

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 9 June 2020

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

*Valor IT v Premier, North West Province and Others (322/2019) [2020] ZASCA 62
(9 June 2020)*

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today dismissed the appeal of Valor IT (VIT) against the Premier of the North West Province.

VIT contacted the Department of Sports, Arts and Culture in the North West provincial government (the Department) and offered to provide certain preliminary services in respect of an information management system at a price of R498 000 excluding VAT. The Department called for quotations for this work from VIT and two other accredited service providers. It awarded a service delivery agreement – a SDA – to VIT. In terms of the SDA, VIT was to perform the work within six weeks and be paid R498 000, excluding VAT. Thereafter, the scope of the work was extended. Eventually, the Department had paid VIT over R41.7 million, including an amount of damages.

The provincial government eventually cancelled the SDA and its extensions but VIT brought an application to challenge the lawfulness of the cancellation and to claim damages, supposedly for breach of the contract. On the advice of a state law advisor, the provincial government settled with VIT by agreeing to the continuation and extension of the contractual arrangement with the Department and the payment of damages of R22.8 million. This settlement was made an order of court. Some time later, the provincial government having obtained independent legal advice, again cancelled the SDA and its extensions. This time, when VIT challenged the lawfulness of the cancellation and claimed damages once again, the provincial government brought a counter-application to set aside the award of the SDA to VIT, as well as any extensions of it, and to set aside the order embodying the settlement agreement.

The SCA found that the SDA was awarded to VIT unlawfully in that required procurement processes were not followed: as the value of the contract was in excess of R500 000, when VAT was *included* (as it was required to be), an open tender process was required and the award on the basis of quotations did not comply with those requirements. As no tender process of any sort was followed in respect of the extensions of the SDA, those agreements were likewise unlawful. Only a lawful settlement agreement could be made an order of court, with the result that the order of court embodying the settlement agreement was invalid too.