

# Dispute Resolution

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**DISPUTE RESOLUTION  
ALERT**

## Balancing transparency and process: A court's approach to dual application of PAIA and PAJA

In the case of *SKG Africa (Pty) Ltd v the South African Local Government Association and Others* [2024] (3) SA 540, the Eastern Cape High Court dealt with the challenges caused by the simultaneous application of two key pieces of legislation: the Promotion of Access to Information Act 2 of 2000 (PAIA) and the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

The applicant, a private company, unsuccessfully bid for a tender to provide office accommodation for the South African Local Government Association's (SALGA) Eastern Cape office. After learning that a higher-priced bid was accepted, the applicant requested information to assess the grounds for review and potential setting aside of the tender award. Despite reminders, the applicant did not receive the requested information within the 30-day period prescribed by PAIA, prompting the urgent application.

The application was brought under section 5(1) of PAJA, requesting SALGA to provide written reasons for its decision regarding the tender award, and under section 25(1) of PAIA requesting SALGA to furnish the applicant with documents relating to the tender award which included, *inter alia*, copies of all bids submitted, adjudication reports and copies of its recommendations. The applicant required such information to assess the merits of an application for review and the setting aside of the respondents' decision to award the tender to the third respondent.

SKG Africa argued in its application that:

- The court reduce the 90-day period for providing reasons under section 2 of PAJA to a lesser period of 48-hours. This expedited timeline was authorised under section 1 of PAJA, which allowed for time-periods to be shortened when necessary.
- It had also repeatedly made requests to the SALGA to furnish it with the tender documents within 30 days as prescribed by PAIA. Since SALGA did not respond within the specified period, this was considered a 'deemed refusal' under section 27 of PAIA.

In terms of urgency, the applicant contended amongst other things that the matter would take up to a year to resolve if it were to proceed in the ordinary course of the legal process. At such time, the successful tenderer would have already started executing the tender. The applicant was only entitled to damages from SALGA in the case of fraud and was exposed to irreparable financial prejudice if the application was not heard as a matter of urgency. On the other hand, the respondents asserted that the applicant's application relied on two straddled pieces of legislation, each prescribing different methods and timeframes for handling requests for information. PAIA focuses on the provision of documents while PAJA deals with the provision of reasons for administrative decisions. The respondents also denied that a decision was taken to refuse the applicant's request for information or that its right to administrative justice was infringed.

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### Courts findings

The High Court agreed with the respondents that the applicant's application straddled two pieces of legislation. Notwithstanding this, the court highlighted that the purpose of PAIA was to give effect to the constitutional right of access to any information required for the exercise or protection of any right, including the right to fair administrative action. The applicant had complied with the procedural requirements of PAIA in requesting access to the information it sought. Furthermore, the applicant's access to information would enable it to decide whether to apply for a review and the setting aside of the first respondent's decision to award the tender to the third respondent. As such, the applicant was justified in seeking the court's intervention. Accordingly, the court held that the application was urgent and ordered the first and second respondents to jointly produce for inspection and collection, the documents sought by the applicant within 48 hours of service in terms of PAIA.

In summary, while the court recognised the urgency of the applicant's need for certain tender-related documents, it did not find it necessary to reduce the statutory 90-day period for the provision of reasons under PAJA. The court balanced the need for expediency with the respondents' right to a reasonable period to prepare their reasons.

The court acknowledged the urgency of the matter, particularly due to the potential for imminent implementation of the tender and the need for the applicant to exercise its rights to fair administrative action. The court ordered the respondents to produce copies of the documents listed in paragraph 4 of the notice

of motion within 48 hours of service of the order. This included a variety of documents related to the tender process, such as bids submitted, minutes of meetings, evaluation and adjudication reports, and supply chain management policies. The applicant's request for a reduction of the 90-day period to provide reasons was not granted, but the court ordered the immediate production of documents, recognising the need for the applicant to have access to this information to assess its legal options. Each party was ordered to pay its own costs, as the applicant only succeeded partially in its application.

### PAIA vs PAJA

The difference that stands out in this case between PAIA and PAJA is primarily in the nature of the information sought and the timeframes within which responses are required.

Under PAIA, the applicant sought access to specific documents related to the tender process, such as bids submitted by other parties, minutes of meetings and evaluation reports. PAIA provides a framework for requesting and accessing information held by public bodies, with a requirement for the information officer to respond within 30 days of the request, failing which the request is deemed to have been refused.

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In contrast, PAJA concerns the provision of reasons for administrative decisions. The applicant requested written reasons from SALGA for the decision to award the tender to another party. PAJA allows for a longer period of 90 days for the administrator to provide reasons for the administrative action, which may be extended or reduced by agreement or by a court.

