



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: 25 May 2009

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

On 25 May 2009 the Supreme Court of Appeal handed down judgment in *Manong and Associates (Pty) Ltd v Eastern Cape Department of Roads and Transport and others*. The SCA overturned a decision of the Equality Court sitting at the seat of the High Court in Bhisho, in terms of which it was held that the Eastern Cape of Roads and Transport had not unlawfully discriminated against a Black-owned national civil engineering company, Manong and Associates (Pty) Ltd, by excluding it from the second phase of a two-phase tender process.

The SCA held that the Equality Court is not a high court with all the trappings and power of the latter. Instead, it is a special court with its powers to be found in the provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. The SCA held that the Equality Court had ignored provisions of the Equality Act and in particular those that promoted participation by the parties in relation to

the proceedings. The Equality Court erred further by not having regard to important provisions of the Equality Act and therefore the enquiry conducted by it was flawed.

The SCA held that certain aspects of Manong's complaint required further exploration. It found that the Equality Court's conclusion, that a prior roster system of allocation of tenders provided sufficient opportunity to gain experience, was reached without proper scrutiny and important factors that impacted on previously disadvantaged engineers should have been examined.

The SCA shared the Equality Court's concern that our roads should be safe and durable and constructed by persons who are technically proficient but held that this did not obviate the need to properly establish whether the alleged systematic discrimination was unfair. In order to determine this question a proper enquiry in terms of the Equality Act was required. The appeal was upheld and the matter referred back to the Equality Court for a proper enquiry to be conducted in terms of the Equality Act. The question of costs was reserved to be decided upon a final resolution of the dispute.