



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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Sekoko Mametja Incorporated Attorneys v Fetakgomo Tubatse Local Municipality (Case No. 60/2021) [2022] ZASCA 28 (18 March 2022)

Today the Supreme Court of Appeal (SCA) handed down a judgment upholding, with no costs, an appeal against the Limpopo Division of the High Court, Polokwane (the high court).

The issue before the SCA dealt exclusively with the dismissal of Sekoko Mametja Incorporated Attorneys (Sekoko Attorneys) counter application for payment for the services rendered by it to the Fetakgomo Tubatse Local Municipality (the municipality) prior to the review and cancellation of the tender. The municipality brought a review based on legality in which it sought to review and set aside its own decision to award a tender to Sekoko Attorneys. Sekoko Attorneys opposed the review application and counter applied for payment of the outstanding amount in respect of the invoices already delivered to the municipality covering the period January 2018 to May 2018 for services rendered.

The Municipality's Bid Evaluation Committee and Adjudication Committee awarded the tender to Sekoko Attorneys and four other applicants in which the municipality required the collection of debts owed to it. However, in April 2018, the municipality realised that Sekoko attorneys had submitted a non-responsive bid in contravention of clause 43 of the Municipality's Supply Chain Management Policy. Consequently, on 15 May 2018, the municipality addressed a letter to Sekoko Attorneys and sought to cancel the appointment with immediate effect.

The high court considered whether or not the municipality was entitled to an order in terms of s 172(1)(a) of the Constitution. Having found that the tender award was inconsistent with the Constitution and was therefore unlawful and invalid, the high court dismissed Sekoko Attorneys' counterclaim with costs. It reasoned that even though the municipality failed to dispute the counter application, Sekoko Attorneys 'cannot be allowed to derive a benefit out of an unlawful contract'.

The SCA held that it was incumbent on a court making an order of invalidity under s 172(1)(a) to then invoke the provisions of s 172(1)(b) in considering whether or not to make an order which was just and equitable. Accordingly, this the high court did not do. It clearly could not enforce payment under a void tender, but it could consider whether an amount should be paid on the basis that it was just and equitable for the municipality to do so.

Furthermore, the SCA held that it was common cause that the municipality had 'never complained about the effectiveness of the respondent's services' and it received the full benefit of such services. In addition, the SCA held that Sekoko Attorneys incurred expenses to enable it to render the services to the municipality. Moreover, the SCA held that where no fault lies at the door of Sekoko Attorneys, and

it rendered services which redounded to the benefit of the municipality, an order was granted for payment.

The SCA found that in those circumstances, it was just and equitable to order that the municipality pay to Sekoko Attorneys an amount equivalent to that to which it would have been entitled under the void tender. In the result, the counter application for payment should have been upheld by the high court on this basis.

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