of state, including municipalities, to comply with the prescripts of s 217 of the Constitution in ensuring that procurement processes are fair, equitable, transparent, competitive, and cost-effective. Tenders must be drafted in clear and unambiguous terms to avoid offending public policy and the principle of legality. Importantly, the Court noted that this was not an isolated incident and that municipalities and prospective bidders are likely to encounter similar tenders in the future, especially given South Africa's ongoing water-scarcity challenges. In light of these circumstances and the need to promote clarity, fairness, and legal certainty in municipal infrastructure procurement, the Court concluded that it was in the interests of justice to determine the appeal despite it being moot.

On the merits, the SCA concluded that the tender documents were vague and that the Municipality had misconstrued the nature of a turnkey contract. The documents did not clearly articulate whether CIDB registration was a mandatory requirement for all bidders, nor did they state that joint ventures between consultants and contractors were mandatory, although a turnkey contract typically requires such collaboration. The Court found that the BEC compounded the confusion by inserting additional requirements, such as mandatory joint-venture participation, disqualifying Bidders that have not entered into a joint venture agreement, and by arbitrarily deciding to allocate maximum points for any design licence proof attached that relates to civil works, which had not been specified in the tender document.

The Court held that it was not unreasonable for Tekoa to conclude, as it did, that the tender documents did not impose a mandatory requirement to submit proof of CIDB registration. The structure of the documents, coupled with the placement of the CIDB reference under the section dealing with construction companies, suggested that the requirement applied only to contractors and not to consulting engineers such as Tekoa. This ambiguity left significant questions unanswered. On a proper reading of the tender, one is left to ask: was CIDB registration required only "if applicable," was it mandatory for all bidders involved in construction work, or, as the Municipality contended, should its compulsory nature simply have been inferred from the tender documents? In summary, the Court found, the disqualification of Tekoa for failing to submit a CIDB certificate in relation to a vague tender document, warranted this Court's consideration, as the method of disqualification will impact other parties in future tenders of this kind.

While the remedies sought by Tekoa could not be granted due to the tender's completion, the SCA nevertheless decided that the full court's judgment was incorrect and required correction.

It therefore reinstated the appeal, set aside the full court's order, and held that the full court should have dismissed the Municipality's appeal against the high court. The appeal was upheld, and the Municipality was ordered to pay costs, including those of two counsel.

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