



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 July 2025

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

The MEC for Health: Gauteng Province and Others v Buhle Waste (Pty) Ltd (338/2024 & 384/2024) [2025] ZASCA 102 (15 July 2025)

Today the Supreme Court of Appeal (SCA) set aside the 30 November 2023 order of the Gauteng High court in which the latter declared that tender number GT/GDH/060/2022 had lapsed on 17 November 2022. In issue was whether the high court impermissibly set aside administrative action in an application for a declarator and gave equitable relief not applied for.

The SCA found that the high court in the exercise of its discretion failed to consider the importance of the Rule 53 record and failed to consider that the fifth respondent was given the assurance that it would be afforded an opportunity to respond to Part B once the Rule 53 record became available. The matter was disposed of before that eventuality.

This was impermissible for three reasons: First, the respondent did not allege that the tender had expired on 17 November 2022; instead, its pleaded case was that it had timeously extended its tender 'as required' but was unaware whether 'each tender extension was done lawfully and/or competently'. It therefore, reserved its right to challenge any extension 'where the Rule 53 record demonstrates' that an extension was not validly done. Second, this was not the case the appellants were called upon to meet in terms of Part A of the relief sought. The respondents had also pointed out that if the high court proceeded with the declaratory relief they would suffer prejudice. Third, the letter from the Department calling for bidders to grant the extension cautioned as follows: 'Should you not be willing to hold your tender valid for the further period, it will of course lapse on expiry of the current validity period and will therefore be ignored if the tender is not adjudicated within the period....'

The issue raised in the letter was dealt with by the SCA in *Aventino Ecotroopers Joint Venture and Others v The MEC for the Department of Roads and Transport, Gauteng Province and Others* and there it held that 'the exclusionary stipulation' permitted the relevant Department to exclude bids of bidders who either fail to respond or refuse to hold their bids valid for the requested extended period. And that whoever was unhappy with that condition, could have taken the department on review. The issue of the validity of the extensions arose only in Part B of the application and not in the interdictory relief. It is common cause, that the record was unavailable at the time of the hearing, therefore Part B of the application was not ripe for the hearing.

The SCA further held that a court is limited to the case it is called upon to determine. It was impermissible for the high court to raise the 17 November 2022 extension and to pronounce

it in circumstances where the issue had not been fully canvassed. In setting aside the award of the tender, the high court went beyond the requirements for a declaratory order. This was another misdirection.

In the circumstances of this matter, the high court erred in setting aside administrative action through a declarator. It was the wrong procedure. That is dispositive of this matter.

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