

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 1 December 2010
STATUS Immediate

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

Ethekwini Municipality v Combined Transport Services Pty (Ltd)
(115/10) [2010] ZASCA 158 (1 December 2010)

Media Statement

The Supreme Court of Appeal (SCA) upheld an appeal against an order of the KwaZulu-Natal High Court (Pietermaritzburg) and dismissed the claim by the appellants. The main issue in the court a quo concerned the validity of the decision to award the remainder of the contract to the eighth respondent.

The appellants were responsible for the provision of bus services to the people of Durban and surrounding areas.

A decision was taken by the first and third appellants to outsource public land transport and they subsequently proceeded to invite tenders to provide the bus service and ultimately awarded the tender to a company, Remant/Alton Land Transport (Pty) Ltd (Remant), for the provision of public transport in the greater Durban area.

Upon Remant's decision to terminate its contract with the appellants midway through the contract, the third appellant appointed the eighth respondent, Tansat Bus Service (Pty) Ltd, as an alternate transport provider, without inviting tender to provide the service for the remainder of the contract.

The first and sixth respondents then proceeded to launch an urgent application in the high court interdicting the appellants and the eighth and ninth respondents from performance under the contract and, in addition, the review and setting aside of the decision of the first and third appellants to award the contract to the eighth respondent due to their failure to comply with the requisite tender procedures. The first to sixth respondents were successful and the decision by the appellants to

award the contract to the eighth respondent was set aside. The appellants appealed against the order made by the high court setting aside the award made to the eighth respondent.

By the time the appeal was heard, the time period stipulated in the initial contract between the appellants and Remant had run its full course. Further, the Transport Transition Act had been repealed. On this basis the SCA found that the issue regarding the validity of the agreement had become moot and that deciding the matter on its merits would have no practical effect. It therefore dismissed the appeal on that ground alone, in terms of s 21A of the Supreme Court Act 59 of 1959.