



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: 01 April 2025

Status: Immediate

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Western Cape Provincial Government and Others v D C Security (Pty) Ltd t/a D C Security and Others
(971/2023) [2025] ZASCA 35 (01 April 2025)

Today the Supreme Court of Appeal (SCA) dismissed an appeal with costs, including costs of two counsel where applicable. The appeal emanated from the Western Cape Division of the High Court (the high court).

In November 2017, the Western Cape Provincial Government (the provincial government) issued a call for bids for the framework agreement for transversal provision of security services for the 13 departments of the Western Cape (the tender). The process comprised of two main stages. First, the establishment of a panel of services providers who meet the qualification criteria set in the bid document. Second, the conclusion of various transversal agreements between the departments and the services providers on the panel. It was a material term of the bid that the contracts would come into existence as and when the services of the service provider would be required. This was initiated through a procedure referred to as the 'call-off' system.

The provincial government adopted the direct selection process in implementing the call-off system. The process involved the selection of a service provider from the list of shortlisted service providers based on their ranking. The first available contract was assigned to the highest ranked and eligible provider. Once the initial allocation had been exhausted, it was envisaged that the ranking will align with the contract value of the work completed in the initial round of the call-offs. Consequently, the service provider ranked lowest in contract value would be awarded the highest contract value. This procedure initiated the establishment of a security contract with the various provincial departments.

Dissatisfied with the outcome of the process and the allocations in terms of the call-off process, three service providers brought the application for review before the high court. The review applications were brought by Distinctive Choice Security (Pty) Ltd t/a DC Security, Sechaba Protection Services Western Cape (Pty) Ltd t/a Sechaba Protection Services and Delta Corporate Security Services (Pty) Ltd (Delta). The applications were consolidated and heard together. The high court granted orders essentially against the provincial government and in favour of the respondents. Dissatisfied with the outcome of the review application, the appellants sought leave to appeal the judgment and orders of the high court.

The SCA's first point of enquiry was determining whether the appeal was moot. On this point, the SCA pointed out that it was common cause that, by the time the provincial government's application for leave to appeal was lodged with the high court, the Department of Health (DOH) had already exited the

framework agreement. By then, the DOH, a major contractor for security services within the province, had issued a new bid for security services and this occurred five months after the delivery of the high court judgment. By the time the application for leave to appeal was heard by the high court, it had already cancelled the previously advertised bid and re-advertised a new one, calling for bids by 9 June 2023. On this point, the SCA held that that the order of the high court, which was the subject of the appeal, on its own rendered the appeal moot. The effect of the order was that the contracts remained extant until their termination dates, irrespective of the finding of invalidity.

The SCA further stated that the contractual period to Delta ended on 30 June 2023 and this was the case with other contractors. The SCA stated then concluded that no further purpose was served by the filing of the appeal which made the appeal academic. On the first point of enquiry, the SCA conclusively found that there was no live issue for the determination of appeal.

The next stage of the enquiry related to whether the Court should, in the interest of justice, exercise its discretion to decide the matter regardless of it being moot. Therefore, the question that remained to be considered, was whether the said issues raised discrete legal issues of importance that warranted the Court's adjudication for the benefit of future matters. On this point, the SCA was not persuaded that the issues raised discrete legal issues, holding that, logically, none of the purported legal issues would affect the provincial government in the future and that the said issues were fact-based and determinable through the trite principles of law. Consequently, there were no factors that were relevant to the exercise of its discretion. Pointing out that the appeal was purely brought for advice and clarification of the erstwhile framework transversal agreement, the SCA dismissed the appeal with costs, including costs of two counsel where applicable.

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