

In the Supreme Court of Appeal of South Africa
MEDIA SUMMARY –

Case number: 148/2007

In the matter between

THE GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA

APPELLANT

and

THABISO CHEMICALS (PTY) LTD

RESPONDENT

From: The Registrar, Supreme Court of Appeal

Date: 2008-09-25

Status: Immediate

Today the Supreme Court of Appeal (SCA) upheld an appeal by the South African Government against the judgment of the Pretoria High Court in favour of Thabiso Chemicals (Pty) Ltd (Thabiso).

Thabiso was the plaintiff in the High Court. It sued the Government for damages in an amount exceeding R15 million, allegedly arising from the wrongful cancellation of a contract between the parties by the State Tender Board, on behalf of the Government.

The contract originated from a tender by Thabiso to deliver cleaning materials to State Departments, which was accepted by the State Tender Board. Soon thereafter the State Tender Board, in the exercise of its statutory powers to act on behalf of the Government in matters of this kind, purported to cancel the contract resulting from the award of the tender. The basis relied upon was that the tender had been awarded on the strength of information furnished by Thabiso which subsequently proved to be incorrect. The High Court's decision that the cancellation had in fact been wrongful was ultimately derived from its factual finding that Thabiso had not furnished any incorrect information prior to the award of the tender.

The SCA held, however, that although Thabiso did not furnish any incorrect information by express words, it did so by implication. And, so the SCA further held, even though this misrepresentation by implication was innocently made, it constituted a sufficient ground for the State Tender Board to cancel the contract. Hence the cancellation could not be said to be wrongful and, consequently, the appeal was upheld with costs.

FDJB