



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 30 November 2022
STATUS Immediate

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

MEC Responsible for Local Government, Western Cape v Matzikama Local Municipality and Others (747/2021) [2022] ZASCA 167 (30 November 2022)

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today upheld the appeal of the Member of the Executive Council for Local Government in the Western Cape provincial government (the MEC) against the Matzikama Local Municipality (the municipality).

The MEC had in terms of s 106(1) of the Local Government: Municipal Systems Act 32 of 2000 (the Systems Act) appointed two people to investigate allegations of abuses of power within the municipality. The section empowered him to do so if he had reason to believe that 'maladministration, fraud, corruption or serious malpractice' were occurring or had occurred in a municipality. One of the allegations which had been referred for investigation was an allegation that R320 000 of municipal funds had been stolen.

The municipality applied, in the Western Cape Division of the High Court, Cape Town (the high court) for the review and setting aside of the MEC's decision to appoint the investigation. The MEC brought a counter-application for an order to compel the municipality and its officials to co-operate with the investigators.

The high court granted the MEC's counter-application and dismissed the municipality's application except for one issue. It held that the MEC had no power to refer the theft allegation for investigation, as the only forms of criminal conduct he could refer for investigation in terms of s 106 were fraud and corruption. The MEC sought and was granted leave by the high court to appeal to the SCA against this finding.

The SCA held that the purpose of s 106 was to monitor the performance of local governments with a view to remedying weaknesses, and to hold municipal officials to account. The interpretation of the section favoured by the high court would undermine this purpose and lead to arbitrary results. It could have the effect of rendering s 106 a dead letter. The SCA held that s 106(1) meant that not only the crimes of fraud and corruption could be investigated but that other crimes, such as theft, could also be.