



REPUBLIC OF SOUTH AFRICA

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 22 November 2007
STATUS Immediate

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

**LUFUNO MPHAPHULI & ASSOCIATES (PTY) LTD v NIGEL A ANDREWS & BOPANANG
CONSTRUCTION CC
(Case No 434 / 06)**

Media Statement

Today the Supreme Court of Appeal ('SCA') dismissed an appeal by Lufuno Mphaphuli & Associates ('Lufuno') against a judgment of the Pretoria High Court in favour of Nigel A. Andrews (Andrews) and Bopanang Construction CC (Bopanang). Lufuno was appointed by Eskom as its principal contractor on an electrification project in the Limpopo Province. It in turn, during 2002, concluded a written agreement with the second respondent, Bopanang. When certain disputes arose between Lufuno and Bopanang relating to the performance of the contract and payment, those disputes were referred by the parties to arbitration. The first respondent, Andrews, was duly appointed arbitrator.

Andrews found in favour of Bopanang, awarding to it the sum of R339 998.83 together with interest. Aggrieved by Andrew's award, Lufuno approached the Pretoria High Court with an application to review and set aside the award. The High Court held that Lufuno had failed to comply with the time limits prescribed by the Arbitration Act. It accordingly refused to grant the condonation sought resulting in Lufuno's application being dismissed with costs on a punitive scale. The High Court nonetheless granted Lufuno leave to appeal to the SCA.

Neither the rules nor any principle of our law, according to the SCA, permitted an applicant to make out its case in its supplementary affidavit. It followed that the High Court could not be faulted for refusing to grant the condonation sought. That, ought to have been the end of the matter. Before the SCA, however, Lufuno contended that Andrews had held three secret meetings with Bopanang. Bopanang on the other hand argued that Andrews, strictly speaking, had not performed the function of an arbitrator but rather that of an expert or valuer. According to the SCA, were an arbitrator to have discussed the merits of the matter with one of the parties to the exclusion of the other that ordinarily may warrant the setting aside of the award, but in this instance, the meetings were innocuous and occurred within the scope of Andrews' mandate. The SCA held further that even if Andrews had performed the function of a valuer that would not have assisted Lufuno as it could not be said that Andrews' decision was not arrived at honestly and in good faith. It accordingly dismissed the appeal with costs.

--- ends ---