



**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: 26 July 2016  
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.*

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**THE CITY OF CAPE TOWN V KHAYA PROJECTS (PTY) LTD & 5 OTHERS**

The Supreme Court of Appeal today handed down a judgment dismissing a constitutional declarator sought by the City of Cape Town that a private construction company is an organ of state and incurs constitutional obligations independent of any statutory or contractual obligations when it contracts to build low cost housing funded by the State. The court held that the principle of constitutional subsidiarity applies and that the provisions of existing statutes or contracts must be exhausted or challenged as unreasonable.

The City of Cape Town sought to hold a private construction company liable for houses allegedly defectively built on the basis that a construction company building lower socio-economic housing funded by the State attracts a constitutional obligation not to build defective houses.

The City of Cape Town also appealed an order where it sought to have arbitration proceedings declared lapsed where it was not a party to the arbitration. This issue was dismissed.

The City of Cape Town also appealed an order of the High Court which granted the costs of an amicus curiae in the proceedings. The appeal on this issue was upheld.

Accordingly, the appeal was dismissed with costs including the costs of two counsel. The order of the court a quo that the appellant was to pay the costs of the amicus curiae was set aside.