THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Roads Agency Limpopo SOC Ltd v Matla Consultants CC and Another (960/2024); *Axton Matrix Construction CC v Roads Agency Limpopo SOC Ltd and Another* (970/2024) [2026] ZASCA 152 (13 November 2026)

Today, the Supreme Court of Appeal (SCA) granted special leave to appeal to Roads Agency Limpopo SOC Limited (RAL) and upheld its appeal with costs. The SCA refused special leave to appeal to Axton Matrix Construction CC (Axton) and dismissed its appeal with costs.

The principal issue before the SCA was whether RAL had established good cause under s 3(2) of the Arbitration Act 42 of 1965 to be released from an arbitration agreement contained in a commercial construction contract concluded with Axton.

The dispute arose from a project to upgrade Road D3537 in the Waterberg District of Limpopo Province from gravel to tar. RAL appointed Matla Consultants CC (Matla) as the professional consulting engineer responsible for designing and supervising the works. Under a separate construction contract, valued at approximately R108.5 million, RAL appointed Axton to undertake the construction works. The construction contract incorporated the General Conditions of Contract for Construction Works (2010), which provided for the resolution of disputes through adjudication and arbitration.

Disputes arose concerning the completion of the works and defects in the road. Although a certificate of practical completion was issued in November 2016, it was subject to Axton remedying identified defects. Following heavy rains in December 2016, further substantial defects were discovered, including the incorrect vertical alignment of sections of the road, which allegedly caused portions of the road to act as channels rather than elevated roadways. An independent investigation subsequently concluded that the road was materially defective and estimated the cost of remedial work at approximately R64.9 million.

Responsibility for the defects was disputed. Axton maintained that it had constructed the road in accordance with Matla's designs and instructions and attributed the defects to deficiencies in those designs. Matla, in turn, attributed the defects to Axton's workmanship and failure to comply with its designs and instructions.

In August 2018, RAL instituted an action in the high court against Matla and Axton for damages of approximately R64.9 million. Its principal claim was against Matla for breach of its engineering services agreement. RAL also advanced a conditional contractual claim and an alternative delictual claim against Axton. Determining these claims would require an examination of Matla's and Axton's respective responsibilities for the alleged defects.

Axton, however, maintained that it was entitled to payment of retention monies following the expiry of the defects-liability period. Rather than pursuing this claim by way of a counterclaim in the pending high court action, Axton invoked the adjudication procedure under the construction contract. The adjudicator rejected RAL's contractual time-bar defence but found that Axton had failed to remedy the 17 defects recorded in the snag list. After deducting the estimated cost of remedial work, the adjudicator determined that approximately R2.56 million was payable to Axton.

RAL refused to make payment. Axton subsequently referred the dispute to arbitration. RAL then approached the high court under s 3(2) of the Arbitration Act, seeking an order that the arbitration agreement cease to have effect in relation to the disputes between it and Axton. RAL contended that the disputes concerning the defects, the retention monies and the respective responsibilities of Matla and Axton were substantially interconnected and ought to be determined in a single forum.

The high court dismissed RAL's application, finding that it had failed to establish good cause to be released from the arbitration agreement. It also dismissed Axton's counter-application for payment of the retention monies and related declaratory relief because of material disputes of fact. The full court dismissed both parties' appeals.

The SCA emphasised that arbitration agreements concluded between commercial parties form part of their contractual bargain. By agreeing to arbitration, the parties deliberately choose the forum in which disputes arising from their contractual relationship are to be resolved. That choice must be accorded considerable weight. A party seeking to avoid arbitration under s 3(2) bears a stringent onus and must establish compelling reasons for being released from its contractual undertaking. The mere fact that litigation may subsequently appear more convenient or economical does not constitute good cause.

Referring to *Universiteit van Stellenbosch v JA Louw (Edms) Bpk* and *De Lange v Presiding Bishop of the Methodist Church of Southern Africa*, the SCA reaffirmed that the discretion under s 3(2) must be exercised judicially and that the onus of establishing good cause is not easily discharged. The enquiry is fact-specific and requires the relevant circumstances to be considered cumulatively.

The SCA also considered the principles governing the interpretation of commercial arbitration agreements, including those discussed in *North East Finance (Pty) Ltd v Standard Bank of South Africa Ltd*, *Fiona Trust & Holding Corporation v Privalov* and *Zhongji Development Construction Engineering Co Ltd v Kamoto Copper Co SARL*. These authorities underscore the importance of giving effect to the parties' contractual choice of arbitration and the commercial purpose underlying that choice.

Applying these principles, the SCA held that the circumstances extended beyond mere inconvenience, expense or delay. The arbitration and the pending high court action involved substantial overlapping factual and legal issues concerning responsibility for the alleged defects

in the road. Matla, whose design and supervision of the works were central to the dispute, was a party to the high court action but was not bound by the arbitration agreement and could not be compelled to participate in the arbitration.

The SCA found that allowing the proceedings to continue separately would result in duplication of evidence and costs and create a real risk of inconsistent findings. Both forums could also be required to interpret and apply the same contractual time-bar provisions. Importantly, releasing RAL from the arbitration agreement would not deprive Axton of its substantive claim for the retention monies, which could instead be determined in the high court together with the related claims involving all three parties.

The SCA concluded that, although the existence of parallel proceedings does not, without more, constitute good cause, the cumulative effect of these considerations established compelling reasons for departing from the agreed arbitration procedure. RAL had accordingly discharged its onus under s 3(2) of the Arbitration Act.

Axton's application for special leave to appeal concerned the dismissal of its counter-application for payment of the retention monies and related declaratory relief. The SCA held that material disputes of fact concerning liability, the alleged admissions, responsibility for the defects and the amounts payable could not properly be resolved on affidavit. Axton had therefore failed to establish reasonable prospects of success or the special circumstances required for special leave to appeal.

The SCA accordingly ordered that the arbitration agreement contained in clause 10.7 of the construction contract cease to have effect in relation to the disputes between RAL and Axton concerning the construction of Road D3537. Axton's counter-application remained dismissed, with costs.

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