



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

Auditor-General of SA v MEC for Economic Opportunities, Western Cape and Another (Case no 671/2020) [2021] ZASCA 133

Today the Supreme Court of Appeal (SCA) dismissed the appeal by the appellant with costs including the costs of two counsel.

The appellant was the Auditor-General of South Africa. The first respondent was the Member of the Executive Council (the MEC) responsible for the Western Cape Provincial Department of Agriculture (the Department). The appeal was about the audits by the Auditor-General of the financial statements of the Department. The Auditor-General determined that the payments that the Department had made to Casidra and Hortgro were wrongly classified as transfers. With reliance on the Modified Cash Standard, issued by the Accountant General in the National Treasury on 1 April 2013 (the Standard), the Auditor-General concluded that the Department's financial statements should have reflected the amounts as payments for goods and services.

The MEC approached the Western Cape Division of the High Court for the review and setting aside of the relevant findings in the audit reports (the findings). The National Treasury did not oppose the application. In addition to the Auditor-General, he cited the National Treasury as a respondent in the application. The High Court found for the MEC and granted the relief sought. The National Treasury nevertheless applied for leave to appeal, as did the Auditor-General. The court a quo refused the application of the National Treasury but granted leave to the Auditor-General to appeal to this Court.

The issue in the SCA was whether the Department had properly categorised the payments to Casidra and Hortgro. On the facts of this case, the contention of the Auditor-General was wholly dependent on the existence of principal-agent relationships between the Department and Casidra and Hortgro respectively, within the meaning of the Standard. The SCA found that the findings were based on a material error of law. Therefore, the findings fell to be reviewed and set aside on the basis that they had been founded on a material error of law. On this basis, the SCA found that the order of the court a quo was correct and the appeal must fail. The SCA also held that the

Promotion of Administrative Justice Act 3 of 2000 is not applicable to the exercise of the constitutional and statutory functions of the Auditor-General. In the result, the appeal was dismissed with costs, including the costs of two counsel.

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