R80m – FOR NOT DOING THE WORK

Health, public works told to pay architects after officials bungle tender

ADRIENNE CARLISLE

A decade-long series of outrageous government and legal gaffes has ended with the Eastern Cape government being ordered by the courts for the last time to pay more than R80m in damages and interest to an East London-based firm of architects and millions of rands in legal fees.

The health and public works departments received a drubbing at every step of the way for what the courts termed their serial default, recklessness and repeated failure to comply with court orders along the way.

The interest on the initial R44m damages award to Ikamva Architects in 2012 has doubled as the government continued to fight a case the courts had made abundantly clear had been too compromised to win.

The legal fees – all paid for by peoples' taxes – will be extraordinary after the case bounced from a single judge in the high court, to a full bench, up to the Supreme Court of Appeal and back to the high court.

The two departments have now reached the end of the legal road and will have no choice but to fork out R80m to Ikamva Architects, a firm which was never given the opportunity to earn one cent of that money.

The sad tale of official dithering and legal contestation began in 2003 when the provincial public works department appointed Ikamva as its architectural consultants to oversee the R1.3bn Frere Hospital upgrade.

The department signed an agreement with Ikamva to this effect.

But shortly after being appointed by public works, the work was again advertised and another firm of architects was appointed to do the same work.

Ikamva said in court papers that this constituted a repudiation of the agreement and sued the department for R44m in damages that it said it had suffered as a result.

The R44m is the profit Ikamva said it would have enjoyed had the department not unlawfully repudiated the contract soon after awarding it to the company.

The public works department admitted its blunder, but claimed the agreement was invalid because it had no power to enter into it in the first place.

'Sorry tale with protracted and contentious history' once involved R44m lawsuit

This is because the health department had in the meantime appointed the Coega Development Corporation (CDC) as the implementing agent to oversee the upgrading of the health care facilities at the East London hospital complex, which also included Frere Hospital.

It seems the CDC, unaware that public works had already signed a contract with Ikamva, then advertised and appointed another service provider to oversee the project.

Even more confusion followed once summons were issued when Ikamva sought the discovery of certain documents from the two departments to supplement its case.

The departments failed to produce the documents and Ikamva brought an application to compel them to do so.

The court ordered the departments to produce the documents within 10 days, failing which their defence would be struck out and Ikamva could immediately apply for default judgment.

The departments failed to comply and their defence was duly struck out.

Judge Murray Lowe at the time described the entire debacle as a "sorry tale" with a protracted and contentious history and ordered the departments to pay the costs on a punitive scale.

Once its defence was struck out, default judgment was granted.

The departments sought both leave to appeal the default judgment and, inexplicably, simultaneously sought to have it rescinded.

Leave to appeal was refused and judge Belinda Hartle also dismissed the rescission application.

She said the departments had burned their bridges and had nowhere to go.

However, not deterred by this, the departments appealed her refusal to rescind the default judgment.

But a full bench of the high court has now dismissed that appeal.

Judge Glenn Goosen, with judges Zamani Nhlangulela and Igna Stretch, agreeing, said the case had a long and torturous history.

Both the health and public works departments were again ordered to foot the legal bill of the application.