



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: 1 December 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

On 1 December 2010 the Supreme Court of Appeal dismissed an appeal by Manong & Associates (Pty) Ltd, a company specialising in civil, structural and development engineering, against a decision of the Western Cape Equality Court in terms of which it was held that the City Council of Cape Town (the CCT) and Futuregrowth Property Development Company (Pty) Ltd (FG) had not discriminated against it on the basis of race by excluding it from the development of a central business district in Khayelitsha. Furthermore, it dismissed the company's appeal against a decision of the Equality Court upholding FG's plea of misjoinder in respect of a complaint concerning the Setsing project in the Free State.

The SCA also upheld a cross-appeal by the CCT against a decision of the Equality Court in terms of which it held that the CCT had discriminated against the company on the basis of race by excluding it

from municipal contract opportunities in Khayelitsha. The Equality Court held that the CCT had employed measures, which although they appeared legitimate, were aimed at maintaining exclusive control by white professional firms.

In respect of municipal opportunities in Khayelitsha allegedly being denied to the company on the basis of racial discrimination, the SCA held that the Equality Court had not conducted a proper factual analysis of the evidence and had adopted the wrong approach concerning the onus of proof. The SCA found that the allegations of race discrimination were wholly unfounded and that the individuals complained of had in fact provided the company with opportunities. This court held that the CCT was justified in its view that the allocation of work in Khayelitsha should not be viewed in isolation but should be considered across the metropole. In nine years the CCT had awarded 27 municipal projects to the company with a total value of more than R140 m.

The SCA expressed concern about the manner in which the company had conducted the litigation in the Equality Court. Its complaint spanned almost 100 pages. The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 envisaged that complaints should be succinctly stated. This would focus the minds of the parties and the court and would contribute to expedition. The litigation in the Equality Court extended beyond three years and was the antithesis of what was intended.

This court was dismayed at some of the comments made by the company's managing director during the course of the enquiry in the

Equality Court. A number of outrageous statements were made deserving of censure.

The SCA considered the submission on behalf of the CCT and FG that the Equality Court should, instead of making no order as to costs, have ordered the company to pay their costs, including the costs of two counsel. It took into account that in general, parties genuinely asserting their constitutional rights should not have to pay the State's costs even where they lost the case. Having regard to the manner in which the litigation was conducted by the company and the wholly unfounded charges of racism, the SCA reversed the order of the Equality Court and ordered the company to pay the respondents' costs, including the costs of two counsel. The SCA ordered the company to pay the CCT and FG's costs of appeal, including the costs of two counsel, and the costs of a postponement of the appeal occasioned by the sudden illness of the company's senior counsel.