



**THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA**

**MEDIA SUMMARY - JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

***Department: Transport, Province of KwaZulu-Natal v Ramsaran & others  
(1274/2017) [2019] ZASCA 62 (23 May 2019)***

**From:** The Registrar, Supreme Court of Appeal

**Date:** 23 May 2019

**Status:** Immediate

***Please note that the media summary is for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.***

---

Today, the Supreme Court of Appeal (SCA) dismissed an appeal by the Department: Transport, Province of KwaZulu-Natal (the department) against an order declaring a summons issued by it out of the Durban High Court on 25 November 2014 to be null and void.

The combined summons, which was signed by Lambert Attorneys, cited the department as the plaintiff and nine employees of the department as the defendants. The particulars to the summons alleged that the defendants were involved in a fraudulent scheme that caused the department loss amounting to R7 123 704.91. The loss was to be sought to be recovered from the Defendants. On 3 March 2015 the defendants filed a notice in terms of rule 7 of the Uniform Rules of Court. They contended that the department was not permitted in terms of the Treasury regulations 'to instruct attorneys to act in the matter or to take action by instituting proceedings independent of the state attorney'. The department did not respond to the rule 7 notice, the first, third, fourth, sixth and eight defendants (the respondents in the appeal) applied on 22 June 2015 to set aside and declare the summons a nullity. That application eventually succeeded before the high court.

On 6 August 2018 and whilst the appeal was pending before the SCA, the respondent's attorney served and filed a notice in terms of rule 41 (2) of the Uniform Rules of Court abandoning the judgment 'save for the order of costs'. The SCA held that the abandonment means that the respondents conceded 'the relief that the department is entitled in law to seek from this court of appeal'. The department further contended that the lack of a tender for costs in the notice of abandonment left the department with no recourse other than to proceed with the appeal. The SCA held that the department was not without a remedy, as it could apply for those costs on notice in terms of rule 41(2) read with rule 41(1)(c). The SCA accordingly dismissed the appeal with costs up to and including the date of abandonment.