

Court challenge to SIU findings against Nelson Mandela Bay's Covid spending fails

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The Special Investigating Unit found irregularities in a R26.4m toilet procurement during the national state of disaster.



Illustration: Lisa Nelson

- A Special Investigating Unit report that found irregularities in a R26.4m toilet tender during the Covid pandemic stands.
- The High Court dismissed a bid by the Nelson Mandela Bay Municipality to review and set aside the report.
- The judge said the municipality's challenge was based on its "aversion or dislike" of the findings, and this was not a reason to set it aside.

The Gqeberha High Court has dismissed a bid by the Nelson Mandela Bay Municipality to review and set aside a Special Investigating Unit (SIU) report that found irregularities in a R26.4m procurement process during the national state of disaster.

Acting Judge Rosaan Kruger, in a recent ruling, said while the SIU report was not a model of clarity, the unit had conducted its investigation within its mandate and had reported to President Cyril Rhamaposa as required.

“The challenge to the report was based simply on its [the municipality’s] aversion or dislike of its findings ... That is not a reason for the report to be set aside,” said Acting Judge Kruger.

She also noted that the municipality had not proven any “prejudice” emanating from the report.

[Read the judgment](#)

The report revealed that processes governing public procurement were not followed when the municipality appointed HT Pelatona Projects to build 2,000 toilets and 2,000 standpipes in informal settlements. Only 200 toilets were built.

The report found that the municipality had used the national state of disaster, linked to the Covid pandemic, to circumvent proper tender processes.

The SIU referred the matter to the Special Tribunal to review the contract and it issued a letter to the municipality to stop making payments to the company.

Disciplinary referrals were made against two senior officials for their role in the awarding of the contract.

The municipality, in its review before the court, said it had a particular mandate to take steps to prevent the spread of the Covid virus. This included moving people from densely populated informal settlements to serviced municipal-owned stands. The plan had been presented to the provincial government and the municipality was given funding to provide “emergency relief”. It said it was authorised under the directives issued by the Minister of Water and Sanitation that permitted emergency procurement of water and sanitation equipment for communities.

The municipality submitted that the SIU’s suggestions of impropriety were irrational, arbitrary and influenced by material errors of law.

Acting Judge Kruger said judicial review was not about whether or not the SIU got it “right or wrong” but whether it exercised its powers properly.

“In conducting the investigation and presenting the report to the President, the SIU acted in terms of the SIU Act and the proclamation (authorising it to probe Covid-related procurement).”

She said the directives issued by the Minister of Water and Sanitation only empowered the National Disaster Water Command Centre to coordinate procurement of goods and services at a national level, not individual municipalities.

Acting Judge Kruger said the municipality’s challenges to the report were couched in general terms “and as such were of little assistance to the court”.

But the SIU had also not conducted itself in an “exemplary fashion” in the proceedings, she said, dismissing the application but making no order as to costs.

SIU spokesperson Kaizer Kganyago said evidence pointing to criminality had been referred to the National Prosecuting Authority for further action.

“Though the SIU welcomes the dismissal of the review application and respects rights of implicated parties to challenge its reports, it is worried by the step taken by the municipality as an organ of the State.

“SIU investigations in State intuitions also identify lapses in governance and processes which expose the State to irregular and wasteful expenditure and make recommendations to ensure such lapses do not recur,” he said.

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