**IN THE SPECIAL TRIBUNAL ESTABLISHED IN TERMS OF SECTION 2(1) OF**
**THE SPECIAL INVESTIGATING UNIT AND**
**SPECIAL TRIBUNALS ACT 74 OF 1996**
**(REPUBLIC OF SOUTH AFRICA)**

**CASE NO.: KN05/2024**

In the matter between:

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| **THE SPECIAL INVESTIGATING UNIT** | Applicant |
| And | |
| **WOODGLAZE TRADING (PTY) LTD**<br>**REGISTRATION NUMBER: 2004/026630/07** | First Respondent |
| **MADUPHA BUSINESS ENTERPRISE CC**<br>**REGISTRATION NUMBER: 2002/061589/23** | Second Respondent |
| **READY HOMES CC**<br>**REGISTRATION NUMBER: 1996/027150/23** | Third Respondent |

**ETHEKWINI METROPOLITAN MUNICIPALITY** Fourth Respondent

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**JUDGMENT**

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**Victor J**

[1] This application concerns the lawfulness of the appointment and continued participation of the first, second and third respondents as service providers in the eThekwini Metropolitan Municipality's Human Settlements Infill Housing Programme. (the Programme). The matter arises from a procurement process which, over a protracted period, became marked by uncertainty, irregular implementation, inadequate record-keeping and non-compliance with constitutional, statutory and policy requirements governing municipal procurement.

[2] The applicant is the Special Investigating Unit (SIU). The first, second and third respondents are private entities which participated in the Programme as service providers. The fourth respondent is the eThekwini Metropolitan Municipality (the Municipality).

[3] The first respondent is Woodglaze Trading (Pty) Ltd, trading as Lady Brick Block Property Development (Woodglaze). The second respondent is Madupha Business Enterprise CC (Madupha). The third respondent is Ready Homes CC (Ready Homes). Where appropriate, Woodglaze, Madupha and Ready Homes are referred to collectively as the respondents.

[4] The SIU seeks orders reviewing and setting aside the respondents' appointments and the contracts or arrangements under which they participated in the Programme, on the basis that the appointments were unlawful and constitutionally invalid. It also seeks

consequential relief, including an accounting and the disgorgement of profits or assets allegedly derived from the Programme, together with condonation for the delay in instituting the review.

[5] The SIU further seeks an order directing the respondents to disclose all properties purchased or developed under the Programme, the purchase prices, any onward sales and the proceeds received. It contends that, following such accounting, any amount found to be due should be paid to the SIU within the period directed by the Tribunal. Costs are also sought, payable jointly and severally, the one paying the other to be absolved.

***Issues for determination***

[6] The issues for determination are the following:

6.1 Condonation.

6.2 Are the appointments of the respondents as service providers reviewable?

6.3 Disgorgement of any profits made by the respondents.

6.4 Costs.

***Factual background***

[7] In the year 2000 the Municipality resolved to utilise vacant sites in the Phoenix area for affordable housing aimed at first-time homebuyers in lower and middle-income groups. The Municipality intended to sell vacant land to service providers, who would develop the sites into residential dwellings and sell them to beneficiaries approved by the Municipal Housing Department. On 5 September 2002 the Municipality advertised a tender in the Mercury newspaper inviting private developers to develop 130 sites.

[8] It was a term of the tender that the service providers were to take over and develop 130 sites within two years. The service providers had to produce evidence of available funding, traceable references, and the ability to obtain funding for the entire project. It was also required that they provide the beneficiaries with good value for money.

[9] On 15 November 2002 the Municipality's Executive Committee resolved to appoint three service providers, namely Universal Property Development, Sabamba and Cascade Home Trust. The developers were required to provide detailed plans, specifications, materials and finishes, and to demonstrate how they would meet the beneficiary allocation requirements, including allocations to subsidy-income and middle-income beneficiaries. They had to provide clear proposals on how to meet the quota, being 25% of the housing sold to subsidy-income beneficiaries, who earn less than R3500 per month, and 75% of the housing sold to the middle-income band of beneficiaries who earn between R3501.00 and R5000 per month. The Council of the Municipality also required a racial breakdown of the beneficiaries.

