



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

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Fleet Africa (Pty) Limited v Polokwane Local Municipality (Case no 720/2022) [2023] ZASCA 142 (30 October 2023)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding, with costs together with costs of two counsel, an appeal against the decision of the Limpopo Division of the High Court, Polokwane.

This was an appeal against the judgment and order issued by the Limpopo Division of the High Court, Polokwane (high court). The appellant, Fleet Africa Pty Ltd (Fleet Africa) sought a declaratory order in the high court that certain defences raised by the respondent, the Polokwane Municipality (the Municipality), in the ongoing arbitration process between the parties were without merit and should be ignored by the Arbitrator when resolving the remaining disputes between the two parties. Additionally, Fleet Africa sought a declaration that the Service Level Agreement (SLA) between the parties was binding on the Municipality.

The Municipality brought a point *in limine* stating that the high court did not have jurisdiction to hear the matter because, according to the SLA, both parties had agreed that any arising dispute would be dealt with by the Gauteng Divisions of the high court. They also argued that Fleet Africa's Bid was unlawfully awarded. They further contended that the SLA between the two parties, which was the foundation of Fleet Africa's arbitration claim, was irregular and liable to be invalidated. The high court found in favour of the Municipality and held that it did not have jurisdiction to hear the matter and as a result did not even delve into the merits of the case, relating to the defences brought by the Municipality. Aggrieved with this decision, the appellant appealed with the leave of the high court.

On appeal, the SCA made the following findings relating to the issue of jurisdiction: It found that, although it was not established at the time the SLA was entered into, the high court was a court of competent jurisdiction. Furthermore, all key aspects of this case, such as the Municipality, the tender award, the SLA, and the services provided by Fleet Africa, were within the high court's jurisdiction. Clause 33.10 of the SLA, read together with clause 23, did not establish exclusive jurisdiction to the Johannesburg high court, nor did it exclude the jurisdiction of the high court. Our law, according to the SCA, was clear that when a party consented to a court's jurisdiction, it did not oust the jurisdiction of another competent court. Rather, it designated a specific court as the appropriate one to adjudicate the dispute. It was now established that parties could not completely exclude a court's jurisdiction through their mutual agreement. Accordingly, the high court did not have the discretion to decline to hear the matter as its jurisdiction was based on the location where all jurisdictional facts occurred.

As it related to the Municipality's defence regarding the irregularity of the SLA, the SCA made the following findings: It held that, throughout the legal proceedings, the Municipality acknowledged that Fleet Africa's selection as the preferred service provider was the outcome of a comprehensive bidding process, which involved multiple rounds of negotiations and presentations. The Municipality explicitly affirmed the validity and legality of Fleet Africa's appointment in a letter dated 7 September 2020

addressed to Fleet Africa. Additionally, on 21 September 2012, the Municipal Manager issued a public notice in accordance with s 33 of the Municipal Finance Management Act 56 of 2003 (MFMA), confirming that the process of awarding the fleet management contract had been completed, with Fleet Africa as the successful bidder for a five-year contract. According to the SCA, there was no indication of fraud, dishonesty, or corruption in awarding the contract. Fleet Africa entered into the contract with the Municipality in good faith. The defence raised by the Municipality that its award of the tender was *ultra vires* because of the absence of certain officials who were required to be present was unsubstantiated. It was the high court, and not the Arbitrator, with jurisdiction to determine whether the SLA complied with the principle of legality. Consequently, the burden fell on the Municipality to tender sufficient evidence in the high court proceedings to succeed in its defence. It failed to do so. It follows then, that the defences must fail. The SCA further held that more than ten years had passed since the alleged irregular decision was made, and the Municipality had not taken any steps to challenge the decision through a self-review application despite being encouraged to do so by the Arbitrator. Given the excessive delay, the absence of a reasonable and satisfactory explanation for the delay, and the unconscionable and highly prejudicial conduct of the Municipality, it would be in the interest of justice for this Court to allow Fleet Africa to proceed to enforce its rights by way of the arbitration proceedings. As a result, the appeal was upheld with costs.

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