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State blunder to cost well over R120m

16-year legal battle over R44m had 'no reasonable prospect of success'

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The taxpayer will have to foot a more than R120m damages bill to an East London firm of architects after 16 years of extraordinary tender and legal blunders by the Eastern Cape government.

The Constitutional Court – the final destination of a disastrous decade-long legal battle – has ruled in favour of Ikamva Architects, which must now be paid at least R120m in damages and interest after government fouled up a 2003 tender.

In that year, Ikamva was appointed by the public works department to carry out the architectural consultancy work on the R1.3bn Frere Hospital upgrade. Bizarrely, shortly after being appointed, the work was again advertised and another firm of architects was appointed. It turned out that the health department had appointed the Coega Development Corporation (CDC) as the implementing agent to oversee the upgrade of all healthcare facilities.

The CDC, unaware that public works had already signed a contract with Ikamva, had advertised and appointed another service provider.

Ikamva said in court papers that this constituted a repudiation of the agreement and sued the departments for R44m in damages. This, said the firm, was the profit Ikamva would have made off the deal had the department honoured its contract.

What followed was a mammoth legal battle, with Ikamva winning every step of the way.

The case bounced from a single judge in the high court to a full bench of three judges, up to the Supreme Court of Appeal (SCA) and back down to the high court.

It then went back to the SCA and, finally, the ConCourt.

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

Ikamva Architects will score this amount despite not delivering a single service

At the end of July, in a single paragraph, the ConCourt ruled that the case "did not engage its jurisdiction". It also repeated what every court had said along the way: The government's appeal had "no reasonable prospect of success".

Arguably, one of the worst legal blunders to be made was the government's decision in 2016 to waive the so-called "in-duplum" rule. In terms of this age-old rule, interest on an owed amount can never exceed the principal debt. So, if the state owed Ikamva R44m, even after 16 years the interest on that amount could not exceed R44m – meaning that the amount owed would be R88m. By waiving this rule, the debt will now be considerably more. By 2016, it already stood at the maximum of R88m, with maximum interest. Add another 15.5% annual interest to that since 2016 and the amount is likely to be well over R120m.

Ikamva Architects will score this amount despite – through no fault of its own – not delivering a single architectural o any other service to the gov ernment.

The government will als have to foot its own and Ikam va's legal fees which, after decade, are likely to be huge.

Public works spokesperso Vuyokazi Mbanjwa would onl say that public works, healt and the office of the premie were studying the one-pag ConCourt decision hande down on July 29 with the "se riousness and urgency it de serves".

Ikamva had not yet com mented by the print deadline.