



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 18 June 2020
STATUS Immediate

Madibeng Local Municipality v DDP Valuers and Another (Case no 1284/2017) [2020] ZASCA 70 (18 June 2020)

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.

Today the Supreme Court of Appeal (the SCA) dismissed the application for leave to appeal by the applicant, the Madibeng Local Municipality (the Municipality), against the decision of the Gauteng Division of the High Court, Pretoria (the high court).

The Municipality invited tenders for the compilation of a new valuation roll and the performance of residual services in respect of the period ending 30 June 2018 (the tender). Bidders were required to tender a fixed price for the compilation of the valuation roll, and the fees to be charged per individual residual service required. The first respondent, DDP Valuers (Pty) Ltd (DDP), and the second respondent, Activa Valuation Services (Pty) Ltd (Activa) submitted bids. The Municipality awarded the tender to an entity known as Dijalo Property Valuers (Dijalo), despite the fact that the price tendered in its bid had been approximately three times that of DDP and twice that of Activa.

DDP approached the high court to review and set aside the Municipality's decision to award the tender to Dijalo, which application was dismissed on the basis that DDP had failed to exhaust internal remedies. DDP successfully appealed against this order to the SCA, which remitted the matter to the high court for a decision on the merits. On the merits, the high court (per Makgoba JP) held that the evaluation of the bids had been affected by material irregularities, ordered the review and setting aside of the decision to award the tender to Dijalo; and remitted the matter to the Municipality for reconsideration. Prior to this order, the Greater Taung Local Municipality (Taung Municipality) had awarded a tender to Activa, which culminated in a service level agreement that set out a fixed price for the compilation of a new valuation roll.

By the date of the remittal order, Dijalo had submitted the valuation roll to the Municipality. Thus the Municipality only required residual services for the remaining period of the tender. The Municipality decided to cancel the tender and to invoke reg 32 of the Municipal Supply Chain Management Regulations in appointing Activa to perform the residual services based on the contract secured by Taung Municipality. DDP again approached the high court, to review and set aside the Municipality's failure to reconsider the tender and the decision to appoint Activa to execute the tender. The high court (per Pretorius J) dismissed the review, *inter alia*, on the basis that the tender had not been cancelled and that the services that Activa had to provide to the Municipality fell outside the scope and ambit of its service level agreement with Taung Municipality. The high court also dismissed the Municipality's application for leave to appeal. In the application for leave to appeal before the SCA, the issue was whether a decision on the proposed appeal would have any practical effect or result.

The SCA held that as the appointment of Activa expired on 30 June 2018, the matter was clearly moot. However, despite the mootness of a matter, the SCA has a discretion to determine a matter where it

presents a discrete legal issue of public importance that would affect matters in the future and on which the adjudication of the SCA is required. In the present circumstances, the SCA was not persuaded that such a legal issue existed, given the factual findings of the court a quo that the tender had not been cancelled and that Activa was not appointed to render the same services to the Municipality as those that it had been contracted to render to Taung Municipality.

The SCA held that s 16(2)(a)(i) of the Superior Courts Act 10 of 2013 provides that when at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on that ground alone. The SCA said that the object of the principle is to reduce the heavy workload of appeal courts and to ensure that matters that deserve the attention of appeal courts are not delayed by the burdening of these courts. In the circumstances, the application was dismissed.