



SUPREME COURT OF APPEAL SOUTH AFRICA

MEDIA SUMMARY – JUDGEMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 2 December 2019

STATUS Immediate

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

ZIKHULISE CLEANING MAINTENANCE & TRANSPORT CC

v

THE CHAIRMAN OF THE INVESTIGATING COMMITTEE OF THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD & OTHERS

The appellant, a close corporation, is registered as a contractor under the Construction Industry Development Board Act 38 of 2000 (the Act). In April 2013 the Construction Industry Development Board (the Board) delivered a notice to the appellant containing 20 charges relating to breaches of a Code of Conduct published under the Act, stating that an inquiry under s 29 of the Regulations promulgated under that Act would be held and requesting the appellant to indicate whether it admitted or denied the charges.

The appellant applied to the Investigating Committee delegated to inquire into the charges, for them to be dismissed. It refused to do so. The appellant then approached the High Court, Pretoria to review that decision.

In the High Court the appellant raised four main grounds of review. The High Court dealt with the first, determined it against the appellant, and dismissed the review. Why the High Court did not deal with the other grounds of review is a mystery.

When the matter came before the Supreme Court of Appeal, the appellant, for purposes of its argument, accepted that the High Court had been correct in rejecting its first ground of review. However, it argued that both its second and third grounds were fatal to the charges. The appeal therefore proceeded on grounds which had not been addressed by the High Court.

The first of these grounds was that the conduct that was the subject of the charges could not be inquired into under reg 29. The Supreme Court of Appeal concluded that the Code of Conduct do not apply to relations between parties involved in the construction procurement process on the one hand and the Board on the other: it only applied between different parties involved in the procurement process. As 17 of the 20 charges related to the appellant's actions in regard to the Board, they were not covered by the Code of Conduct and therefore ought to have been dismissed.

The Supreme Court of Appeal went on further to find that the requirements of the Regulations which had to be followed before there could be a valid inquiry under reg 29, had not been followed and that, on this basis as well, the inquiry had lacked legitimacy. All the charges thus ought to have been dismissed.

In these circumstances the appeal succeeded with costs. The review was upheld and the order of the Investigating Committee was substituted with an order that the charges against the appellant be dismissed.