

Public works' huge legal headache over Ikamva

ADRIENNE CARLISLE

The Eastern Cape public works department wants to breathe life into a 16-year case in terms of which it has been ordered to pay an architect firm about R41m in damages.

After a long court case culminating in judgment in 2015 against the health and public works departments, the interest has almost tripled the amount and the state is now liable for about R120m. Each day it fails to pay, the amount grows by about R50,000.

The case has wended its way through the high court, to the Supreme Court of Appeal and all the way to the Constitutional Court, with the departments receiving a drubbing every step of the way.

The Concourt ruled in September in favour of Ikamva

Architects, slamming shut the door to any further appeals against the 2015 judgment.

It all goes back to a 2003 decision in term of which public works appointed Ikamva to carry out the consultancy work on the R1.3bn Frere Hospital upgrade. But, after concluding the contract with Ikamva, the work was again advertised and another firm of architects was appointed. It turned out 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 of the contract with Ikamva, had advertised and appointed another service provider.

Having exhausted the appeal process all the way up to the Concourt, the public works has now defiantly resorted back to

court. This time it wants the court to review and set aside its own 2003 decision to award the multimillion-rand contract to Ikamva in the first place.

It says the fiscus would be denuded of desperately needed funds for public healthcare.

While the department seeks to dig itself out of a very deep legal hole of its own making, the 2015 judgment remains intact – meaning the department remains obliged to pay out Ikamva some R120m – or have its assets seized to satisfy the debt.

Ikamva has agreed not to execute against the debt until the outcome of the department's review application.

But whichever way the review application goes is academic, Ikamva's counsel Advocate Izak Smuts SC will argue.

Legally, a judgment that has not been successfully appealed or rescinded remains in place and the 2015 judgment has withstood every appeal.

In his argument, Smuts says: "Under the circumstances, the inquiry ... into the reviewability or otherwise of the decisions which preceded the contract in dispute is entirely academic, and a waste of this honourable court's time and energy."

The matter was postponed in the Grahamstown high court on Friday, with no date set for the hearing.

Advocates Max du Plessis SC, Sarah Pudifin-Jones and Toni Palmer instructed by the state attorney and Mabece Tilana Inc appeared for the public works department.

Advocates Smuts SC and Gavin Dugmore appeared for Ikamva.

16 years of interest have almost tripled the original R41m award