



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED**

MUNICIPALITY OF MHLONTLO v TDH TSOLO JUNCTION (PTY) LTD

(Case no 1086/2019) [2021] ZASCA 3 (7 January 2021)

From: The Registrar, Supreme Court of Appeal

Date: 07 January 2021

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

Today the Supreme Court of Appeal (SCA) handed down judgment in an appeal against an order of the Eastern Cape Division of the High Court, Mthatha (Nhlangulela DJP), which turned mainly on the enforceability of a contract prior to, or without, the fulfilment of a suspensive condition in the letter of appointment (the letter). The appeal was dismissed with costs.

The respondent received the letter signed by the municipal manager which noted inter alia that the respondent's appointment would be effective if the respondent satisfied the requirements in it. The parties signed a Supply and Development Agreement (the agreement) after they held negotiations as required by the letter. The agreement did not incorporate the suspensive conditions in the letter.

On 25 February 2011, the respondent issued summons against the appellant for breach of the agreement and claimed damages in the amount of R48 340 059.00. The appellant filed numerous special pleas, all of which were dismissed, including one based on the failure to

submit documents as required in the letter. This special plea was based on the appellant's contention that the agreement was subject to a suspensive condition – that the respondent had to submit to it the documents listed in the letter of appointment – and that, as a result of it not doing so, the agreement had not come into existence. For this reason, so the argument went, the claim for damages was not sustainable.

The SCA rejected the appellant's argument. It held that the letter was a preliminary document, which explicitly stated that the development of the property would be governed by a written contract that would 'outline the conditions of contract'. The undisputed evidence was that, during the negotiations between the parties that preceded the conclusion of the agreement, the representatives of the respondent had explained why the documents in question were not applicable to the project and that this was accepted by the appellant's representatives. In any event, the agreement contained a non-variation clause and was thus clearly not subject to the alleged suspensive condition in the letter, as submitted by the appellant.

In the result, the appeal was dismissed with costs, including the costs of two counsel.
