



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 31 March 2010

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

GROENEWALD NO & OTHERS

versus

M5 DEVELOPMENTS (CAPE) (PTY) LTD

The Supreme Court of Appeal today dismissed an appeal against an order of the Western Cape High Court reviewing and setting aside the award municipal of a contract by the Overstrand Municipality to Asla Devco (Pty) Ltd 'Asla'.

The municipality had invited tenders for a municipal contract. Five acceptable tenders were received, including those from M5 Developments, Asla and a close corporation, Blue Whale CC. Both an independent evaluator and the municipality's tender evaluation committee had considered the tenders and recommended that the contract be awarded to M5. The municipality's tender adjudication committee did so.

Blue Whale, acting under s 62 of the Local Government Municipal Systems Act 32 of 2000, appealed against the award of the contract to M5. Asla also sought to lodge an appeal, but did so out of time.

The appeal under s 62 was heard by the acting municipal manager of the municipality who decided that Asla's appeal could not be considered as it had been lodged out of time. However, although he also decided that Blue Whale could not be awarded the contract and that its appeal should be dismissed, he awarded the contract to Asla as he was of the view that the tenders had been incorrectly scored and that Asla ought to have been awarded the contract.

M5 brought review proceedings in the Western Cape High Court, contending that the municipal manager was not entitled to award the contract to Asla. Its review was upheld and the award of the contract to Asla was set aside.

The municipal manager, the municipality and Asla appealed to the Supreme Court of Appeal which found that the high court had correctly set aside the award to Asla. It held that the municipal manager, as appeal authority, had the power only to consider Blue Whale's appeal and, once it had decided that the contract could not be awarded to Blue Whale, it could not award the contract to Asla. The appeal to the Supreme Court of Appeal was therefore dismissed with costs of two counsel.