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Provincial government liable for huge payout to Ikamva Architects after 16 years of tender and legal blunders

Taxpayers set to foot R120m damages bill

Adrienne Carlisle

The taxpayer will have to foot a damages bill of more than R120m 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 the government fouled up a 2003 tender.

Ikamva was appointed by the public works department to carry out architectural consultancy work on the R1.3bn Frere Hospital upgrade.

Bizarrely, shortly after being appointed, the work was advertised again and another firm of architects 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 was the profit Ikamva would have made off the deal had the department honoured its contract, the firm said.

A protracted legal battle followed, 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 to the high court.

It then went back to the SCA and, finally, to the Constitutional Court.

The health and public works departments were criticised by the courts repeatedly for their serial default, recklessness and repeated failure to comply with court orders.

ConCourt ruled that the case 'did not engage its jurisdiction'

At the end of July, in a single paragraph, ConCourt ruled that the case "did not engage its jurisdiction".

It 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 made was the government's decision in 2016 to waive the "in duplum" rule.

In terms of this rule, interest on an owed amount can never exceed the principal debt.

So, if the government 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 be considerably more now.

By 2016, it already stood at the maximum of R88m, with maximum interest.

Add a further 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 or any other service to the government.

It will be a massive blow to the fiscus.

The government will also have to foot its own and Ikamva's legal fees which, after a decade, are likely to be huge.

Public works spokesperson Vuyokazi Mbanjwa said that the departments of public works and health and the office of the premier were studying the one-page Constitutional Court decision handed down on July 29 with the "seriousness and urgency it deserves".

Ikamva had not yet commented through its attorney, Gary Stirk, at the time of going to print. – *Daily Dispatch*