



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: 18 March 2011
Status: Immediate

**THE PREMIER OF THE WESTERN CAPE & OTHERS v OVERBERG DISTRICT
MUNICIPALITY & OTHERS**

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 18 March 2011 the SCA dismissed the appeal by the Premier and the Cabinet of the Western Cape against a judgment of the High Court, Cape Town in favour of the Overberg District Municipality and 11 individual members of the council of that municipality (the council).

The case arose from a decision by the Western Cape cabinet on 14 July 2010 to dissolve the council in the light of its failure to approve an annual budget for the 2010/2011 financial year of the municipality, before 1 July 2011, as it was obliged to do in terms of the Municipal Finance Management Act 56 of 2003. The cabinet further decided to approve a temporary budget and to appoint an administrator for the municipality until the election of a new council. This gave rise to an application by the respondents in the Cape High Court for an order setting these decisions of the cabinet aside. The application was granted by the High Court and it is that judgment which gave rise to the unsuccessful appeal to the SCA.

The decisions were taken by the cabinet in terms of s 139(4) of the Constitution of South Africa, 1996. Section 139 permits and requires a provincial government to supervise the affairs of local governments and to intervene when things go awry. More particularly s139(4) deals with the situation where a local government fails to approve an annual budget before the start of the financial year on 1 July. In that event, so the subsection provides, the provincial cabinet must intervene by taking appropriate steps, including dissolving the municipal council, to ensure that the budget is approved.

At its meeting of 14 July 2010 the cabinet was presented with legal advice that on a proper interpretation of s 139(4), it had no alternative, in the circumstances contemplated, other than to dissolve the council. The impugned decisions were taken on the basis of that advice.

Both the High Court and the SCA decided, however, that the advice received by the cabinet was wrong. What s 139(4) means, so both courts held, is that the cabinet has a wide discretion to take any appropriate steps to ensure approval of the budget, including dissolving the council. In this case the evidence showed that the council was willing and able to approve its annual budget but was prevented from doing so before 1 July 2010 by factors beyond its control. In the circumstances, so both courts held, dissolution of the council was not the appropriate step.