[10] Madupha and Ready Homes were later introduced into the Programme without a prior public advertisement inviting prospective service providers to submit tenders. There was no evaluation by the Bid Evaluation Committee nor the Bid Adjudication Committee. Woodglaze had initially been identified as a possible substitute should any of the appointed developers fail to perform. On 18 February 2005 the Bid Evaluation Committee recommended Woodglaze's appointment as an additional developer for a further phase of the Programme comprising 225 sites. The Bid Adjudication Committee adopted that recommendation, and Woodglaze was appointed on 18 March 2005. On 12 May 2005 the Municipality amended the appointment letter to permit Woodglaze to take over houses previously allocated to Universal Property Development, which had failed to perform.

[11] On 26 April 2017 the Municipality adopted a recommendation to revoke Woodglaze's contract because of a breach of supply chain management requirements. Despite that recommendation, the contract was not revoked. On 1 February 2021, the Municipality renewed its contractual arrangements with Woodglaze. No review of the Programme or Woodglaze's continued participation was undertaken after three years, as contemplated by section 116(3) of the Local Government: Municipal Finance Management

Act 56 of 2003 (MFMA). Woodglaze submitted in argument that implicit in each handover and transfer into the name of a beneficiary was a review of the situation.

[12] The record reflects that the Municipality failed to maintain a coherent and lawful procurement trail in respect of the Programme. That failure materially affects the assessment of the respondents' appointments and the consequential relief sought.

[13] Madupha's appointment was also made without prior public advertisement, evaluation by the Bid Evaluation Committee, or recommendation through the prescribed procurement structures. On 17 May 2012 and 16 July 2014, the Municipality granted Madupha rights to develop certain sites under the Programme. There is no evidence that Madupha's continued participation was periodically reviewed as required by section 116(3) of the MFMA.

[14] Ready Homes was likewise allocated sites and permitted to participate in the Programme without a public tender process, without evaluation by the Bid Evaluation Committee and without adjudication by the Bid Adjudication Committee.

[15] On 9, 25 and 30 May 2012, and again on 16 July 2014, the Municipality issued letters allocating sites to Ready Homes and granting it the right to develop them. The SIU submits that the precise date of Ready Homes' initial appointment is unclear. There is similarly no evidence of a periodic review of its continued participation. For my findings in this matter, I take into account the submission by the first respondent that, in any event, each time the Municipality confirmed the transfer of a property to a buyer, this constituted some periodic review

[16] A witness involved in the Programme between 2004 and 2011 indicated that Madupha and Ready Homes had acted as subcontractors to Sabamba, one of the original successful service providers, and that sites allocated to Sabamba were subsequently

distributed between Madupha and Ready Homes. The evidence suggests that these arrangements were not preceded by a formal municipal procurement process.

[17] The impugned arrangements therefore span more than two decades. The Municipality's handling of the Programme produced confusion, uncertainty and unlawful procurement outcomes. Notably, the Municipality elected not to participate substantively in these proceedings, although counsel appeared to observe. That stance has consequences for the question of costs.

***Legal Framework***

[18] The SIU was established under section 2(1)(a)(i) of the Special Investigating Units and Special Tribunals Act 74 of 1996 (the SIU Act). Acting under Proclamation 32 of 2020, published in Government Gazette 43885, the President authorised the SIU to investigate maladministration and unlawful conduct relating to the affairs of the Municipality and the Programme.

[19] Section 4 of the SIU Act provides that the SIU may investigate all allegations within the terms of the proclamation, collect evidence relevant to its investigation and, where applicable, institute proceedings in the Special Tribunal and present evidence in those proceedings.

[20] The SIU may also investigate improper or unlawful conduct by employees of a State institution, the unlawful appropriation or expenditure of public money or property, and offences contemplated in the Prevention and Combating of Corrupt Activities Act 12 of 2004, where such conduct falls within the terms of the empowering proclamation.

