



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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Sasol South Africa (Pty) Ltd v Murray & Roberts Limited (Case no 425/2020) [2021] ZASCA 94 (28 June 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing an appeal from the Gauteng Division of the High Court, Johannesburg (high court). Subject to minor variation of the amounts still to be paid by the appellant the SCA confirmed the high court order.

On 15 March 2015 the appellant, Sasol South Africa (Pty) Ltd (Sasol) as an employer and the respondent, Murray & Roberts Limited (Murray & Roberts) as a contractor, concluded a construction contract in terms of which Murray & Roberts would render certain engineering and construction services to Sasol at its Secunda plant. The contract provided for the appointment of a project manager to perform certain functions under the contract and the mechanism to resolve the disputes that might arise between the parties. During the execution of the contract various disputes arose between the parties which mainly related to the correctness of the assessments made by the project manager in respect of payments claimed by Murray & Roberts.

When the project manager applying what was termed PMC200 disallowed some of the payment applications submitted by Murray & Roberts, the latter notified a dispute and referred it to the adjudicator appointed in terms of the adjudicator's contract. The adjudicator rejected Murray & Roberts' claims and confirmed the project manager's assessments. Dissatisfied with the outcome, Murray & Roberts referred the disputed payments on Disputes 1 and 2 to the arbitrator who found in favour of Murray & Roberts, holding that the timesheets were contractually binding and that the project manager's instruction (PMC200), pursuant to which the payments were disallowed, was not valid. Murray & Roberts requested the project manager to implement the terms of the award by adjusting payments in relation to all 10 disputes. The project manager implemented the terms of the award for some of the disputes and refused to implement for the rest. Murray & Roberts took the project manager's refusal to the adjudicator. The adjudicator reviewed the project manager's refusal to pay and ordered Sasol to pay the disallowed payments. Murray & Roberts demanded Sasol to comply with the adjudicator's award but Sasol refused.

Murray & Roberts approached the high court to enforce the adjudicator's decision. Sasol opposed the application. It contended that it was justified to ignore the adjudicator's decision on the ground that it

was invalid. It in turn launched a counter-application in which it sought an order declaring that the decisions previously made by the adjudicator were enforceable as contractual obligations. The high court upheld Murray & Roberts' claims and dismissed Sasol's counter-application. It granted Sasol leave to appeal to this Court.

The issue before the SCA was whether the adjudicator's decision was invalid as contended by Sasol. Sasol had contended that the adjudicator's decision was invalid on the grounds that: (a) the adjudicator decided a dispute which was the same or substantially the same as the ones that he had previously decided which is something that he was not entitled to do under the adjudicator's contract; (b) he had no authority to receive information after the time allowed for him to do so had expired; and (c) he had no jurisdiction to issue a decision after the time allowed for him to do so had expired.

The SCA dismissed Sasol's contentions. It held that in terms of clause W1.3(5) read with clause 50.5 and 51.3 of the contract, the adjudicator was entitled to review and revise any action or inaction of the project manager and when acting under these clauses the adjudicator was not reconsidering his prior decisions, but was simply doing what the project manager was supposed to have done in terms of the contract in accordance with the principles established in the arbitration award. Furthermore, the Court held that the adjudicator had complied with the time periods stipulated in the contract and the adjudicator's contract and that the notices of dissatisfaction purportedly issued by Sasol were premature. The appeal was dismissed.

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