THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case no: 102/2024

In the matter between:

INZALO ENTERPRISE MANAGEMENT SYSTEMS (PTY) LTD **APPELLANT**

and

CHIEF ALBERT LUTHULI MUNICIPALITY **RESPONDENT**

Neutral citation: *Inzalo Enterprise Management Systems (Pty) Ltd v Chief Albert Luthuli Municipality* (102/2024) [2025] ZASCA 85 (11 June 2025)

Coram: NICHOLLS and UNTERHALTER JJA and NORMAN AJA

Heard: 21 May 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email, publication on the Supreme Court of Appeal website and released to SAFLII. The date and time for hand-down of the judgment is deemed to be 11h00 on 11 June 2025.

Summary: Contract – interpretation – delivery of data – overbreadth of the order-remittal and referral for the hearing of oral evidence.

ORDER

On appeal from: Mpumalanga Division of the High Court, Mbombela (Roelofse AJ, sitting as a court of first instance):

1 The appeal is upheld with costs.

2 Paragraphs 2 and 3 of the order of the high court is set aside and replaced with the following:

'(i) The matter is remitted back to the Mpumalanga Division of the high court;

(ii) The matter is referred to the hearing of oral evidence before a judge to be allocated by the Judge President or Deputy Judge President of the Division on the following question: what data, if any, is the applicant entitled to secure by way of delivery up from the respondent upon the Master Agreement coming to an end by effluxion of time?

(iii) The judge so allocated will determine the further terms upon which the referral to oral evidence is ordered;

(iv) The costs incurred to this point in the proceedings will be determined after the hearing of oral evidence.'

JUDGMENT

Unterhalter JA (Nicholls JA and Norman AJA concurring):

[1] The appellant, Inzalo Enterprise Management Systems (Pty) Ltd (Inzalo) and the respondent, Chief Albert Luthuli Municipality (the Municipality), in 2018, concluded an agreement, styled the Master Agreement. Under the terms of the Master Agreement, Inzalo provided what are described as designated services to the Municipality by installing and managing designated software and hardware. The designated services are many, but they include the management of the Municipality's financial accounting, project management, treasury and cash management, valuation roll management, land use, human resource and payroll management, and building control management, and revenue management. It is apparent that these services are essential to the discharge by the Municipality of many of its essential statutory functions.

[2] The Master Agreement came to an end on 30 June 2023 by the effluxion of time. The Municipality, on 22 March 2023, invited bids for the provision of an integrated financial system that would render services to the Municipality after the end of the Master Agreement. On 10 July 2023, the Municipality wrote to Munsoft (Pty) Ltd (Munsoft) to accept its tender. This came to the attention of Inzalo. Inzalo's attorneys then wrote to the Municipality on 27 July 2023. They objected to the tender process that had been followed by the Municipality, and threatened legal proceedings to interdict any final award of the tender. The Municipality's attorneys promptly responded. The Municipality undertook that Munsoft would not commence their duties until the adjudication before the tender appeal board of Inzalo's objections to the award of the tender. Inzalo was invited to extend the Master Agreement, month by month, and provide the Municipality with immediate access to the system that Inzalo used to render services to the

Municipality. Inzalo's attorneys wrote to the Municipality's attorneys on 3 August 2023. In sum, Inzalo declined to render any further services, given that the Master Agreement had lapsed, without the Municipality concluding a further contract with Inzalo. Inzalo indicated that, without prejudice to its rights to challenge the award of the tender, it would migrate the Municipality's data to its chosen service provider, but at the Municipality's cost. Inzalo also reminded the Municipality of outstanding amounts that remained due and payable.

[3] This exchange did not result in any resolution. The Municipality demanded access to what it described as 'the captured data'. On 17 August 2023, the Municipality brought an urgent application. It complained that data in the possession of Inzalo was critical to the functioning of the Municipality; that Inzalo had 'switched off' the system, and that the Municipality's new service provider required the data for continued use by the Municipality.

[4] In its amended notice of motion, the Municipality sought the following substantive relief:

'All Data files and documents on the Inzalo EMS Financial System which will include but not limited to the following:

(2) That the Respondent be directed to make all the capture data of the Applicant, which data is described as follows:

2.1 Data files and documents

2.2 Financial data (CSV dump of the **entire financial information** which includes but not limited to the following below)

2.3 Invoices and billings, accounts receivable and payable files

2.4 Customer information

2.5 Vendor information

2.6 Communications

2.7 User Accounts

2.8 Applications

2.9 databases (including usernames and password)

2.10 Operating System files and configurations

2.11 All full backup that was run on FMS system as at 27/07/2023 for the C:/D:/ dives *(sic)*.'

I shall refer to this as the amended relief.

