

# 'PAY BACK THE MONEY'



Picture: Danie van der Lith

**SANDI KWON HOO**  
CHIEF REPORTER

THERE is no end to the troubles of the R2 billion, 286-bed Kimberley mental health hospital, whose doors remain shut 13 years after construction started.

The Department of Roads and Public Works now intends recouping all monies paid over to Vista Park Development (Pty) Ltd /Joh-Arch Investments (Pty) Ltd joint venture in terms of a settlement agreement.

The joint venture was the first contractor on site at the controversial mental health facility when it was appointed in 2006.

The contract was terminated in 2009, which gave rise to ongoing legal battles between Vista Park and the Northern Cape Department of Roads and Public Works.

Vista Park Development was liquidated in 2011.

According to a court order obtained in September 2017, the Minister of Public Works, the MEC for Public Works and the HOD for Public Works would pay Vista Park Developers R36.8 million, which amounted to 10 percent of the contract sum.

Staggered payments would be made, with the first payment of R15 million to be paid on October 31 2017 and subsequent payments of R10 million to be made on January 31 2017 and April 30 2017 and

the last payment of R1.3 million to be made on July 31 2018.

However, only one payment of R10 million was made on December 1 2017

Northern Cape High Court Judge Bulelwa Pakati, who reserved judgment on Friday, queried why the department had signed the settlement agreement if it contained irregularities.

Judge Pakati also questioned how the settlement agreement had been reached.

"The premier, the MEC for the Department of Finance, the MEC for the Department of Roads and Public Works, senior officials, legal advisers and administrative staff had attended a meeting to discuss this very topic."

The legal representative for the Department of Roads and Public Works, senior advocate Johan du Toit from Johannesburg, stated that the MEC had acted upon the request of the HOD to deal with this specific matter.

"The MEC was not briefed on this matter."

He added that the litigation and summons that was listed on the agenda for the high-level meeting that took place in Port Nolloth in February 2017, was not discussed.

Du Toit indicated that proper processes were not followed, where no valid settlement agreement existed.

"The agreement must still be

cost effective and rational. The public purse must be spent in a motivated manner. State funds cannot be a free-for-all."

He claimed that the MEC for the Department of Roads and Public Works had not been privy to all the information pertaining to the settlement agreement.

"The R10 million that was paid over on December 1 2017 was not approved in terms of the agreement that was signed on September 27 2017. The document was signed by Andrew Scholtz (the director of Vista Park Development) and four plaintiffs and submitted to the HOD on September 20 2017.

"The director of Joh Arch Investments, Mr Sibisi, was oblivious of this agreement. He walked into the department's legal adviser's office, Fabian Borman, and signed the agreement."

Du Toit added that the department effected payment on December 1 2017, after the agreement was signed by the relevant parties.

"The matter gets more curious because the money was paid to another attorney of Scholtz. The HOD realised that payment was not made to the liquidators, when he enquired seven months later. They were not party to the settlement agreement."

He explained that the R10 million was paid into a creditor's bank account in May 2018.

Advocate Jerry Marabe from

Bloemfontein, who is also representing the Department of Roads and Public Works, indicated that Joh Arch Investments was "oblivious" to the settlement agreement that was reached on September 27 2017.

"Prior to February 13 2018, Mr Borman (the department's legal adviser) was unaware of the existence of Mr Sibisi from Joh Arch Investments, who was induced to sign the settlement agreement – to his detriment."

He stated that the settlement was agreed to upon Scholtz's "ceaseless insistence despite pending legal proceedings".

"During various interactions, I requested him to give me something in support of his right to compensation."

Marabe explained that the HOD had summoned the legal adviser, "on short notice", to prepare a presentation on the validity of the points raised by Scholtz regarding certain terms of the procurement agreement.

The legal representative for Scholtz, senior advocate Stefan Grobler from Bloemfontein, said that the HOD for the Department of Roads and Public Works, Kholekile Nogwili, "made no sense".

"You cannot simply undo a legal settlement agreement. It is highly improbable for a major decision to be considered (regarding the settlement agreement) without

it being discussed. The MEC would have had to be given full exposure.

"If they wish to undo an administrative act, then what is unlawful needs to be conveyed. The events leading up to the meeting that took place on September 27 2017 need to be laid bare."

Grobler pointed out that his client's initial claim of R57 million was reduced to R36.8 million following extensive negotiations with the department's legal adviser.

"The liquidators defaulted on payment obligations."

He insisted that the department had been negligent in failing to obtain sound and proper advice.

"You cannot benefit from your own wrongdoing."

Attorney Janine Snyders pointed out that the director of Joh Arch Investments, Sibisi, was presented with the settlement agreement that had already been signed by the department's accounting officer, its legal adviser and Scholtz.

"He did not suspect that there was anything strange or sinister when he was presented with the document in the department's legal adviser's office. He was brought under the impression that the matter had been settled."

She indicated that the settlement agreement could only be set aside if non-compliance could be proven on the side of the department.