



## 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** 24 March 2017

**STATUS** Immediate

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

*Asla Construction (Pty) Ltd v Buffalo City Metropolitan Municipality (894/2016)*  
[2017] ZASCA 23 (24 March 2017)

#### Media Statement

The SCA upheld an appeal against an order by the High Court which reviewed and set aside the award of a contract by the respondent, the Buffalo City Metropolitan Municipality to the appellant, Asla Construction (Pty) Ltd, on the ground that the respondent had failed to comply with s 217 of the Constitution. The High Court also dismissed the appellant's claim for provisional sentence, on the basis that the engineers' certificates relied upon by the appellant were invalid, based as they were upon the invalid contract. The SCA held that the application by the respondent for a review of the award of the contract in terms of s 7, 8 and 9 of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) should not have been granted for several reasons. The respondent had failed to seek an order in terms of s 9(2) of PAJA extending the period within which the application could be brought, at the same time as the application for review, and had failed to provide a full and reasonable explanation for the delay, which far exceeded the period of 180 days stipulated in s 7 of PAJA. In addition, the High Court erred in deciding the merits of the review application, before deciding whether condonation should be granted in terms of PAJA. This precluded any finding that the application for condonation should be refused on its merits, with the result that any unlawful award of the contract would be 'validated' by the delay. In addition, the High Court regarded the breach of s 217 of the Constitution as a complete bar to the 'validation' of the contract, contrary to the principle that even unlawful administrative action may be rendered unassailable by delay. The High Court also failed to properly consider the extent to which the appellant had proceeded with the performance of the contract, with the ostensible permission of the respondent and the resultant prejudice to the appellant in setting the contract aside at that stage. The High Court also failed to properly consider the nature and extent of the prejudice to be suffered by those persons who were in desperate need of housing, to be provided by performance of the contract. In the result, the award of the contract was 'validated', insofar as this may have been necessary, by the undue delay of the respondent. The payment certificates relied upon by the appellant, were accordingly valid.

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