



**THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA**

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF
APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 1 June 2018

Status: Immediate

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.

MADIBENG LOCAL MUNICIPALITY

v

PUBLIC INVESTMENT CORPORATION LTD

The SCA today dismissed an appeal by the Madibeng Local Municipality (Madibeng). The Public Investment Corporation Ltd (the PIC) had sued Madibeng for the repayment of three loans totalling approximately R162 million. Madibeng pleaded that the loans were unenforceable because in order to raise the loans, Madibeng's predecessor, the Brits Town Council (Brits), had been required in terms of the Local Government Ordinance 17 of 1939, which was then in force, to have obtained the prior written consent of the Administrator of the province, and it had not done so.

The high court had, by agreement separated this issue from the remaining issues and had, also by agreement, dealt with the separated issue on the basis of affidavits

filed by the parties. It found that there was no merit in the point and awarded a 'punitive costs order' against Madibeng.

On appeal, the SCA held that, on the assumption that the Ordinance applied, the type of loans in this case – loans to repay other loans – did not, in terms of the Ordinance require the consent of the Administrator. Madibeng also argued that the procedure adopted in the high court was irregular and that the proceedings should be set aside and remitted. The SCA held that the procedure was sanctioned by the uniform rules of court and, in any event, Madibeng had agreed to it. That being so, it was too late to object on appeal. The SCA commented on the unethical and unconscionable manner in which Madibeng had conducted its defence, which had justified the high court making a punitive costs order against it.