



THE SUPREME COURT OF APPEAL
REPUBLIC 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.

STATE INFORMATION TECHNOLOGY AGENCY SOC LTD

v

GIJIMA HOLDINGS (PTY) LTD

The Supreme Court of Appeal (SCA) today dismissed an appeal by the State Information Technology Agency (SITA) to declare unlawful a contract it concluded with Gijima (an information technology company) in July 2012.

Gijima had delivered services to the Department of Defence until a payment dispute arose. Gijima referred the dispute, in which it was claiming R9.5 million, to an arbitrator in July 2013. At the arbitration SITA claimed that the contract was entered into without having gone through an open tender process and was therefore unconstitutional and unlawful. Because this was a constitutional issue the arbitrator ruled that he had no jurisdiction to consider the issue.

SITA then applied to the High Court in Pretoria to declare the contract unlawful. The High Court dismissed the application on the ground that the SITA had delayed unreasonably in instituting legal proceedings against Gijima.

The contract was concluded following the settlement of a R20 million dispute between SITA and Gijima relating to an earlier contract in terms which Gijima had provided IT services to the South African Police Service (SAPS). SITA had unlawfully terminated that contract and agreed, as part of the settlement with Gijima, to enter into another contract with Gijima in terms of which it would render services to the Department of Defence in order to compensate it for the unlawful termination of the SAPS contract.

During the negotiations with SITA for the Defence Contract SITA repeatedly assured Gijima that there were no legal problems with the fact that this contract was not being put out for an open tender. SITA warranted this in the agreement. However, when the payment dispute arose SITA sought to invalidate the agreement despite having given Gijima these assurances.

The SCA, by a majority (Cachalia JA, Tshiqi and Van Der Merwe JJA concurring), held that SITA had acted in a self-interested and dishonourable manner and had delayed for more 22 months in seeking to invalidate the contract, which it knew all along was unlawful. It had also circumvented the Promotion of Administrative Justice Act 3 of 2000, which required the decision to conclude the contract be challenged within 180 days, which the SCA held it could not do.

In a minority judgment (Bosieolo JA, Dlodlo AJA concurring) held that SITA was entitled to institute review proceedings under the principle of legality and had not delayed unreasonably in instituting legal proceedings against Gijima.