

36811-2014-aj
2017-03-28

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JUDGMENT
[LEAVE TO APPEAL]

(Digital Audio Recording Transcriptions)/aj

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG DIVISION PRETORIA.CASE NO: 36811-2014DATE: 2017-03-28

- (1) REPORTABLE: YES / NO
 (2) OF INTEREST TO OTHER JUDGES: YES/NO
 (3) REVISED.

23/5/2017
DATESignature
SIGNATURE

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In the matter between

WAYMARK INFOTECH

Applicant/Plaintiff

and

ROAD TRAFFIC MANAGEMENT CORPORATION Respondent/Defendant

J U D G M E N T**[LEAVE TO APPEAL]**

RANCHOD J: In this matter I have before me an application for leave to appeal by the Applicant, who was the Plaintiff in the trial. Various grounds of appeal have been set out, and I have considered the grounds set out as well as the submissions made by counsel for the Applicant, as well as the submissions by counsel for the Respondent.

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Section 17(1)(a) of the Superior Courts Act 10 of 2013 provides inter

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[LEAVE TO APPEAL]

alia:

'(i) Leave to appeal may be given if the court is of the opinion that the appeal would have a reasonable prospect of success; or

(ii) There is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration.'

Having as I said considered the matter I am of the view that:

(1) There would be a reasonable prospect of success with regard to the question whether the Respondent ought to have brought judicial review proceedings to review and set aside its decision to award the tender to the Applicant, and to conclude the Service Level Agreement with the Applicant in the light of the provisions of sections 66 and 68 of the Public Finance Management Act in the circumstances of the facts of this case.

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(2) There is also the issue of the delay in the bringing of the application by the Respondent by way of a counterclaim for the Declaration that the Agreement concluded in March 2009 was not binding on it. Another court may come to a different conclusion in regard to these two issues.

However counsel for the Applicant also relied on further grounds on the basis that there are compelling reasons why the Application should be granted, and those reasons are:

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(1) That there is a compelling reason to grant Leave to Appeal in that the Appeal would resolve the question of the correct interpretation of Sections 66 and 68 of the Public Finance Management Act, and their

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applicability to public procurement contracts for which provision is apparently made in Section 217 of the Constitution, and whether the contract *in casu* is an ordinary public procurement contract.

(2) Another compelling reason is that the Appeal would resolve the question whether an organ of state which seeks to rely on Sections 66 and 68 of the Public Finance Management Act, does not have to approach the court for a declaratory order such as the one sought by and granted to the Respondent by virtue of its counterclaim.

(3) The third compelling reason raised by the Applicant is that the real issue raised by the Respondent's counterclaim was in fact whether the Respondent acted lawfully when it awarded the tender to the Applicant and when it concluded the Service Level Agreement with the Applicant on the strength of the decision to award the tender. The Applicant contends that that decision remains valid and of full force and effect, as it was not set aside by me in my judgment. It is an issue which ought to be resolved by way of judicial review proceedings. Hence to the extent that my judgment holds otherwise says the Applicant, it is in conflict with previous decisions of this court, the Supreme Court of Appeal and the Constitutional Court and therefore this conflict can only be resolved on appeal.

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I am persuaded by these additional grounds for appeal, that is the three compelling reasons advanced by the Applicant, in addition to the two that I have determined may have reasonable prospects of success. Both parties agree that if I were to grant Leave to Appeal it should be to the Supreme Court of Appeal. I accordingly make the following order:

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JUDGMENT
(LEAVE TO APPEAL)

1. Leave to appeal is granted to the Supreme Court of Appeal;
2. Costs of the application for leave to appeal are to be costs in the appeal.

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RANCHOD J
JUDGE OF THE HIGH COURT
DATE: 23/8/2017

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CASE NO: 36811/2014

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

PRETORIA 28 March 2017

BEFORE THE HONOURABLE MR JUSTICE RANCHOD

In the matter between:

WAYMARK INFOTECH PTY LTD

APPLICANT

And

ROAD TRAFFIC MANAGEMENT CORPORATION
SOC LTD

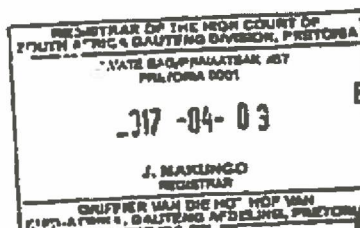
RESPONDENT

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HAVING HEARD counsel for the parties and having read the application for leave to appeal against the judgment of the Honourable Justice RANCHOD delivered on 13 DECEMBER 2016.

IT IS ORDERED THAT:

1. Leave to appeal is granted to the Supreme Court of Appeal;
2. Costs of the application for leave to appeal is to be costs in the appeal



BY THE COURT

REGISTRAR

AJ

Attorney:

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable
Case No: 440/2017

In the matter between:

WAYMARK INFOTECH (PTY) LIMITED

APPELLANT

and

ROAD TRAFFIC MANAGEMENT CORPORATION

RESPONDENT

Neutral citation: *Waymark Infotech v Road Traffic Management Corporation*
(440/2017) [2018] ZASCA 11(6 March 2018)

Coram: Lewis, Seriti and Mathopo JJA and Davis and Plasket AJJA

Heard: 19 February 2018

Delivered: 6 March 2018

Summary: Interpretation of ss 66 and 68 of the Public Finance Management Act 1 of 1999: contract for the procurement of professional services did not constitute a future financial commitment.