The court's approach in this case was to recognise the different purposes and timeframes of the two acts. While it recognised the urgency of the applicant's need for documents under PAIA and ordered their production within 48 hours, it did not find it necessary to truncate the 90-day period for the provision of reasons under PAJA, acknowledging SALGA's commitment to provide a substantive response within the statutory timeframe.

### Conclusion

This case highlighted the importance of balancing the need for urgent access to information with the procedural requirements and timelines set by legislation. The court's decision highlights the importance of transparency and accountability in public procurement processes, while also respecting the legal timeframes established for administrative actions. It underscores the rights of unsuccessful bidders to seek reasons for tender decisions and access relevant documentation to assess the fairness of the process and to consider legal challenges if necessary. The case also emphasises the role of the courts in ensuring that such challenges are handled expeditiously without unduly prejudicing any party involved.

**Katekani Mashamba**  
Overseen by **Marelise van der Westhuizen**

## Chambers Global 2024 Results

### Dispute Resolution

Chambers Global 2022–2024 ranked our Dispute Resolution practice in:  
**Band 2:** Dispute Resolution.  
Chambers Global 2018–2024 ranked us in:  
**Band 2:** Restructuring/Insolvency.

**Tim Fletcher** ranked by Chambers Global 2022–2024 in  
**Band 2:** Dispute Resolution.

**Clive Rumsey** ranked by Chambers Global 2019–2024 in  
**Band 4:** Dispute Resolution.

**Lucinde Rhoodie** ranked by Chambers Global 2023–2024 in  
**Band 4:** Dispute Resolution.

**Jackwell Feris** ranked by Chambers Global 2023–2024 as an  
"Up & Coming"  
dispute resolution lawyer.

**Anja Hofmeyr** ranked by Chambers Global 2024 as an  
"Up & Coming"  
dispute resolution lawyer.



## A step in the right direction: Mining sector required to develop a GBVF implementation plan

On 2 August 2024, a [Guidance Note for the Management of Gender-Based Violence and Femicide \(GBVF\), Safety and Security challenges for women in the South African mining industry \(Guidance Note\), under the Mine Health and Safety Act 29 of 1996, was published.](#)

This Guidance Note, published in National Women's Month, is a welcome step in the right direction to ensure the safety and security of women in an overarching male dominated mining work environment. It comes as a result of recommendations set out in a report based on a study conducted in 2013 on the safety of women in the mining sector (refer to Annexure C of the Guidance Note for a summary of the report). The focus areas of the Guidance Note include: accountability, co-ordination and leadership; prevention and rebuilding social cohesion; response, care, support and healing; research and information systems; and the observance of the 16 Days of No Violence Against Women and Children campaign.

The Guidance Note applies to the South African mining industry and mining communities and sets out specific roles and responsibilities for employers, managers and supervisors. It proposes that a zero-tolerance approach to GBVF in the workplace be adopted by developing and implementing policies and strategies to tackle the GBVF scourge, which also includes discrimination and sexual harassment. Employers are further expected to report on GBVF issues in relation to the development and implementation of a sexual harassment policy which must be displayed on notice boards; GBVF plans; the establishment of a GBVF database; and collaboration initiatives with the criminal justice system.

GBVF management structures and systems should be in place to address, amongst other things, anti-sexual harassment ambassadors; employee health and wellness services;

the establishment of a gender monitoring and evaluation committee; the provision of properly illuminated ablution facilities that are lockable from the inside and specific change rooms for women in mining; reporting systems; and the implementation of a buddy system and the use of mobile radios for reporting purposes.

Managers and supervisors are similarly obligated to adhere to GBVF policies and procedures; participate in GBVF training; report on progress regarding GBVF annually; refer GBVF victims to relevant support systems; and ensure that systems to address the safety and security of women are in place and are periodically reviewed or assessed, including the monitoring and reporting of progress.

Part B of the Guidance Note requires an employer to develop an implementation plan to address its organisational structures, responsibilities of functionaries and programmes and schedules in light of the requirements in the Guidance Note (Annexure D includes a template to be used for the implementation plan). The implementation plan must be kept on record and related documents should be readily available for examination by any affected person.

Part C of the Guidance Note requires all mines to submit an annual report on their GBVF implementation plans on the last day of February each year (Annexure E of the Guidance Note includes a template to be used for progress reporting).

The mining sector is strongly encouraged to consider the Guidance Note and adhere to its requirements to assist in creating a safe working environment for women.

**Tanya Calitz**  
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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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