[5] The urgent application was heard by Roelofse AJ in the high court. He gave an *ex tempore* judgment in which he found that Inzalo was not entitled to the Municipality's data and nothing in the Master Agreement provided otherwise. He was also critical of Inzalo, and considered that it was holding the Municipality to ransom in respect of data that it had no right to retain. There is some discrepancy in the order that appears in the transcription of the judgment and the court order that issued from the Registrar of the high court. The former order, in relevant part, reads as follows: 'The Respondent shall deliver all data that it holds in its files in such format as prescribed by the Applicant by no later than 25 September 2023 to the Applicant'. The latter order, in relevant part, requires that: 'The respondents shall deliver all data files in such format as prescribed by the applicant by no later than 25 September 2023 to the applicant'. Inzalo was also ordered to pay the Municipality's costs. I observe that the description of the subject of the orders differs: all data appears to be broader than all data files. Inzalo sought leave to appeal. Its application was dismissed by the high court, but granted on petition to this Court.

[6] At the commencement of the oral hearing before us, counsel for Inzalo helpfully made it clear that Inzalo did not intend to persist with a number of preliminary points that it had taken in its answering affidavit. Rather, the issue for us to decide was whether the Municipality was entitled to the order made by the high court, in either of the versions set out above.

[7] The Master Agreement is very sparse in its treatment of who owns what data. Much debate occurred before us regarding clause 7 of the Master

Agreement, under the heading 'Termination': 'This agreement may be terminated by either party, without cause on 1 month's or 30 calendar days' written notice of such termination to the other party. The customer reserves the right to all data captured on the Designated Software'. I shall refer to this provision as the captured data provision and the data there referenced as the captured data. The Master Agreement does not define the meaning of data nor captured data. It does define Designated Software which in relevant part means, '. . . the intellectual property [of Inzalo] forming the principal subject matter of this Agreement'.

[8] The Municipality's founding affidavit was of little assistance in order to understand how the Master Agreement regulated the ownership of data. The averment it made was this: 'At the heart of any functioning municipality is the availability of data. The data information, and the absence of data and availability of the system for reporting and audit purposes may collapse the municipality, and in this case the Applicant'. While it may readily be appreciated that access to Inzalo's system in order to access the data that the Municipality uses to discharge its functions has importance, averments of such generality are of little assistance to decide what data the Municipality is entitled to claim from Inzalo, upon the lapsing of the Master Agreement.

[9] It is clear that under the Master Agreement Inzalo was required to render services, defined as the 'Designated Services'. To do so, Inzalo made use of its Designated Hardware and Designated Software. The definition of the Designated Software makes it plain that the intellectual property comprising this software remains the sole property of Inzalo. As the matter was debated before us, I did not understand counsel for the Municipality to contend that the Municipality had any claim to the Designated Software upon the lapsing of the Master Agreement. The Municipality thus has no proprietary claim to the intellectual property of Inzalo.

[10] Yet the amended relief does not distinguish the intellectual property of Inzalo from the generality of the captured data it sought. Furthermore, particular categories of data that are identified in the amended relief include the intellectual property of Inzalo. That would appear to be so in respect of 'Applications', 'Operating System files and configurations' and perhaps also 'All full backup that was run on the FMS system'.

[11] The order granted by the high court, in neither of its iterations, made any effort to differentiate types of data to which the Municipality and Inzalo may have a claim. The one order refers to 'all data files' and the other to 'all data that it holds in its files'. These descriptions are very broad and include Inzalo's intellectual property. The Master Agreement vests no proprietary claim in the Municipality to such property. On the contrary, it specifies that Inzalo is the sole proprietor of the intellectual property attaching to data embodied in the Designated Software. Neither the founding affidavit of the Municipality, nor the judgment of the high court, provide any other basis upon which the Master Agreement permits, upon its lapsing, that the Municipality may procure the delivery of Inzalo's intellectual property. Once this is so, the widely framed order of the high court cannot stand.

[12] If the intellectual property incorporated in the Designated Software remains the property of Inzalo, what then comprises the captured data to which the Municipality claims a right in terms of the captured data provision. Here too, the Master Agreement is not helpful. The captured data provision confers a right on the Municipality. But what is the content of that right, and in what circumstances may it be exercised?

[13] Counsel for the parties sought assistance in the interpretation of the captured data provision from other provisions of the Master Agreement. Inzalo referenced provisions that allow Inzalo no longer to support the Designated Software upon termination of the Master Agreement or the licence granted to Inzalo; and to suspend the use of the Designated Software upon material and unremedied breach, including non-payment. Furthermore, Inzalo emphasised that under the Master Agreement, upon termination or cancellation, the Municipality may no longer use the Designated Software, 'unless a specific written arrangement is made and agreed between the Parties'. Such an agreement is what Inzalo had offered to conclude with the Municipality after the lapsing of the Master Agreement, but no agreement was concluded. Whatever then the captured data might consist of, the Municipality could not claim it because its retrieval required the use of the Designated Software to which the Municipality had no claim.

