



**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:** 29 April 2022

**Status:** Immediate

***The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal***

*IGS Consulting Engineers & Another v Transnet Soc Limited (Case no 198/20) [2022] ZASCA 63 (29 April 2022)*

---

Today the Supreme Court of Appeal (SCA) varied an order of the Gauteng Division of the High Court, Johannesburg (the high court) in terms of which Turnmill (Pty) Ltd, the second appellant, was ordered to repay to Transnet, the respondent, jointly and severally with IGS Consulting Engineers, the first appellant, profits made from a contract which was declared unlawful and set aside by the high court. The SCA set aside the joint and several liability portion of the high court order, with the effect that IGS and Turnmill would each be liable to pay to Transnet the profits that they each made from the unlawful contract.

Transnet reviewed five of its contracts, awarded to the Turnmill, on the basis of legality as the contracts had been concluded fraudulently and contrary to s 217 of the Constitution. Turnmill was only implicated in respect of the second and the fourth contracts because it had entered into joint venture agreements with IGs in respect of those contracts. The high court granted an order setting aside the five contracts and ordered a disgorgement of the profits by IGS, as well as jointly and severally with Turnmill in respect of the second contract.

On the morning of the appeal IGS withdrew the appeal and tendered Transnet's costs. As a result, the SCA invited the respective counsel to make submissions on whether there was any live issue remaining for determination. While Transnet's counsel stated that there was no need to argue the appeal, counsel for Turnmill argued that a decision on the liability of Turnmill, jointly and severally with IGS, for profits made on the second contract, would not be academic and could have far reaching consequences for Turnmill. In response, counsel for Transnet advised that Transnet was prepared to abandon the joint and several claim in respect of the second contract. As a result, Turnmill's objection to the high court order was no longer a dispute that required determination. Turnmill's lack of involvement in respect of the fourth contract was accepted. There was therefore no live issue for determination except the question of costs.

The SCA held that there were no exceptional circumstances which warranted an argument on costs alone in terms of s 16(2)(a)(ii) of the Superior Courts Act. The SCA ordered the appellants to pay the costs of the appeal including those occasioned by the employment of two counsel. The order of the high court in respect of the disgorgement of profits of the second contract was varied to exclude joint and several liability, taking into account the fact that Turnmill, although not entirely innocent, had not participated in any corrupt or dishonest conduct.

~~~~ends~~~~