

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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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.

**Mogale City Municipality v Fidelity Security Services (Pty) Ltd**

The SCA today dismissed an appeal by the Mogale City Municipality against an order of the South Gauteng High Court setting aside the award of a tender for the provision of security services to the municipality for a period from 2011 to 2014. The court ordered that the municipality re-evaluate the original tenders within a period of two weeks from the date of its order and reach a fresh decision on the award of the tender. It provided a further week to enable an orderly hand-over of services from the existing contractor to the tenderer to whom the balance of the contract was awarded.

The tender was set aside because the tender by Fidelity Security Services, which was at the time the existing provider of security services to the municipality, was wrongly disqualified by the Bid Evaluation Committee and the Bid Adjudication Committee. In addition the court highlighted a number of other irregularities in the tender adjudication process. These included an unexplained rescoring for functionality of the bid of the ultimately successful tenderer, whose tender should have been excluded from consideration on these grounds; a decision to recommend that two separate contracts be awarded to different tenderers and the

continued consideration of one tender when the bidder was sponsoring a function for the municipality that involved the giving of gifts to municipal officials. The court also expressed disquiet over the fact that the initial review proceedings were withdrawn after the successful tenderer and the unsuccessful tenderer that instituted the proceedings agreed to share the contract, with the apparent approval of the municipality.

The Court sounded a warning that in cases such as these it might in future hold that the decision to award a tender be taken out of the hands of the municipality and taken by the court. It also warned that in future errant officials might be held personally liable for the costs of similar proceedings.