



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 20 December 2022
Status: Immediate

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.

MEC for the Department of Public Works, Eastern Cape and Another v Ikamva Architects CC [2022] ZASCA 184

Today the Supreme Court of Appeal dismissed an application for leave to appeal a judgment of Beshe J in the Eastern Cape Division of the High Court, Grahamstown (the high court). The application for leave was referred for oral argument and arose from the dismissal by the high court of an application for the self-review by the Department of Public Works (the Department of Works) of decisions to award, and the consequent award of, a contract to Ikamva Architects CC (Ikamva) in 2003. The contract related to work to be done on the Frere Hospital in the Eastern Cape. In 2007, the Department contracted Coega to oversee all work on Eastern Cape hospitals. Coega, in turn, awarded a contract to another entity for similar work to that which Ikamva had been contracted to perform. The Department of Works obtained legal opinion to the effect that the award of the contract to Ikamva contravened s 217 of the Constitution. It then informed Ikamva that it did not intend to comply with its contractual obligations. Ikamva accepted the repudiation, cancelled the contract, and sued for damages. Although the action was defended, the Departments failed to comply with a number of procedural steps.

This resulted in default judgment being granted by Malusi AJ in December 2015. Leave to appeal was refused as was rescission. The refusal of rescission was appealed to the full court, which dismissed the appeal. Applications for special leave and for leave, to this Court and the Constitutional Court respectively, were dismissed. In 2018, the Department of Works and the Department of Health launched the application to self-review the decisions to award the contract to Ikamva and to set aside the resultant contract.

The Supreme Court of Appeal assumed, without deciding, that there was a basis to review and set aside the decisions in terms of s 172(1)(a) of the Constitution and to set aside the contract. It considered whether there were prospects on appeal that the high court ought to have granted an order under s 172(1)(b) of the Constitution to the effect that Ikamva should be entitled to no further payments in terms of the default judgment of Malusi AJ granted on 1 December 2015. The application was argued on the basis that the default judgment was valid and binding and not susceptible of challenge. Despite this, the Departments contended that such an order should be granted, which meant that Ikamva would not be able to execute pursuant to the default judgment. After reviewing the limited bases for setting aside judgments, which did not apply since the Departments conceded there was no basis for doing so, and the provisions of s165(5) of the Constitution which provides that an 'order or decision issued by a court binds all persons to whom and organs of state to which it applies', the Supreme Court of Appeal held that such an order is impermissible as offending the Constitution and the Rule of Law. For those reasons, the application for leave to appeal was dismissed with costs.