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

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Ekurhuleni Metropolitan Municipality v Business Connexion (Pty) Ltd (1186/2023) [2025] ZASCA 41 (10 April 2025)

Today, the Supreme Court of Appeal (SCA) struck from the roll an application for reconsideration in terms of s 17(2)*(f)* of the Superior Courts Act 10 of 2013 (the Act). The application was before court pursuant to a referral by the President of the SCA.

On 31 January 2023, the Gauteng Division of the High Court, Johannesburg (the high court) found that there was a valid and binding agreement between the Ekurhuleni Metropolitan Municipality (the Municipality), the applicant, and the respondent, Business Connexion (Pty) Ltd (BCX). It ordered the Municipality to pay the sum of R85 479 535.26 plus interest to BCX for the purchase of software licences and related services. The high court refused an application for leave to appeal by the Municipality, as did two judges of the SCA on petition.

In March 2020, Oracle Corporation (South Africa) (Pty) Ltd (Oracle) assessed the Municipality's information system and advised that it needed to upgrade its infrastructure. As a result, in May 2020 the Municipality embarked on a process to establish a panel of accredited service providers to renew the existing software licences and to procure new software licences from Oracle. BCX was appointed by the Municipality to its panel of service providers.

On 5 August 2020, the Municipality sent a Request for Quotation (RFQ) to each of the Oracle partners on the list, including BCX. On 27 August 2020, the Municipality sent the agreement to be signed by BCX which was titled, 'ICT Instruction to Perform Work' (IPW). The licence specifications and prices were set out with a total sum provided for in the amount of R85 479 535.26. The IPW was followed by a letter from the Municipality to Oracle SA confirming the execution of the agreement with BCX and setting out of the Oracle products to be purchased. Believing that they had been awarded the tender, on 28 August 2020, BCX procured the specified licences and made payment. On 1 September 2020, Oracle sent a welcome letter to the Municipality. Sometime in September 2020, the Municipality sent an email to BCX stating that they wanted to place the order for procurement of additional licences on hold. BCX stated that it was impossible to put the procurement on hold as the licences had been ordered and procured.

A couple of days later, the Municipality sent an email stating that due to budget cuts it was unable to honour the order for additional licences and that it had not received delivery of the licences. BCX responded that the licences had been emailed.

On 29 October 2020, the Municipality sent a letter of cancellation wherein they stated that due to poor revenue collection, budgets had been cut drastically, and they had to reprioritise the maintenance of existing solutions. Nowhere was it mentioned that the licences had not been delivered or that the licences were to be procured as and when needed. Clearly the reason for the purported cancellation was inability to pay.

The high court rejected the Municipality's defences and held that there was no legal basis for the Municipality's contention that the licences were not delivered. The high court did not accept that it was a tacit term of the agreement that the licences were not required immediately but at some future date when the Municipality had migrated from an outdated, unstable and unsupported IBM environment to a more stable Huawei environment.

In the SCA, the application for reconsideration, too, primarily focused on the non-delivery of the licences and what was referred to as the timing of the delivery. The SCA found that if it were the intention of the parties that the contract would be executed as and when certain upgrades were made, this would have been clearly and unambiguously stipulated in the agreement. The Court highlighted that this was not one of the grounds for the purported cancellation of the agreement. It found that the high court was correct in dismissing that defence.

On the question of non-delivery, the SCA found that a bare denial was only sufficient where there was no other way open to the disputing party. The Municipality had not set out details as to what steps it took to confirm that the key codes did not grant it access to the licences. The SCA held that it was the letter of cancellation that set out in the clearest terms the reason for the Municipality's refusal to pay and nowhere was the non-delivery of the licences mentioned. The refusal was due to budgetary restraints and because the Municipality could no longer afford the licences.

The SCA found that the judgment of the high court led to no grave injustice and as such there were no exceptional circumstances that warranted a reconsideration of the decision of the SCA not to grant leave to appeal on petition. Accordingly, it did not engage the jurisdiction of this Court.

As a result, the SCA struck the matter from its roll.

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