[21] Section 2(2) of the SIU Act empowers the SIU to investigate serious maladministration, improper or unlawful conduct, unlawful expenditure of public money or property, and conduct which may seriously harm the interests of the public. Those

powers include the authority, where appropriate, to institute proceedings before the Special Tribunal.

[22] The powers and functions of the Special Tribunal under s 8 (2) of the SIU Act provide that the Special Tribunal has jurisdiction to adjudicate civil disputes brought before it by the SIU or an interested party, including the power to issue interlocutory orders, interdicts and any order necessary to give effect to its decisions.

[23] The Special Tribunal has jurisdiction to adjudicate civil disputes emanating from SIU investigations and may make any order it considers appropriate to give effect to its rulings or decisions. That jurisdiction includes, where the facts and law justify it, orders reviewing and setting aside unlawful contracts, declaring constitutional invalidity, preserving appropriate rights, and fashioning just and equitable relief under section 172(1)(b) of the Constitution.[1]

[24] In the case of Matojane J in *Caledon River Properties (Pty) Ltd t/a Magwa Construction and Another v Special Investigating Unit and Another* had no difficulty in finding that the Special Tribunal could make orders in terms of s 172(1)(*a*) of the Constitution in declaring contracts invalid due to non-compliance with s 217 of the Constitution. He described the discretion under s 172(1)(b) as not mechanical or circumscribed by rigid rules.

> "[8] That discretion is not mechanical, nor is it circumscribed by rigid rules. As explained in *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd* (*Trencon*),[2] it is a discretion in the true sense, requiring a value-laden judgment informed by all the relevant facts and by constitutional principle. The court is enjoined to fashion a remedy that is just and equitable in the particular circumstances, striking a careful balance between correcting

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2 *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* [2015] ZACC 22, 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC).

> constitutional invalidity, vindicating the rule of law, and avoiding outcomes that would themselves be unjust."[3]

[25] The Supreme Court of Appeal has confirmed that the Tribunal's remedial discretion under section 172(1)(b) is a true discretion, to be exercised judicially about all relevant facts and constitutional principles. The remedy must correct constitutional invalidity, vindicate the rule of law and avoid unjust outcomes.

[26] Municipal procurement is governed by section 217 of the Constitution, the MFMA, the applicable supply chain management (SCM) policy framework and the Municipality's own supply chain management policy. These instruments require procurement to be fair, equitable, transparent, competitive and cost-effective.

[27] The Municipality's supply chain management policy required prospective providers to submit bids through public advertisement, required the Bid Evaluation Committee to evaluate bids, and required the Bid Adjudication Committee to consider the evaluation report. Officials and other role players were required to treat all providers and potential providers equitably.

[28 The Municipality is required, under terms 2(2) of the SCM Policy, when procuring goods and services and selecting contractors to provide services to a Municipality, to comply with certain procedures. Section 22 provides that prospective providers must submit bids through public advertisement. Section 28 provides that a BEC must evaluate each bidder's ability to execute the contract, with no outstanding utility costs owed to the Municipality. Section 29 states that the BAC must consider the BEC's report. Although the section allows the accounting officer to dispense with the official procurement process in an emergency. Section 46(2)(a) provides that an official or other role player involved in

[3] 375 & 419/2024) [2026] ZASCA 05 (16 January 2026)

the implementation of the SCM Policy must treat all providers and potential providers equitably.

[29] When immovable property is dealt with, the transactions are bound by the SCM Policy (Supply Chain Management Policy) and the Local Government: Municipal Finance Management Act. It also provides that the sale of Municipal property, section 40(2)(b)(i), can only be sold by competitive process and, if let, at market-related rates. The Municipality can only dispose of capital assets after it has considered the fair market value at a public meeting. S 90(5) provides that any transfer of ownership of a capital asset must be done in a fair and equitable manner

[30] It requires no further analysis to see that the Municipality failed to comply with any of the above legislation, including s 217 of the Constitution. It stumbled on, completely ignoring compliance with any statutory and basic procurement policies.

