



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: 28 March 2014
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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.

**ESORFRANKI PIPELINES (PTY) LTD
V
MOPANI DISTRICT MUNICIPALITY**

The Supreme Court of Appeal upheld an appeal against a decision in the North Gauteng High Court in which it set aside a tender but kept alive the contract awarded to a joint venture, following the award of the tender. The SCA held that the high court should have set the contract aside. The tender process, and as a result the contract, was tainted by dishonesty and fraud. It was in breach of the constitutional imperative that tender awards should be made in accordance with a system that is fair, equitable, transparent and cost effective. The decision of the high court did not give effect to the public interest which demands that the tender process must be free from corruption and fraud, and that public moneys do not end up in the pockets of corrupt officials and business people. Fronting in turn amounts to an exploitation of persons for financial gain, and constitutes a fraud on those

who are meant to be the beneficiaries of legislative measures put in place to enhance the objective of economic improvement of historically disadvantaged people.

The Mopani District Municipality awarded a tender to a joint venture known as Tlong Re Trading SMN to construct a pipeline between Nandoni Dam in Thohoyandou and the Nsami water treatment works in Giyani in the Limpopo Province. The purpose of the pipeline was to provide water to the residents of the greater Giyani. A severe draught in 2009 caused the water levels in the Nsami dam to drop to the extent that there was insufficient water available for domestic use.

Two unsuccessful bidders, namely the two appellants, brought review proceedings in the North Gauteng High Court. That court found that the tender process was flawed. The decision of the municipality was found to have been motivated by bias and bad faith. The joint venture in turn made itself guilty of fronting and making false representations in its tender submission in an attempt to secure the tender. The high court made an order that the award was unlawful. It however refused to also set aside the contract entered into between the joint venture and the municipality for the construction of the pipeline. The appellants appealed to the SCA against that order and the costs orders made by the high court.

Due to the serious and reprehensible nature of the conduct of the municipality and the joint venture, they were ordered to pay the costs of the appellants on a punitive scale.