



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 6 January 2022
STATUS Immediate

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

Eastern Cape Rural Development Agency and Another v Agribee Beef Fund (Pty) Ltd (827/2020) [2022] ZASCA 2 (6 January 2022)

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today upheld the appeal of the Eastern Cape Rural Development Agency (the ECRDA) and the MEC for Rural Development and Agrarian Reform in the Eastern Cape provincial government against Agribee Beef Fund (Pty) Ltd (Agribee).

On 16 July 2018, a tripartite agreement was concluded by the ECRDA, the Department of Rural Development and Agrarian Reform in the Eastern Cape provincial government (the Department) and the Eastern Cape Beef Fund (the ECBF), the trading name of Agribee. The purpose of the agreement was to support and develop smallholder beef farmers in the Eastern Cape.

For this purpose, the Department had a three-year budget of R67 535 000. These funds would be transferred to the Agency which, in turn, would disburse funds to the ECBF when required. The ECBF's role was to acquire a large number of recently weaned beef cattle and to deliver them to the smallholder farmers who had been identified as beneficiaries of the project. The ECBF was also to provide veterinary

packs, feed supplements, training and mentorship to the beneficiaries. They, in turn, would rear the cattle to the point when they were ready to be moved to feedlots. The ECBF would deliver the cattle to feedlots, arrange for their slaughter and the marketing of the meat.

Before the agreement had run its three-year course, the Agency and the MEC of the Department applied to the Eastern Cape High Court, Grahamstown for an order setting the agreement aside. The basis for the application was that the agreement was invalid because its conclusion had not been preceded by a procurement process that met the requirements of s 217(1) of the Constitution. This section requires that, when organs of state contract for goods or services, they must do so in accordance with a system that is 'fair, equitable, transparent, competitive and cost-effective'. While it was common cause that no such process was followed, Agribee argued that s 217(1) was of no application because the agreement was not one for goods or services. The high court upheld Agribee's argument and dismissed the application to set aside the agreement.

On appeal, the SCA arrived at a different conclusion. It found that the agreement, when considered within the wider context of its purpose and the mandates of the Agency and the Department, was indeed one for the provision of goods or services. The ECBF provided goods to the beneficiaries in the form of the cattle, the veterinary packs and the feed supplements. It provided services to the beneficiaries in the form of training, mentorship, delivering the cattle to feedlots, arranging for their slaughter and attending to the marketing of the meat. It provided services to the Agency and the Department by providing goods and services to the beneficiaries which the Agency and the Department would otherwise have had to provide themselves.

As a result, the appeal was upheld. The high court's order was set aside and replaced with an order declaring the agreement to be invalid.