



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: 13 June 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

MEC for the Department of Public Works & Others v Ikamva Architects CC and Others (867/2022)
[2024] ZASCA 95 (13 June 2024)

Today the Supreme Court of Appeal (SCA) dismissed an appeal by various Departments of the Eastern Cape Government against parts of the judgment of the Eastern Cape Division of the High Court, Bhisho. That court had granted a provisional order staying execution of two warrants issued at the instance of Ikamva CC against the Eastern Cape MECs for Public Works, Health, and Finance.

The order staying execution of the warrants was granted provisionally, pending finalisation of appeal processes launched by the Departments of Health and Public Works against a dismissal of their self-review application.

During 2003 the Department of Public Works offered to appoint Ikamva as 'Consulting Architects Agents' for upgrades to Frere Hospital, East London. A written agreement to that effect was concluded on 15 September 2003. During March 2007, the Department of Public Works appointed Coega Development Agency as the implementing agent for the same project. Coega appointed a different firm of architects to do the work that Ikamva had been contracted to do. On 9 July 2007 the Department of Public Works wrote to Ikamva advising that it would not be honouring its obligations under the contract. Ikamva accepted the repudiation of the contract and instituted an action against the two Departments, claiming an amount of R41 031 279.48 as damages for breach of contract.

In the action for damages, the Departments pleaded that the consultancy contract, in terms of which Ikamva was appointed, was invalid because it was concluded contrary to the provisions of the Constitution, the PPPF, and the Regulations promulgated in terms of the PPPF. During the course of the litigation, Ikamva called upon the Departments to make discovery in terms of Rule 35(1). When they failed to do so, Ikamva obtained an order compelling them to make discovery within 10 days, on pain of having their defence struck out.

In compliance with that court order, the appellants made discovery. Ikamva was not satisfied and obtained a court order directing them to make further and better discovery of listed documents. Further discovery was not made, leading to Ikamva approaching the high court again, for an order compelling further discovery within 10 days. Ultimately the defence that the Departments had filed was struck out due to their failure to make discovery. Judgment was granted against the Departments for the claimed amounts.

Subsequent to the granting of the judgment the warrant of execution against property was issued. The Department launched various proceeding in an attempt to avoid execution, including an application to

rescind the judgment, applications to stay execution of the warrant, including a challenge to attachment of moneys in a bank account held by the Department of Health, and an application for review and the setting aside of the decision to appoint Ikamva as a consultant and the related contract.

The SCA found that the issues relating to the stay of execution were moot as the attached bank account had long been closed and the Department of Health was operating a different bank account. It further found that the only issue that required consideration in the order of the full court was that of costs. The Court held that although an appeal against an order of costs is not lightly granted, it was appropriate that the costs of the application for stay, which the high court had granted against Ikamva, should be borne by the government Departments. This was because of the manner in which the government Departments had pursued meritless litigation and ignored various court judgments in terms of which Ikamva's judgment debt was confirmed. For the same reasons the Court held the costs of the application for the MEC for Finance to intervene in the proceedings should be borne by that Department. The Court ordered the government Department to bear the costs of the appeal.

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