



THE 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 29 September 2014
STATUS Immediate

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

*Lepogo Construction (Pty) Ltd v The Govan Mbeki Municipality
(623/13) [2014] ZASCA*

MEDIA STATEMENT

Today the Supreme Court of Appeal (SCA) furnished its reasons for dismissing the appeal by the appellant, Lepogo Construction (Pty) Ltd and upholding an order of the North Gauteng High Court.

The issue before the SCA was whether a valid contract had been entered into between the appellant and the respondent.

On 11 February 2008 Bigen Africa Services (Pty) Ltd (the agent) was appointed by the respondent as the consulting engineer for the construction of a 10ML Post Tensioned Water Reservoir with a dome. The respondent, in consultation with the agent, then invited tenders for the construction of the reservoir. The appellant responded to the invitation and submitted two tenders – an original and an alternative tender - through the agent. The appellant's alternative tender was conditionally approved by the municipal manager. Thereafter the appellant received a letter of appointment from Bigen in respect of the alternative bid. On or about 30 January 2009, the municipal manager was informed that the process in respect of which he approved the appointment of the appellant to construct the reservoir had been compromised. He then ruled that the award of the bid be withdrawn. The appellant then instituted action against the respondent arising from the withdrawal alleging that a contract had come into existence between it and the respondent when he received the letter of appointment. The respondent denied that a valid and binding contract had come into existence contending that the tender process had been tainted by fraud.

On appeal the SCA held that the appellant's case rested upon the establishment of a contractual relationship between it and the respondent. The SCA found that the reliance by the appellant on the letter of appointment as having given rise to a binding contract was ill-conceived. It held further that the form of offer and acceptance had not been completed by the parties in the manner prescribed. The court stated that the contract documents stipulated the procedure to be followed for the formation of a contract and went further in prescribing when a binding contract came into existence. None of these stipulations were fulfilled.

--- ends ---