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

FROM The Registrar, Supreme Court of Appeal

DATE 3 December 2018

STATUS Immediate

The City of Tshwane Metropolitan Municipality v Blair Atholl **[2018] ZASCA 176**

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

The Supreme Court of Appeal (the SCA) today upheld the appeal with costs, the effect being that the remaining issues have to be adjudicated by the court below.

The essential issue between the parties, even before the inception of litigation, was which of a range of tariffs the appellant, the City of Tshwane Metropolitan Municipality (the City) could charge the respondent, the Blair Atholl Homeowners Association (the association), for the water it supplied to the housing estate which the latter administered. The dispute was about whether the words 'normal rate' in an Engineering Services Agreement (the ESA) was the 'bulk rate for municipalities'.

At the relevant time, a major problem encountered by the developer was that, because the land was situated outside of the urban edge and beyond priority areas, the City was not yet supplying water to that area nor was it in contemplation in the immediate future. The developer entered into discussions with the City to resolve this difficulty and to attempt to persuade the City to facilitate the development of the proposed township by providing water and other municipal services to the area.

The City was only prepared to provide water to the area on the basis that the developer fund the construction of a 20 kilometre water pipeline that would enable the water to be supplied to the new development. It also required the developer to construct an internal and external reservoir and a sewage package plant. After extended discussions and exchanges of written communications as well as several drafts of a contemplated written agreement, an ESA was concluded in February 2006.

The matter was decided on a separated issue in terms of Uniform rule 33(4), namely, an interpretation of clause 6.16 of the ESA and consequently whether the 'bulk rate for municipalities', as contended for by the association, applied. No order of separation was made at the commencement of proceedings and there was no order at that time that the remaining issues were to stand over.

The SCA repeated that careful thought should be given to a separation of issues, and that convenience and expedition should be the object. The court held further that when issues were inextricably linked a full ventilation of all the issues was more often than not the better course and might ultimately prove expeditious and provide finality. In the present case it did not have that effect.

The clause in question, was interpreted as dictated by prior decisions of the SCA. The courts recent experience has been that in many cases extensive inadmissible extrinsic evidence has been allowed in relation to the interpretation of written documents.

The SCA had regard to the context within which the ESA was concluded. It took into account that City supplied water services on the basis that certain infrastructural costs were met by the developer. Much was sought to be made of this fact in justifying the contention that it would only be fair and it made business sense to conclude that the 'normal rate' referred to in clause 6.16 was the bulk rate for municipalities. Against that, for contextual purposes, one had to take into account that the City's insistence, at the outset, that in order for it to provide water services, the developer would have had to pay for infrastructural costs was justifiable, on the basis that the development was located beyond the urban edge and the City's priority area. The SCA also had regard to the contention on behalf of the association that the clause being interpreted commenced by stating that the 'normal rate' of the municipality would apply in recognition of the infrastructure being provided and that, therefore, it implied that a reduced rate was the *quid pro quo*. The SCA also took into account that the City did not charge for sewage and that the legislation regulating tariffs provided for surcharges, where justifiable, and in the present case did not impose them. It also took into account that there was a range of 'normal rates'. The SCA considered it significant that the rates did not provide for consumers that were 'like a municipality'. In this regard it had been contended on behalf of the association that, by bearing infrastructural costs, it was 'like a municipality'.

The SCA held in favour of the City on the basis that the normal rate provided for in the ESA was not the bulk rate for municipalities. It went on to uphold the appeal.

The SCA concluded that the remaining issues, including a constitutional statutory challenge by the association to the City's claimed rate and the amounts claimed by the City based on the tariff it contended was applicable were to be remitted to the court below to be adjudicated. It held that this demonstrated how insufficient thought had been given to the separation of issues.