



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Putco (Pty) Ltd v City of Johannesburg Metropolitan Municipality and Others [2023]
ZASCA 31

The Supreme Court of Appeal (SCA) today dismissed an appeal against an order by the Gauteng Division of the High Court, Johannesburg (the high court). The issue in the appeal was the meaning and effect of ss 41 and 46 of the National Land Transport Act 5 of 2009 (NLTA).

The first respondent, the City of Johannesburg Metropolitan Municipality (the City), developed an Integrated Public Transport Network Plan (IPTN), aimed at combining all existing modes of public transport into a single network, known as the Rea Vaya Rapid Bus System (the Rea Vaya system) which was implemented in phases on various routes within the City. Operators whose services were affected, such as the appellant (Putco), were offered shares in bus companies which the City had incorporated to run the newly integrated network.

The City negotiated Phases 1A and 1B of the Rea Vaya system with affected taxi and bus operators, which culminated in negotiated contracts under s 41 of the NLTA. Putco became a 26% shareholder in the bus company operating Phase 1B. Negotiations between the City and Putco regarding Phase 1C broke down when the City offered Putco a 0.27% shareholding in the bus operating company established for those routes. Putco approached the high court for an interdict restraining the City from incorporating any corporate entity for the purposes of Phase 1C of the Rea Vaya system or from concluding or implementing an agreement in that regard, pending the final outcome of a dispute resolution process (mediation or arbitration) under s 46(2) of the NLTA. The high court dismissed the application for an interdict on the basis that Putco failed to prove a prima facie right: s 46(2) did not apply to the dispute.

On appeal, Putco asserted that the contract for Phase 1C of the Rea Vaya system is entered into in terms of s 46 and not s 41 of the NLTA; that the City was the contracting authority contemplated in its interim transport contract concluded with the Gauteng Department of Roads and Transport; and that the dispute resolution process (mediation and arbitration) envisaged in s 46(2) applied to its dispute with the City. The SCA held that the high court was correct in holding that s 41 and not s 46 applied to the dispute. Section 46 governs existing contractual relationships and does not apply to contracts that are negotiated under s 41 of the NLTA. The City has no power to enter into transport contracts under s 46; that power is conferred by s 41. Section 41 is aimed at conclusion of once-off contracts for a maximum period of 12 years, after which the municipality has to invite tenders for public transport services. It makes no provision for dispute resolution procedures. Section 46, on the other hand, provides for the settlement of disputes concerning existing transport contracts through mediation or arbitration.

In the result, the SCA determined that the dispute between Putco and the City was regulated by s 41 and not s 46, and dismissed the appeal.

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