

In the Independent Review Committee Hearing

Held at Mbabane

In the Matter between:

MANENE THWALA practicing as
THWALA ATTORNEYS

Applicant

And

MATSAPHA TOWN COUNCIL

1st Respondent

S.V.MDLADLA AND ASSOCIATES

2nd Respondent

MTM NDLOVU ATTORNEYS

3rd Respondent

Ruling

Quorum: Mr L Howe Chairman
 Mr ED Simelane Member
 Mr BS Dlamini Member

Parties

Applicant is Manene Thwala practicing as Thwala Attorneys, a firm of attorneys registered with the Law Society of Swaziland with its place of Business in Manzini, in the Kingdom of Swaziland.

1st Respondent is Matsapha Town Council, a Municipality in terms of the Urban Government Act, being the procuring entity in the proceedings.

2nd Respondent is SV Mdladla, a firm of attorneys, registered with the Law Society of Swaziland, with its place of business at Queens Gate Mbabane, Kingdom of Swaziland.

3rd Respondent is MTM Ndlovu Attorneys, a firm of attorneys registered with the Law Society of Swaziland, with its place of business in Manzini Kingdom of Swaziland.

1st Respondent issued a tender for legal services under tender number 28 of 2018/2019. The scope of the tender was for overall legal services to be rendered to the Municipality, which will require the taking of day to day legal responsibilities and provide legal support in discrete legal issues and advise the council including drafting. The full content of the tender document is not necessary to mention in this ruling.

Several firms of attorneys submitted tenders to the 1st Respondent and the top three firms were selected by the 1st Respondent as SV Mdladla, Thwala Attorneys and MTM Ndlovu Attorneys, who are the parties to this matter. The order mentioned in this ruling is not the order of the scoring which was given to the tenderers by no means. The evaluation process was completed and the outcome was that the firm SV Mdladla was awarded the best firm for the purpose, Thwala Attorneys was awarded 2nd place and 3rd place was given to MTM Ndlovu Attorneys. The tender was then awarded to MTM Ndlovu attorneys and led to this application before us.

For the purpose of the matter and the Statutory procedures, all the time limits have been met by all the parties and the matter is properly before the IRC per the Act. No party took any point on jurisdiction and as such we need not mention the same. No objections were taken to the members of the IRC, who disclosed as is required.

The 2nd Applicant did not file any papers but advised the Committee that they will support the application and that they may during the hearing make submissions if need be. All the parties filed papers but for the 3rd Respondent who did not and was not represented at the hearing.

The Applicants case is that, the Council acted ultra vires when they constituted themselves into an evaluation committee and when they proceeded to award the tender to MTM Ndlovu Attorneys, the tender it was illegal and contrary to the law. In a nutshell, they did not follow the procedure and they awarded the tender to the incorrect person per the tender document and the evaluation procedure which they had set out. They have sought that the tender be declared irregular and improper and that it be reviewed and set aside by the IRC.

Respondents case is that the matter has been overtaken by events because the 1st respondent has awarded the contract to MTM Ndlovu Attorneys and further that they have not followed the provisions of the Urban Government Act per section 16. The further point was that the Applicant in law cannot be granted the relief as he cannot benefit from the application.

Ruling.

All the legal points and submissions have been considered by the committee and the full reasons for the ruling will be handed down at a latter date. For the purpose of the application the ruling which we come to is as follows;

1. That the award by the 1st Respondent to MTM Ndlovu attorneys is annulled by the IRC in whole;
2. That the 1st Respondent is directed to apply the provisions of the Act as stipulated and award the tender afresh without the need to evaluate the tender, as the process was done correctly in our view. The award was not correctly made and the awarded persons were not the successful party, per the tender document and the evaluation process presented to the IRC;
3. No order as to costs.

Thus issued on the 12th of October 2018 at Mbabane.



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Mr L Howe.



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Mr E,D Simelane.



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Mr B,S Dlamini.

