



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: 1 December 2022
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.

Road Accident Fund and Others

v

Mabinda Incorporated and Others

Minister of Finance

v

Road Accident Fund and Others

Today the Supreme Court of Appeal upheld an appeal from the Gauteng Division of the High Court, Pretoria (per Hughes J). The Road Accident Fund (the RAF) was formed to facilitate payment of compensation to victims of road accidents. In 2014, the RAF appointed a panel of attorneys to represent it in litigation for five years. The resultant Service Level Agreements (the SLAs) were due to elapse in November 2019. A new tender (the 2019 tender) was advertised. After a new Chief Executive Officer (the CEO) was appointed to the RAF, he conducted a review of its affairs and model of operation. The RAF offered to extend the SLAs to 31 May 2020 to afford time to consider the position. Certain attorneys on the panel agreed to this, despite there being less financial reward. Those who did not handed but unfinalised files and the SLAs lapsed. The CEO concluded that the model of using a panel such as that

was inefficient and unduly costly. This resulted in a new five year strategic plan being presented to and accepted by the Board of the RAF. As a consequence, the 2019 tender was cancelled and the remaining attorneys were requested to hand back their files of unfinalised matters in a phased way.

The present respondents were attorneys who had agreed to the extension of the SLAs. Three separate applications by various of these respondents were launched in the high court to review and set aside the cancellation of the 2019 tender, the decision to extend the SLAs on those less favourable terms and the decision to call for the unfinalised files. On 1 June 2020, Hughes J granted the review relief and attempted to fashion an order maintaining the status quo pending the revival and adjudication of the 2019 tender. Part of this relief was a direction that the SLAs be extended for a period of six months on the same terms and conditions as the existing ones. Her reasoning was that the entity in the RAF which had cancelled the 2019 tender lacked the authority to do so. This entity had been authorised by the Board to do so but Hughes J reasoned that, since the resolution doing so had been passed by the previous Board of the RAF, it had fallen away when the new Board had been appointed. The respondents had also relied on the provisions of a regulation under the Preferential Procurement Policy Framework Act 5 of 2000. This allowed an entity such as the RAF to cancel an unawarded tender if, inter alia, due to changed circumstances, there is no longer a need for the services in question or funds are no longer available to cover the total envisaged expenditure.

A hiatus had been caused by the fact that the order of the high court was dated 1 June 2020 whereas the SLAs had lapsed by effluxion of time on 31 May 2020. This meant that that part of the order purporting to extend the SLAs was not competent because they were no longer extant at the date of the order. The Supreme Court of Appeal expressed a strong desire that the parties agree on what should be done relating to the work done by the remaining attorneys in the interim.

The Supreme Court of Appeal held that the authorisation of the entity in the RAF which had cancelled had not lapsed when a new Board had been appointed. It also

found that the new model adopted by the RAF of attempting to settle claims, and if that failed, to mediate them and if that failed to utilise in-house attorneys and the State Attorney to litigate constituted changed circumstances. It also held that the unchallenged evidence that the RAF had been technically insolvent for a number of years coupled with evidence that, in the period under review the previous year, the RAF had run up a further deficit of R45,713 million also demonstrated that there were insufficient funds to cover the expenditure envisaged. The RAF had accordingly been entitled to cancel the 2019 tender. The live nature of the tender militated against upholding an argument by the respondents that the appeal was moot. The decision to extend the SLAs had been agreed to by the respondent attorneys and could not be assailed. As a consequence, the appeal of the RAF was upheld with costs and the judgment of the high court set aside and substituted by one dismissing the applications with costs.