



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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Aventino Ecotroopers Joint Venture and Others v The MEC for the Department of Roads and Transport, Gauteng Province and Others (1233/2023) [2025] ZASCA 32 (31 March 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment in which it dismissed an appeal with costs, including the costs of two counsel, where so employed.

In May 2021, the first respondent, the Department of Roads and Transport (the Department), published DRT1 9/07/2019 (Tender 19) and RT21/07/2019 (Tender 21) for the management and execution of routine road maintenance on selected provincial roads (the tenders). Aventino submitted bids for the tenders. The Bid Evaluation Committee (BEC) awarded Aventino the highest score in its assessment of the rival bids for the tenders. In August 2022, the Head of the Department disqualified the bids of Aventino. He did so because, at the time of its disqualification, Aventino was to be listed as a restricted supplier and serious allegations of fraud were made against it. Tender 19 was awarded to the third respondent, Lubocon Civils CC (Lubocon) and Tender 21 was awarded to the second respondent, Vea Road Maintenance and Civils (Pty) Ltd (Vea).

In November 2022, Aventino and the partners brought proceedings in the Gauteng Division of the High Court, Pretoria (the high court) to review the award of the tenders, however the application was dismissed with costs. Aventino and the partners sought leave to appeal. This application was refused. But on petition, this Court granted leave to appeal.

Three issues arose for determination in this appeal. First, did the tenders lapse? Second, if they did not, was Aventino unlawfully disqualified from bidding on the tenders? Third, if so, what remedy should issue?

Aventino relied upon two grounds that, it contended, gave rise to the lapsing of the tender. First, if a bidder failed to respond to an invitation to extend the validity period of the tender, the Department could not disqualify that bidder and then proceed to consider the bids of those who agreed to the extension. This was referred to as the disqualification challenge. Second, in order validly to extend the tender validity period, all bidders must be invited to extend the period. This did not occur, and hence the tenders lapsed. This was referred to as the invitation challenge. From its papers, Aventino based its case on the disqualification challenge.

The SCA, per Unterhalter JA, held that Aventino's disqualification challenge cannot prevail because the exclusionary stipulation, which states that bidders may either accept or reject the extended validity period and those who do not wish to extend the validity period would be regarded as non-responsive and would be excluded from further assessment, creates a regime that permitted the Department to exclude bids from further consideration in the event that a bidder either declined to extend its bid or failed to respond to the Department's invitation to extend. This regime was adopted by the Department in terms of a supply chain management policy, adopted in terms of s 38 of the Public Finance Management Act 1 of 1999. Aventino made no challenge to the legality of that regime. Furthermore, the SCA found that the exclusionary provision permits the Department to extend the bid validity period to consider the bids of those who have agreed to extend their bids and may exclude those bids from further consideration where a bidder either declines to extend its bid or fails to respond to the Department's invitation to do so. Therefore, the SCA found that the bid validity period was lawfully extended.

Aventino relied upon a number of cases that, it contended, supported the disqualification challenge. In *Joubert Gulpin Searle Inc and Others v Road Accident Fund and Others*,¹ following *Telkom SA Limited v Merid Trading (Pty) Ltd and Others*,² Plasket J (as he then was), affirmed two propositions. First, once a bid validity period has expired, there is nothing to extend. Second, the constitutional and legislative procurement framework determines the powers of public bodies to procure goods and services. The power to extend a bid, within the bid validity period, is disciplined by this framework. The decision of this Court in *City of Ekurhuleni Metropolitan Municipality v Takubiza*³ is to like effect. The SCA found that these authorities do not support the disqualification challenge.

The Department's Bid Adjudication Committee (BAC) recognised that the BEC had ranked Aventino in first position. However, the BEC flagged for the consideration of the BAC that Aventino Group CC (Aventino CC) was investigated by the Special Investigating Unit in respect of a project in Limpopo. Ultimately, the BAC decided that it should not recommend Aventino. The Department followed this recommendation, and did not award the tenders to Aventino. It did so, not on the merits of Aventino's bids, but because it was implicated in wrongdoing in the Limpopo housing tender. When considering whether Aventino was unlawfully disqualified from bidding on the tenders the SCA found that the evidence against Aventino of misrepresentations to secure a tender is serious and troubling. The terms of the

¹ [2014] ZAECPHC 19; [2014] 2 All SA 604 (ECP); 2014 (4) SA 148 (ECP) paras 73 and 74.

² [2011] ZAGPPHC 1; [2011] JOL 26617 (GNP).

³ [2022] ZASCA 82; 2023 (1) SA 44 (SCA) para 13.

order made by the Tribunal reflect that Aventino made misrepresentations that rendered the contract unlawful. The SCA further held that the BAC was entitled to give consideration to evidence placed before the BAC that make plain Aventino's unlawful actions to secure a tender and conclude from it that Aventino's past conduct rendered it ineligible to bid for the tenders. Once the evidence implicated Aventino in making material misrepresentations to secure a tender, absent clear exculpatory evidence to the contrary, or vindication by way of an authoritative court decision, the BAC's recommendation was entirely reasonable. For those reasons, the SCA found that Aventino's bids were lawfully excluded from consideration by the Department.

Ultimately the SCA held that since the disqualification challenge failed and there is no basis to review the decision of the Department to exclude Aventino's bids from consideration, the appeal must fail. Consequently, the appeal was dismissed with costs, including the costs of two counsel, where so employed.

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