

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 22 March 2018

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.

Palabora Copper (Pty) Ltd v Motlokwa Transport & Construction (Pty) Ltd

The SCA today upheld an appeal by Palabora Copper (Pty) Ltd against a decision of the Gauteng Division of the High Court, Pretoria refusing to set aside an arbitration award against it in an amount of nearly R40 million. The court, however, refused to set aside that portion of the arbitration award in which the arbitrator held that there was a binding contract between Palabora Copper and the respondent Motlokwa Transport & Construction (Pty) Ltd.

The arbitration arose out of a contract for the provision of waste removal services. Palabora contended on various grounds that although a tender award had been made no binding contract had been concluded, alternatively that the contract had been cancelled. The arbitrator rejected all of these contentions. The SCA pointed out that arbitration awards are not set aside lightly and the court's jurisdiction is limited to reviewing the award for gross irregularity, not error either of law or fact. The contention that the arbitrator had pre-judged certain issues was rejected.

The arbitrator upheld a claim by Motlokwa for damages arising from Palabora's refusal to permit it to perform in terms of the contract. However, he misconstrued an agreement concluded between the parties in regard to the quantification of any claim and made an award of damages without requiring any proof from Motlokwa that it would have been able to perform the contract and had suffered a loss of profits as a result of having been prevented from doing so. He also made an award of the higher amount set out in the parties' agreement on quantification without proof of the assumptions on which agreement on that figure had been reached or giving any reason for doing so. In the result Palabora was deprived of a fair trial in respect of these issues. To that extent therefore the arbitration award had to be set aside and the dispute in regard to damages referred to a new arbitrator.