



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 30 November 2020
STATUS Immediate

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

*Madibeng Local Municipality v Public Investment Corporation Ltd (955/2019) [2020]
ZASCA 157
(30 November 2020)*

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today dismissed the appeal of the Madibeng Local Municipality (Madibeng) against the Public Investment Corporation Ltd (the PIC).

During the 1980s and 1990s, the Brits Municipality (Brits), Madibeng's predecessor, had borrowed large amounts of money from various institutions with a view to investing these amounts in the hope that the returns would outperform the costs of the loans, and the surplus could then be used to fund capital projects. The markets did not perform as Brits had hoped, with the result that it faced a serious fiscal crisis when its debts were to fall due. To deal with this problem it borrowed money from the PIC to pay its short-term debts. It did so against a number of zero coupon stock certificates – essentially promissory notes. One of the three certificates that are relevant in this case fell due for payment on 30 June 2003, while the other two fell due on 30 November 2003. On those dates, they had a face value of R93 million, R37 million and R87 million. Madibeng failed to pay on the due dates, but made a number of partial payments over a period of time in respect of all three debts. It was only in 2010, however, that the PIC issued summons to recover payment of the debts.

Madibeng raised two defences. The first was that it had not been properly authorised to make the loans. That defence had been dealt with by the high court and by the SCA, and found to be without merit. The second defence, which was the subject of this appeal, was that the PIC's claim had prescribed. The high court found that the debts had not prescribed and that Madibeng was liable to the PIC in the amount it had claimed.

The SCA upheld the high court's order. It held that the claim had not prescribed because a number of partial payments by Madibeng had amounted to tacit acknowledgements of liability which had interrupted the running of prescription. It held that once Madibeng's special

defences had been dismissed, it had no defence on the merits. It accordingly dismissed Madibeng's appeal but amended the order of the court below to order Madibeng to pay the PIC the sum of R162 639 962, together with interest running from the dates on which the debts had fallen due. As Madibeng had never disputed owing money to the PIC, the quantum of its indebtedness or the partial payments that it had made, the SCA was critical of Madibeng's conduct in defending the claim against it, and then appealing, when it knew that it had no prospect of succeeding.