

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

CHAIRPERSON : STANDING TENDER COMMITTEE AND OTHERS v JFE SAPELA ELECTRONICS (PTY) LIMITED AND OTHERS

From: The Registrar, Supreme Court of Appeal

Date: 26 September 2005

Status: Immediate

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

In a judgment delivered today the SCA found that the award of three tenders by the Standing Tender Committee of the Department of Public Works at its head office in Pretoria to a company, Nolitha Electrical & Construction (Pty) Ltd, for repair and maintenance work at 3 prisons in the Western Cape had been invalid. It appeared that in the case of two of the tenders the successful tenderer had quoted nominal amounts for a whole section of the work in the knowledge that it would not have to perform the work as it was the subject of a tender put out by the department's local office without the knowledge of its head office. The SCA held that the tenders were unacceptable

as they were inconsistent with the core values of fairness and cost effectiveness which the Constitution sought to uphold in the tender process. In the case of the third tender it appeared that after the tenders had been opened the Department agreed with Nolitha to re-allocate amounts over tendered for two items of work to items in respect of which Nolitha had under tendered. This was found to be irregular and unfair to competing tenderers.

The SCA, however, disagreed with the conclusion of the Cape High Court that all three tenders had to be set aside and the contracts declared null and void. The reason was that by the time judgment was given the work on all three contracts had proceeded to such a stage that it was no longer practicable to set aside the contracts and start the tender process all over again. It therefore set aside the order of the Cape High Court.

Despite this, the SCA ordered the Department to pay the costs of the unsuccessful tenderers who had brought the matter to court.

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