***Delay in launching the legality review proceedings***

[31] The respondents contend that the SIU delayed unreasonably in instituting this legality review. They submit that the delay undermines legal certainty and that the State, unlike an ordinary litigant, bears a heightened duty to act diligently, lawfully and expeditiously when seeking to undo administrative action or contractual arrangements concluded by an organ of state.

[32] The delay must be considered in two stages. The first question is whether the delay was unreasonable. If it was, the second question is whether it should nevertheless be overlooked in the interests of justice. The explanation for delay, the nature of the impugned conduct, the strength of the merits, any prejudice to affected parties and the consequences of setting aside the impugned decisions are all relevant considerations.

[33] The SIU's explanation is not complete in every respect. It appears that the SIU became aware of the material irregularities by no later than June 2022. The State Attorney was briefed, there were delays occasioned by attempts to brief private attorneys, and counsel ultimately received the full documentation during 2024. The explanation does not account with precision for every period of inactivity. The delay is therefore not satisfactorily explained in full.

[34] In the case of the *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute Member of the Executive Council for Health, Eastern Cape and Another v Kirland Investments (Pty) Limited t/a Eye & Lazer Institute*, Cameron J stated that:

> "(T)here is a higher duty on the state to respect the law, to fulfil procedural requirements and to tread respectfully when dealing with rights. Government is not an indigent or bewildered litigant, adrift on a sea of litigious uncertainty, to whom the courts must extend a procedure-circumventing lifeline."[4]

The respondents submit that the absence of a proper explanation of the SIU's delay in launching the application is fatal.

[35] However, delay is not dispositive where the unlawfulness is clear, serious and constitutionally material. The procurement irregularities in this matter are not minor administrative slips. They go to the heart of section 217 of the Constitution, the MFMA, and the Municipality's supply chain management regime. The appointments and continued participation of Madupha and Ready Homes were not preceded by any lawful competitive procurement process. Woodglaze's continued participation was also not reviewed in accordance with the statutory framework, despite municipal recognition of supply chain management breaches.

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[4] *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd t/a Eye & Lazer Institute* 2014 (3) SA 481 (CC) A para 82.

[36] The appropriate course is therefore to consider the merits and, if invalidity is established, to craft relief that vindicates the constitutional procurement framework while avoiding undue prejudice to innocent third parties and beneficiaries of completed housing transactions.

[37] The respondents urge the Special Tribunal to exercise caution. The State has all the resources at its disposal to expedite an investigation. Mabindla-Boqwana AJA opined in the case of *Engineered System Solutions*[5] that:

> "Where the delay is found to be unreasonable, there must be a basis for a court to exercise its broad discretion to overlook it. This must be gathered from the available facts." [6]

[38] In evaluating delay, Mabindla- Boqwana AJA stated that several factors must be considered.

> "The first is —
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> 'potential prejudice to affected parties as well as the possible consequences of setting aside the impugned decision. The potential prejudice to affected parties and the consequences of declaring conduct unlawful may, in certain circumstances, be ameliorated by the court's power to grant a just and equitable remedy, and this ought to be taken into account.'
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> The second factor to be considered is the nature of the impugned decision.

[39] Mabindla-Boqwana AJA referred to the case of *South African National Roads Agency Ltd v City of Cape Town*, a judgment by Navsa JA…. which highlighted the point that the merits of the impugned decision are a critical factor in determining whether it is in the interests of justice to condone the delay. That would have to include a consideration of whether the non-compliance with statutory prescripts was egregious." [7]

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[5] *Special Investigating Unit and Another v Engineered Systems Solutions (Pty) Ltd* 2022 (5) SA 416 (SCA) para [30]
[6] *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 (CC) (2019 (6) BCLR 661; [2019] ZACC 15)
[7] *South African National Roads Agency Ltd v Cape Town City* 2017 (1) SA 468 (SCA) ([2016] 4 All SA 332; [2016] ZASCA 122) (Sanral).

[40] Mabindla-Boqwana AJA went on to explain that the Constitutional Court in *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* endorsed the test followed by the SCA in Gqwetha and later approved by the Constitutional Court in *Khumalo*, that in assessing delay, the first question to be determined is the reasonableness of the delay. If the delay is found to be unreasonable, the next question is whether it should nevertheless be overlooked in the interests of justice.