[14] The Municipality submitted that pursuant to the services rendered by Inzalo under the Master Agreement, the Municipality provided data (input data) to which the system of Inzalo was applied to produce outputs, that we might call work product data. Captured data comprises, it was contended, input data and work product data to which the Municipality has a right upon the lapsing of the Master Agreement in terms of the captured data provision. This interpretation is supported by the provision of the Master Agreement that obliged the Municipality 'regularly and periodically' to back up data and information, and should the Municipality not do so, the Municipality could request Inzalo to make back-ups at the expense of the Municipality. If, it was argued, the Municipality was required to make back-ups during the currency of the Master Agreement, it was entitled to the data stored on these back-ups. That data consists of input data and work product data. The Municipality indeed paid for these back-ups before the Master Agreement lapsed. The captured data provision gives expression, it was

argued, to the Municipality's right to precisely the same data that it enjoyed by way of access to back-ups, during the currency of the Master Agreement.

[15] These submissions, developed before us, travelled quite some distance from what is to be found on the papers. How the types of data that were used and generated in the course of the Master Agreement's implementation were not matters clearly set out in the exchange of affidavits. There are also disputes of fact that arise on the papers concerning these matters. Furthermore, given that the Master Agreement does not define what is meant by captured data, the interpretation of clause 7 of the Master Agreement is likely to benefit from the ventilation of relevant extrinsic evidence that is not to be found on the affidavits that serve before us.[1]

[16] What is plain is that the high court was in error in granting the order that it did. The order is overbroad. As I have found, there was no basis to order Inzalo to deliver-up its intellectual property to the Municipality. But overbreadth is not its only infirmity. Even if Inzalo's intellectual property is excised from the remit of the order, there remains no clarity as to what other data falls within the scope of captured data in terms of the captured data provision, if this provision is of application at all. On this crucial issue the affidavits filed of record, permit of no clear answer. Furthermore, there are disputes of fact as to how the Master Agreement was implemented and what was to happen when the agreement came to an end. Faced with this difficulty, the high court should not have made the order that it did. Inzalo's appeal must therefore succeed, and the order of the high court must be set aside.

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[1] *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* [2021] ZASCA 99; [2021] 3 All SA 647 (SCA); 2022 (1) SA 100 (SCA) and its understanding of *University of Johannesburg v Aukland Park Seminary and Another* [2021] ZACC 13; 2021 (8) BCLR 807 (CC); 2021 (6) SA 1 (CC).

[17] What order should the high court have given? Inzalo submitted that the founding affidavit of the Municipality failed to make out a case for the relief that it sought, and hence its application should have been dismissed. It is true that the averments in the founding affidavit are sparse in their treatment of what data might constitute captured data and there is little to be found that assists to interpret the captured data provision, as I have observed. However, the application was brought as one of urgency, in circumstances where the Municipality then considered access to data to be essential to the discharge of its public functions. The affidavits that were then exchanged failed adequately to engage the issues that have since come more clearly into focus on appeal. Since the litigation has been pursued since the grant of the order, I must assume that the question as to what data, if any, the Municipality was entitled to claim upon the Master Agreement coming to an end remains a live issue. It would thus be desirable to secure a definitive judgment, properly informed by relevant evidence that properly ventilates the disputes of fact that divide the parties and assists to resolve the question as to how the captured data provision is to be interpreted. To this end, I propose to make an order remitting the matter to the high court so that it may be referred for the hearing of oral evidence before a judge to be allocated by the Judge President or Deputy Judge President of the Mpumalanga Division of the high court.

[18] As to the question of costs, Inzalo had to bring this appeal to set aside the order made by the high court. It has been successful in doing so. The costs of the appeal must follow upon that result.

[19] In the result, the following order is made:

1 The appeal is upheld with costs.

2 Paragraphs 2 and 3 of the order of the high court is set aside and replaced with the following:

‘(i) The matter is remitted back to the Mpumalanga Division of the high court;

(ii) The matter is referred to the hearing of oral evidence before a judge to be allocated by the Judge President or Deputy Judge President of the Division on the following question: what data, if any, is the applicant entitled to secure by way of delivery up from the respondent upon the Master Agreement coming to an end by effluxion of time?

(iii) The judge so allocated will determine the further terms upon which the referral to oral evidence is ordered;

(iv) The costs incurred to this point in the proceedings will be determined after the hearing of oral evidence.’

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D N UNTERHALTER

JUDGE OF APPEAL

Appearances

For the appellant:	P J J Zietsman SC
Instructed by:	Di Siena Attorneys, Johannesburg
	Honey & Partners Incorporated, Bloemfontein
For the respondents:	Z Z Matebese SC (with him L Zwane)
Instructed by:	Mohlala Attorneys, Mpumalanga
	Moroka Attorneys, Bloemfontein.