



## 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 May 2018

**STATUS** Immediate

*WDR Earthmoving Enterprises & another v The Joe Gqabi District Municipality & others (392/2017) [2018] ZASCA 72 (30 May 2018)*

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

The SCA today upheld in part an appeal by a contractor who had unsuccessfully tendered for a construction project, which was awarded by the Municipality to a competing tenderer. It was held that both competing tenders did not comply with a peremptory requirement in the conditions of tender and were accordingly non-responsive. The Municipality did not possess a discretion to condone non-compliance with the peremptory requirement which could not be regarded as trivial, or of a minor nature. In addition, the requirement could not be described as immaterial, unreasonable or unconstitutional. In the result, the appeal by the unsuccessful tenderer to review and set aside the decision by the municipality which declared its tender as non-responsive was refused, but its appeal against the decision by the municipality to award the tender to the successful tenderer was upheld. The award of the tender to the successful tenderer was reviewed and set aside, with the consequence that the municipality would have to recommence the tender process for the construction project.