> "The reasonableness of the delay is assessed by considering the explanation for the delay, which must cover the entire period of the delay:
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> 'Where the delay can be explained and justified, then it is reasonable, and the merits of the review can be considered. . . . But . . . where there is no explanation for the delay, the delay will necessarily be unreasonable.'
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> [30] Where the delay is found to be unreasonable, there must be a basis for a court to exercise its broad discretion to overlook it. This must be gathered from the available facts. In this evaluation a number of factors must be taken into account. The first is —
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> 'potential prejudice to affected parties as well as the possible consequences of setting aside the impugned decision. The potential prejudice to affected parties and the consequences of declaring conduct unlawful may in certain circumstances be ameliorated by the court's power to grant a just and equitable remedy and this ought to be taken into account.' [8]

[ 41] The Constitutional Court in Gijima made it clear that even if there is no basis to overlook the unreasonable delay, the court is obliged by virtue of the provisions of s 172(1)*(a)* of the Constitution to declare invalid any law or conduct that is inconsistent with the Constitution, to the extent of its invalidity.[9] The Constitutional Court in *ASLA* held that this applies when the unlawfulness is clear and undisputed.[10] It further went on to state that the *Gijima* principle should 'be interpreted narrowly and restrictively so that the valuable rationale behind the rules of delay is not undermined'.[11] At the same time, it should not be

[8] *Buffalo City Metropolitan Municipality v Asla Construction (Pty) Ltd* 2019 (4) SA 331 (CC) (ASLA)
[9] *ASLA* para 63 referring to *Gijima* para 52.
[10] *ASLA* para 66.
[11] *ASLA* para 71.

ignored, but applied where there is an indisputable and clear inconsistency with the Constitution.

[42] I am satisfied that the delay, although unreasonable in certain respects, should be overlooked in the interests of justice. The legality challenge concerns the validity of public procurement and the disposal and development of municipal property. The rule of law would not be served by permitting plainly unlawful arrangements to continue merely because the Municipality and the SIU failed to act with the expedition expected of public bodies.

***Respondents' submissions***

[43] Woodglaze submits that its original appointment must be viewed against the tender advertised in 2002 and the Municipality's later decision to appoint it when one of the original contractors failed to perform. It contends that any non-compliance was immaterial, that the Municipality's officials were involved throughout, and that an innocent contractor is entitled to assume that the necessary internal formalities were complied with.

[44] Madupha submits that it acted in good faith, that the relevant events occurred many years ago, and that it should not be penalised for the Municipality's failure to preserve records or participate fully in these proceedings. It also contends that section 116(3) of the MFMA does not apply because there was no continuing procurement contract imposing ongoing financial obligations on the Municipality.

[45] Ready Homes advances substantially similar submissions. It denies wrongdoing, emphasises the lapse of time, and contends that the absence of municipal records cannot itself establish invalidity. It further submits that relief requiring disgorgement or a debatement of account would be unfair in circumstances where properties may have been sold to third-party purchasers who are not before the Tribunal.

### *Evaluation*

[46] The central question is whether the respondents' appointments and continued participation complied with the constitutional and statutory procurement framework. They did not. In respect of Madupha and Ready Homes, there was no public invitation to tender, no competitive bidding process, no evaluation by the Bid Evaluation Committee, and no adjudication by the Bid Adjudication Committee. Their participation was introduced through informal or irregular arrangements, including arrangements derived from Sabamba's earlier involvement.

[47] Woodglaze's position is different only in chronology, not in principle. Although Woodglaze was connected to the earlier tender process, its later appointment and continued allocation of sites were not managed through a fresh, transparent and competitive process. The Municipality itself recognised supply chain management concerns in 2017, yet the relationship continued and was renewed in 2021 without the required review and without a lawful procurement foundation.

[48] Section 217 of the Constitution does not tolerate procurement by accretion, substitution or informal continuation where the effect is to bypass competition, transparency and fairness. Nor may a municipality dispose of or allocate municipal assets for development without observing the statutory safeguards governing municipal property and supply chain management.

