



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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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.

Ekurhuleni West College v Segal and Another (1287/2018) [2020] ZASCA 32 (2 April 2020)

Today the Supreme Court of Appeal (SCA) dismissed an appeal with costs, from Gauteng Division of the High Court, Pretoria (high court).

The appellant, the Ekurhuleni West College (the College), entered into a written building contract in which it employed the second respondent, Trencon Construction (Pty) Ltd (Trencon), to build a conference centre on its premises. By the time that the construction came to be 'practically completed' within the meaning of the building contract, various disputes arose between the parties. Trencon referred these disputes to the first respondent, Mr Stanley Harold Segal (the adjudicator) for adjudication. Aggrieved by the adjudicator's determination, the College approached the high court for the review and setting aside of the determination. Trencon opposed the application and filed a counter-application for the enforcement of the determination. The high court dismissed the application with costs and granted the counter-application with costs on the attorney and client scale, in both instances including those of two counsel.

Aggrieved by the high court's decision, the College appealed to the SCA. The College submitted, inter alia, that the adjudicator failed to comply with the rules of natural justice. The SCA held that the adjudicator operated as a tribunal created by contract. Express contractual provisions regulated the procedure which the adjudicator had to follow. It follows that there was no room for

the tacit importation of any rule of natural justice into the agreement of the parties. The SCA held, that it is trite that judicial review is not concerned with the correctness of the result on the substantive merits of the decision in question, but with the fairness and regularity of the procedure by which the decision was reached.

The SCA considered whether the high court was correct in holding that the pending arbitration, by itself, justified the dismissal of the review application. The high court had held that by referring the disputes to arbitration, the College elected to enforce one of two mutually exclusive remedies, resulting in the waiver of the right to take the adjudicator's determination on judicial review. The SCA held that the College failed to place its case for the review of the adjudicator's determination within the ambit of the *Wahlhaus* principles, which were applicable to this case. The SCA, further, held that the College had agreed to be bound by the adjudicator's determination. Therefore, its remedy was to refer the matter to arbitration. The SCA found that the review application had to fail and the counter-application for enforcement of the determination was correctly allowed.

With regard to costs on an attorney and client scale, the SCA held that the College intentionally frustrated the rights that Trencon's counter-application aimed to enforce, for such reasons costs on the attorney and client scale was justified.

The appeal was dismissed with costs, including the costs of two counsel.