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

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Status: Immediate

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Greater Tzaneen Municipality v Bravospan 252 CC (Case no. 428/2021) [2022] ZASCA 155 (7 November 2022)

Today, the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against a decision of the Limpopo Division of the High Court, Polokwane (the high court).

The issues before the SCA were whether Bravospan failed to comply with the provisions of s 3(2) of the Institution of Legal Proceedings against Certain Organs of State Act 40 of 2002 (the Act) and whether a portion of Bravospan's enrichment claim had prescribed and the appropriate remedy available to the respondent.

The appellant, Greater Tzaneen Municipality (the municipality) and the respondent, Bravospan 252 CC (Bravospan) concluded a Service Level Agreement (SLA) on 20 November 2013, pursuant to a competitive tender process. In terms of the SLA, Bravospan would render security services to the municipality for a period of 12 months from 1 November 2013 to 31 October 2014. Towards the end of the term of the SLA, and without any tender process, the municipality and Bravospan concluded an addendum to the SLA (the extension agreement) in terms of which it was agreed that the SLA would be extended for a further 24 months from 1 November 2014 to 31 October 2016.

On 9 February 2015, the municipality launched an application in which it sought an order declaring that the extension agreement was null and void, alternatively that the extension agreement be reviewed and set aside. Bravospan launched a counter-application for payment of R2 005 000 for the security services rendered for the period November 2014 to March 2015. Even after the municipality had commenced with litigation it requested Bravospan to continue rendering services 'until such a time that a new service provider was secured'. The municipality's application and counter-application were argued before Mokgohloa DJP, and she found that the extension agreement was unlawful. She declared it null and void for want of constitutionality and the counter-application was dismissed with costs.

It was undisputed that throughout the 24 months' period after the extension agreement was declared null and void, Bravospan, at the municipality's request, continued to provide the security services and the municipality the enjoyed the benefit of security services provided by Bravospan without payment

and without engaging another service provider. During January 2018, Bravospan instituted a claim of unjust enrichment against the municipality for payment of a sum of R9 624 000, which amount was the sum total of invoices submitted to the municipality for the duration of the extension agreement. On 2 February 2021, Makgoba JP upheld Bravospan's claim.

As to the issue of prescription, the SCA held that the municipality failed to prove the date on which prescription commenced. In respect of the notice in terms of s 3(2) of the Act, the SCA held that counsel for the municipality rightly conceded that the claim for unjust enrichment was not a 'debt' as defined in s (1) of the Act because it was not a claim for damages. Therefore, the absence of a notice in terms of the Act did not bar the enrichment claim. Lastly, the SCA held that Makgoba DJP's order granting Bravospan's claim for unjust enrichment was not sustainable in law as our law is yet to recognise a general enrichment action. However, the SCA held that on the facts, it would be manifestly unjust for Bravospan to be afforded no compensation for the services that it had rendered to the municipality. It held that Bravospan should, in the exceptional circumstances of this case, be afforded compensation for the services rendered under the extension agreement as a just and equitable remedy under s 172(1)*(b)* of the Constitution.

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