THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED

***Merifon (Pty) Ltd v Greater Letaba Municipality and Another* (1112/2019) [2021] ZASCA 50 (22 April 2021)**

From: The Registrar, Supreme Court of Appeal

Date: 22 April 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of the case and does not form part of the judgments of the Supreme Court of Appeal

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The Supreme Court of Appeal (SCA) today dismissed an appeal against the judgment of the Limpopo Division of the High Court, Polokwane (high court). On 18 July 2019 the high court dismissed an action instituted by the appellant, Merifon (Pty) Ltd, against the first respondent, Greater Letaba Municipality (the municipality) for payment of the sum of R52 million and R209 892. 90 being the purchase price and transfer costs respectively in respect of immovable property that the appellant had sold to the municipality on 7 March 2013 together with ancillary relief.

The municipality resisted the claim on four principal grounds. First, it denied that its representative was duly authorised to conclude the agreement on its behalf. Second, it pleaded that the agreement was illegal and null and void for want of compliance with s19 of the Local Government: Municipal Finance Management Act 56 of 2003 (the MFMA) because the subject-matter of the sale constituted a capital project. Third, it alleged that the municipal council never approved the purchase of the property. Fourth, it asserted that it was precluded from incurring expenditure otherwise than in accordance with an approved budget and within the limits of the amounts appropriated in the approved budget. The municipality also filed a

counter-claim in which it sought an order declaring the impugned agreement null and void. In the alternative the municipality alleged that the agreement fell to be rectified because to the knowledge of the contracting parties the purchase price and transfer costs were not going to be paid by the municipality but by the Limpopo Provincial Government: Department of Cooperative Government Human Settlements and Traditional Affairs (CoGHSTA).

Section 19 of the MFMA provides that a municipality may spend money on a capital project like the acquisition of land only if the money for the project has been appropriated in the capital budget subject to compliance with certain statutory requirements. The MFMA, asserted the municipality, also provides that a municipality may not spend money that has not been appropriated in terms of an approved budget and within the limits of the amounts appropriated for the different votes in an approved budget.

It was not in dispute in this case that the municipality did not appropriate any funds in its capital budget in terms of an approved budget for the 2012/2013 financial year. It was common cause that both the purchase price and transfer costs were, as contemplated by the parties, to be paid by the CoGHSTA from its budget and not from the municipality. Hence the municipality did not budget for these amounts. Unsurprisingly, the municipality did not have funds appropriated for the project. But the Provincial Treasury refused to authorise payment of the amounts payable stating that the purchase price was exorbitant.

The SCA found that s 19 of the MFMA was of application to the parties' agreement. And as the peremptory provisions of s 19 were not complied with the agreement was not enforceable. The SCA also rejected Merifon's reliance on estoppel holding that as the agreement was invalid for want of compliance with s 19 it could not be validated through the deployment of the doctrine of estoppel. Hence Merifon's appeal was dismissed with costs, including the costs of two counsel.