



## 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 September 2023

**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***

*Golden Core Trade And Invest (Pty) Ltd v Merafong City Local Municipality and Another* (Case No 338/2022) [2023] ZASCA 126 (29 September 2023)

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This morning, the Supreme Court of Appeal upheld an appeal brought by Golden Core Trade and Invest (Pty) Ltd (formerly AngloGold Shanti Limited) (AngloGold) against the Merafong City Local Municipality (Merafong). The matter has a long history. In 2004, Merafong imposed tariffs upon AngloGold for the supply of water for industrial and domestic use. AngloGold appealed that decision to the Minister of Water Affairs in terms of s 8(9) of the Water Services Act 108 of 1997. The Minister overturned the decision of Merafong to impose the tariffs. Negotiations between Merafong and AngloGold followed, but did not resolve their dispute. Merafong however insisted upon payment of the tariffs. And threatened to constrain water supplies to AngloGold. AngloGold paid under protest.

In 2011, AngloGold brought proceedings to the high court Gauteng to enforce the Minister's decision. Merafong resisted enforcement on the basis of a conditional counter-application that, by way of a reactive challenge, contended that the Minister lacked the power to interfere with Merafong's constitutional competence to impose tariffs for the supply of water. AngloGold prevailed in the high court, and thereafter on appeal to the Supreme Court of Appeal. These courts held that Merafong was required to review the Minister's decision and seek to set it aside. Merafong could not fail to comply with the Minister's decision because it considered it to be void. The matter proceeded to the Constitutional Court. There, the majority sustained this proposition, but held that Merafong was entitled to raise a reactive challenge as a defence to AngloGold's enforcement application. The majority of the Constitutional Court also held that both the review that Merafong might then bring and its reactive challenge would require a determination by the high court as to whether Merafong's delay in bringing these challenges to the validity of the Minister's decision nevertheless permitted the high court to entertain these challenges. The matter was then remitted to the high court (the high court redux).

Merafong then supplemented its papers; it brought its review of the Minister's decision; it sought condonation for its delay. The high court redux decided as follows: Merafong's delay in bringing its review was unreasonable but by reason of its merits that delay should be overlooked and the review entertained. The high court found for Merafong in the review and accordingly dismissed AngloGold's application to enforce the Minister's decision.

On appeal before the Supreme Court of Appeal, this court held that the delay in bringing the review was unreasonable and this delay could not be overlooked. Merafong knew that it was required to bring a review if it wished to contest the Minister's decision. It had failed to do so; it had chosen not to comply

with the Minister's decision, and exact payment of the tariffs, threatening to reduce AngloGold's water supply. That conduct was unconscionable. The merits of the review concerned serious questions but that did not overcome the need for finality.

The Supreme Court of appeal accordingly declined to entertain the review. It found that AngloGold had made out a case for the enforcement of the Minister's decision. It held that for the same reasons that counted against Merafong in respect of the review, Merafong's reactive challenge could not be entertained. The Supreme Court of Appeal found that the decision of the Minister affected tariffs for a limited period of time, dating back to 2005, and that AngloGold was entitled to limited relief in respect of those tariffs. The appeal was upheld, and AngloGold was awarded costs, reflective of the costs incurred in the proceedings before the courts before which this matter had served.

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