



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: 15 December 2025
Status: Immediate

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North West Provincial Department of Agriculture, Conservation, Environmental and Rural Development and Another v Bosigo Investment and Trading CC and Another (228/2024)

[2025] ZASCA 191 (15 December 2025)

Today, the Supreme Court of Appeal (the SCA) handed down judgment against the order by the North West Division of the High Court, Mahikeng (the high court) as follows. It condoned the late filing of the notice of appeal, the record of appeal and the replying affidavit in the reinstatement application, and reinstated the appeal. It upheld the appeal with costs including those of two counsel, and set aside the high court order and replaced it with the following order: ‘The plaintiff’s claim is dismissed with costs including those of two counsel.’ It also dismissed the cross appeal with costs including those of two counsel.

During July 2006, the first appellant, the North West Provincial Department of Agriculture, Conservation, Environmental and Rural Development (the Department) issued an invitation to tender in respect of Bid Number 13 ACE 218/06. The tender was for the construction of large and small stock fencing as and when required, for a period of twenty-four months, commencing 1 November 2006 and terminating on 31 October 2008 (the tender). On 31 July 2006, the first and second respondents, Bosigo Investment and Trading CC (Bosigo) and Keewave Trading 191 CC (Keewave) respectively, submitted bids in respect of the tender. On 31 October 2006, the Department awarded the tender to Bosigo and Keewave, and appointed them as joint service providers for a period of two years.

On their acceptance of the terms of the appointment, a contract came into being between Bosigo, Keewave and the Department (the contract). However, neither Bosigo nor Keewave were given orders for the erection of fencing (orders) in the first year of the contract. In its second year, and after putting immense pressure on the Department, Bosigo was given official written orders for four projects in the Southern region. Subsequent to discovering that the Department had re-advertised the tender without consulting it, Bosigo instituted an action for breach of contract, in the high court, against the Department and the second appellant, the Member of the Executive Council: North West Provincial Department of Agriculture, Conservation, Environmental and Rural Development.

On 14 November 2022, the high court found that the Department had breached the contract which it entered into with Bosigo, by placing orders with various other service providers. It awarded Bosigo damages in the amount of R7 060 907.12. On appeal, The SCA found that the high court was wrong in arriving at this conclusion. The evidence of Mr Bosigo, revealed that of the various tender invitations that the Department had purportedly advertised for the erection of fencing, it actually only awarded one tender for the supply, debushing and construction of fences on construction projects listed on annexure 'A'. This tender – Bid number 13 ACE 36/07 – was awarded to Selehogoa Trading (Selehogoa) in 2008.

The issue before the SCA was whether Bosigo was able to prove, on a balance of probabilities, that the Department had placed orders with Selehogoa for the erection of fencing in the areas listed on annexure 'A' to the letter of appointment, that Bosigo and Keewave were entitled to. Bosigo presented evidence which demonstrated that Selehogoa received an order, from the Department, for the erection of fencing on the Lower Majeakgoro project, which was listed on annexure 'A'. Hence, it contended that the Department was in breach of the tender.

After proper interpretation of the tender, the SCA held that the tender required that an official order first be issued to Bosigo and Keewave before they would be entitled to insist, as of right, to perform the work specified in the order. It found that there was no breach as they had not received an official order in respect of the work on the Lower Majeakgoro project, which Selehogoa had received. The SCA held that even if it might be that Bosigo and Keewave should have been awarded those orders that is, at best, an administrative law issue which was not the relief pursued and would involve considerations other than issues of contract only.

The SCA held further that if it was wrong in concluding that there was no breach, and that Bosigo and Keewave were entitled to have received orders and to do the work on the orders issued to Selehogoa on the Lower Majeakgoro project, any damages Bosigo could have suffered would be restricted to its loss of profit in respect of that specific project only. Its measure of damages would be the difference between the contract price contained in the letter of appointment and the hypothetical expenses it would not have incurred in not having to perform on the specific project. The expenses that it would have saved by not getting that order, would have to be taken into account in calculating the damages as a benefit accruing to Bosigo.

The SCA also held that Bosigo had not presented any evidence of the actual expenses it would have saved by not performing the work on the Lower Majeakgoro project. To establish its loss of profit, Bosigo needed to present evidence, supported by discovered documentation, that detailed each expense item it would have saved by not performing the fencing work on the Lower Majeakgoro project. It was necessary for Bosigo to identify, quantify, and deduct from the agreed price per kilometre all costs that would have been incurred but were not, and thus were saved. Comprehensive disclosure of the company's operational costs, as reflected in its accounting records, as a bare minimum, was required as proof. This was not done. The expenses that Bosigo would have saved were entirely within Mr Bosigo's knowledge. The Department had given Bosigo orders in four projects listed on annexure 'A'. It completed those projects and was paid. This evidence should have been produced to prove its actual damages, but it was not. For all these reasons, the SCA concluded that the high court erred in awarding Bosigo damages arising out of a breach of contract. The appeal was, accordingly, upheld.

With regards to the cross appeal, the SCA held that the high court concluded, correctly, that Bosigo was not entitled to erect fencing across the whole of the North West Province. The cross appeal was, accordingly, dismissed.

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