



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: 16 January 2026

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

Caledon River Properties (Pty) Ltd t/a Magwa Construction and Another v Special Investigating Unit and Another (375 & 419/2024) [2026] ZASCA 05 (16 January 2026)

Today, the Supreme Court of Appeal (SCA) dismissed an application for reconsideration of a decision refusing special leave to appeal against a judgment of the Gauteng Division of the High Court, Pretoria (the full court). The matter concerns the "just and equitable" remedial consequences following the declaration of invalidity of contracts for the construction of a border fence at the Beitbridge Border Post during the COVID-19 national state of disaster.

In March 2020, following the declaration of a national state of disaster, the Department of Public Works and Infrastructure (the Department) appointed Magwa Construction and Profteam CC to construct and oversee a 40 km border fence. The project was treated as a variation of an existing contract rather than a new procurement process, bypassing competitive bidding. Within days of appointment, and before substantial work commenced, the applicants received advance payments totaling approximately 60% of the contract value (over R21 million and R1.8 million respectively).

The Special Investigating Unit (SIU) challenged these appointments in the Special Tribunal. The applicants conceded that the contracts were invalid for non-compliance with the Constitution and Treasury Regulations. The Tribunal ordered that the applicants be divested of all profits, limiting their recovery to actual, proven expenses through a debatement of accounts. This order was upheld by the full court on appeal.

The applicants then applied to the SCA for special leave to appeal, which was initially refused by two judges. They subsequently applied for reconsideration of that refusal in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013.

The central issue before the SCA was whether the full court properly exercised its discretion under s 172(1)(b) of the Constitution in determining a just and equitable remedy. The applicants argued that since the fence was completed according to specifications and no financial loss to the State was proven, they should be entitled to the full contract price, including profit.

The SCA held that in reconsideration proceedings, it must determine whether the statutory threshold for special leave to appeal has been met. The Court found that the full court had exercised its discretion judicially. It emphasized the "no profit from unlawful conduct" principle, noting that while innocent tenderers might sometimes retain benefits, the applicants in this case were not "innocent" in the legal sense. They were experienced contractors who accepted massive advance payments in violation of the Public Finance Management Act (PFMA) and Treasury Regulations.

The Court concluded that the "no loss, no gain" approach—ensuring the contractors are reimbursed for costs but denied profit from an unconstitutional process—struck a proper balance between the rule of law and the avoidance of unjust enrichment. Finding no special circumstances or reasonable prospects of success that would justify interference, the SCA dismissed the application for reconsideration with costs.

ENDS