



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

Date: 14 November 2024

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

Roadmac Surfacing (Pty) Ltd v MEC for the Department of Police, Roads and Transport, Free State Province and Another (461/2023) [2024] ZASCA 157 (14 November 2024)

Today the Supreme Court of Appeal (SCA) upheld an appeal in part to the extent that it varied the order of the Free State Division of the High Court, Bloemfontein (the high court) by adding an additional paragraph 2 to that order. The SCA further made an order directing the first respondent, the MEC for the Department of Police, Roads and Transport, Free State Province, to pay the costs of the appeal and wasted costs occasioned by the adjournment of the appeal on 7 May 2024, which costs shall include the costs of two counsel, where so employed.

The appellant, Roadmac Surfacing (Pty) Ltd (Roadmac), is a company, who, on invitation by the first respondent, together with the second respondent, Tau Pele Construction (Pty) Ltd, as well as other bidders, submitted bids regarding a tender (Tender No:PR&T18/2021/22) for the Special Maintenance on Route P44/1&2 between Deneysville and Jim Fouche (the works) in the Free State Province. Roadmac was unsuccessful as the bid was awarded to the second respondent.

Aggrieved by this outcome, Roadmac sought reasons from the first respondent, and, after receipt thereof, launched review proceedings to the high court premised on the fact that the award of the tender to the second respondent was not fair, transparent, competitive, or cost effective. Pending the review proceedings, Roadmac applied for interim relief, seeking an interdict, which was granted on 28 March 2022 with the effect that the first respondent was interdicted from giving instructions to the second respondent to continue under the tender in question, and the second respondent was interdicted from commencing with any further work. The order granting the interim interdict directed that the costs leading up to the hearing of the application for an interdict (being the 28 January 2022, 10 February 2022 and 24 March 2022), should stand over for determination at a later stage (the Daffue J order).

On 14 November 2022, the high court delivered an order dismissing the review application, which was heard on 7 November 2022. On 28 April 2023 leave to appeal this order was granted by the high court, however, the costs aspect of the Daffue J order remained unresolved as the high court failed to deal with it.

The appeal before the SCA was initially set down for 7 May 2024, however, on that day, counsel for the first respondent produced a Certificate of Completion of Works (completion certificate), which indicated that the works for the awarded tender in dispute were completed on 28 September 2023. This completion certificate affirmed that, on 14 September 2023, the works carried out had been inspected

and had been found to have met all the required conditions for its issuance which, in turn, prompted the question of whether the appeal would have a practical effect or results. Having been taken by surprise, counsel for Roadmac requested a postponement of the matter which was granted. The matter was then postponed, with costs reserved, and subsequently set down for 13 September 2024.

The crisp issue before the SCA was whether the judgment or order sought by Roadmac would have any practical effect or result.

In addressing the issue, the SCA pointed out that, in as much as the first and second respondent failed to take the Court into its confidence and waited for the date of the appeal to spring the existence of the completion certificate on both the Court and Roadmac, courts will not decide matters which are purely academic and would have no practical effect. On this point, the SCA concluded that the appeal on the merits was academic, moot and of no practical effect, as the works had been completed as far back as 2023.

With regards to the issue of costs, the SCA stated that, taking into account the fact that the high court failed to deal with the Daffue J order in relation to the costs which stood over, this was an instance where an important issue between the parties, affecting their interest, required resolution for justice to prevail. In the circumstances, the SCA held that the high court's failure to exercise its judicial discretion in dealing with the costs issue could amount to an exceptional circumstance wherein an appeal court may interfere in the interests of justice. Consequently, the SCA found that, since Roadmac had successfully obtained the interim interdict, it was entitled to obtain the costs for the dates preceding the interdict order.

As to the costs in the appeal before the SCA, the Court found that the postponement of the appeal on 7 May 2024 was occasioned by the first respondent handing up the completion certificate dated September 2023 on that date, and failing to notify Roadmac and the Court of it prior to the hearing of the appeal. Due to Roadmac attaining partial success in the appeal, the SCA found that Roadmac was entitled to costs in the appeal. In the result, the SCA made an order as detailed in the introductory paragraph above.

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