



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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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

*Makasela Consulting and Projects (Pty) Ltd v Mopani District Municipality (773/2024) [2026]
ZASCA 131 (30 September 2026)*

Today, the Supreme Court of Appeal (SCA) granted an application for reconsideration, set aside this Court's order refusing special leave to appeal, and granted special leave with costs. The reconsideration application arises from an action in the Limpopo Division of the High Court, Polokwane (high court).

The matter arises from a controversy concerning whether the appointment of the applicant, Makasela Consulting and Projects Pty Ltd (Makasela) to a risk-based feasibility study (the risk-based appointment) entitled it to remuneration calculated at 17.5% of construction costs or whether an earlier appointment of Makasela to a pool of approved suppliers subject to the Guideline for Services and Processes for Estimating Fees for Persons registered in terms of the Engineering Profession Act 46 of 2000 of the Engineering Council of South Africa (the Guidelines) and a later municipal instruction, following the risk-based appointment reduced the contractual basis for remuneration to an 8% limit.

The Mopani District Municipality (the Municipality) initially appointed Makasela to a pool of approved contractors who would qualify to render professional engineering services to it for the period 2017/18 to 2019/20. The pool appointment established a general framework under which, inter alia, professional fees for such services, if and when engineers are appointed, would not exceed rates approved and determined by the Municipality with reference to the Guidelines. The Municipality contends that the Guidelines impose a cap of 8% on fees. On 28 May 2018, the Municipality appointed Makasela in terms of a risk-based appointment to perform a feasibility study in respect of the Lulekani Water Scheme.

The letter stipulated that Makasela was to develop a technical report and seek the necessary approval to guide the implementation of the proposed project. Payment would follow approval of the technical report and project business plan based on the applications made to the funder. The inclusive fee offered by the Municipality would be 17.5% of the construction costs. If the feasibility study was not approved, Makasela would not be entitled to claim payment of any fee.

Makasela duly performed the work required by the risk-based appointment and obtained approval of the technical report on 13 May 2019, which resulted in it being entitled to payment of the sum of R9 615 174.14. The Municipality indicated that it was entitled to limit and calculate Makasela's fee to 8% of the total contract price and requested an invoice reflecting same. Makasela submitted an invoice dated 12 July 2019, reflecting R4 395 508.59, and the Municipality paid that amount on 28 August 2019. Makasela stated that it did so to facilitate payment to it. In the action instituted by Makasela for the balance of its remuneration calculated as R5 219 665.55, the high court found that the parties were bound by the limit of 8% in the Guidelines and that Makasela was not entitled to the balance to make up the fee of 17.5%. An appeal to the full court of the high court (full court) was dismissed, with the full court finding that Makasela had acquiesced to the fee of 8%.

On appeal before this Court, the SCA found that where a general framework, such as the pool appointment, is followed by a specific risk-based appointment that expressly regulates the subject in dispute, the specific terms of the latter cannot be deprived of their content by seeking to revert to the general framework for work on projects that are to be implemented. This Court held that any Guidelines provision remained relevant context, but could not detract from the fee expressly agreed by the parties in the risk-based appointment. This Court found that the appointment of Makasela was on risk and therefore Makasela had to be remunerated in accordance with the terms of that appointment, namely the fee fixed at 17.5%

This Court further held that the fact that Makasela accepted the Municipality's instruction and thereafter invoiced the Municipality for the amount the Municipality was prepared to process does not by itself establish that the parties intended to cancel, novate, or compromise the remuneration formula already contained in the risk-based appointment. It was held that the invoice and receipt of payment of R4 395 508.59 did not establish that Makasela abandoned the right to the balance of its agreed remuneration arising from the fee formulation in the risk-based appointment. Therefore, this Court found that because the fee agreed was 17.5%, Makasela was entitled to the amount of R5 219 665.55, which was the balance produced by the contractual fee formula after deducting the payment received.

On the reconsideration application, this Court held that it is trite that the requirements warranting the reconsideration of a refusal of leave to appeal are the existence of a likelihood of a grave failure of justice or of bringing the administration of justice into disrepute if no reconsideration occurs. This Court found that those requirements are met as the matter raises a material question concerning the interaction between a general municipal professional-services framework, a later risk-based appointment, and subsequent instruction; therefore, the interests of justice favoured reconsideration and the grant of special leave to appeal.

The SCA thus granted the application for reconsideration, set aside this Court's order refusing special leave to appeal, and granted special leave with costs. The SCA set aside the order of the full court and replaced it with an order upholding the appeal.

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