[49] The respondents' good faith, where established, is relevant to remedy. It does not render an unlawful procurement process lawful. The absence of complete records, and the Municipality's failure to participate meaningfully in these proceedings, cannot cure non-compliance with mandatory constitutional and statutory requirements.

[50] It follows that the appointments and continued arrangements under which the respondents participated in the Programme are constitutionally invalid and fall to be

reviewed and set aside. The declaration of invalidity, however, does not determine the appropriate consequential relief. That relief must be just and equitable.

***Just and equitable remedy***

[51] The relief must balance three considerations. First, the rule of law requires that unlawful procurement arrangements be declared invalid. Secondly, the Programme concerns housing and may involve completed transactions with beneficiaries and third-party purchasers who are not before the Tribunal. Thirdly, there is no finding on the papers that the respondents acted corruptly or fraudulently. Their innocence, if established, does not validate the procurement, but it is relevant when determining whether disgorgement, debatement of account or preservation of accrued rights is appropriate.

[52] A blanket disgorgement order on the present record would be inappropriate. The papers do not establish the extent of any profits, the value of land paid for, the status of incomplete dwellings, or the effect of the requested relief on purchasers and beneficiaries. The appropriate remedy is therefore to set aside the impugned arrangements prospectively, prohibit further development under the invalid arrangements, preserve the completion of dwellings already commenced, and permit further evidence to be placed before the Tribunal where necessary to determine any equitable financial adjustment.

[53] The Municipality's conduct warrants particular comment. It created and perpetuated the irregular arrangements, failed to maintain adequate records, failed to revoke or regularise unlawful arrangements when concerns were identified, and then elected not to participate substantively in proceedings concerning its own procurement failures. It is therefore appropriate to issue a rule nisi calling upon the Municipality to show cause why it should not bear the costs of the application.

**Order**

1. The appointments, contracts and arrangements under which the first, second and third respondents participated as service providers in the eThekwini Metropolitan Municipality's Human Settlements Infill Housing Programme are declared unlawful, constitutionally invalid, reviewed and set aside.

2. No debatement of account or disgorgement order is made.

3. The first, second and third respondents may complete any dwellings already commenced as at the date of this judgment and may sell those completed dwellings in accordance with applicable law.

4. The first, second and third respondents are prohibited from commencing the construction of any new dwellings under the invalid arrangements declared unlawful in this order.

5. The fourth respondent must, should it wish to continue the development of further dwellings under the Programme, institute a lawful procurement process compliant with the Constitution, the MFMA, the applicable supply chain management framework and its own procurement policies.

6. If any of the first, second or third respondents has paid for undeveloped sites, and has concluded contracts with third parties, they may continue to complete the buildings on those sites.

7. Any sites that may lie fallow and not on sold to third parties, the respondents may place further evidence before the Special Tribunal to determine just and equitable relief in relation to those sites.

8. A rule nisi is issued, returnable on 29 September 2026, calling upon the fourth respondent to show cause why it should not be ordered to pay the costs of this application.

9. Until the rule nisi is determined, the question of costs is postponed sine die.

10. The applicant and the fourth respondent may file further affidavits confined to the issue of costs.

[redacted]

**JUDGE M VICTOR**

**Seized of the matter whilst President of the Special Tribunal**

**Appearances:**

For the Applicant: Adv JM Singh assisted by Adv JG Bhika.

Instructed by: State Attorney.

For the First Respondent: Adv P Barnard assisted by Adv C Mitchell

Instructed by: Cox Yeats Inc.

For the Second Respondent: Adv AL Christison

Instructed by: Grant & Swanepoel Attorneys

For the Third Respondent: Adv AD Collingwood

Instructed by: Pregen Govindasamy & Associates

**Date of hearing:** 17 and 18 November 2025

**Date of judgment:** 5 August 2026

**Amended on:** 06 August 2026

**Mode of delivery**

This judgment is handed down by email transmission to the parties' legal representatives, uploading on Caselines and release to SAFLII and AFRICANLII. The time of delivery is deemed to be 12H00.