

## Behind the news

# The peculiar gift that just can't stop giving

### The Ikamva contract battle government just won't let go of

ADRIENNE CARLISLE

The story on the legal saga involving Ikamva Architects and the two departments, public works and health, is an outrageous one that will leave a bitter taste in the mouth of the taxpayer.

It is a story I first picked up in about 2015 when the Grahamstown High Court granted default judgment against the two departments in Ikamva's favour for R41m.

It was, as far as I could ascertain, one of the biggest default judgments ever given against a provincial government.

It was to become a case the lawyers jocularly referred to as the "gift that keeps on giving".

Indeed, the legal fees after 16 years of staggering blunders by the government and the state attorney must, by now, be astronomical.

It all began long before I picked up on it.

Public works awarded the firm of architects a lucrative

contract in about 2003 to carry out the architectural consultancy work on the R1.3bn Frere Hospital upgrade.

Unfortunately, the health department had appointed the Coega Development Corporation (CDC) as the implementing agent to oversee the upgrade of all health facilities.

The CDC defiantly contracted another service provider to do the same work.

Ikamva sued for R41m — the profit it would have made if it had been allowed to do the work it was contracted to do.

I write mostly on legal matters heard in the Grahamstown High Court.

After three decades in journalism — two of which were in the Eastern Cape — I have built up a rapport with many wonderful legal practitioners in the province.

Some will tip me off when there is case worth writing about.

I came to regret this particular tip-off.

The case just never seemed to end despite definitive and scathing judgments.

Miscommunication between the departments, the



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state attorney and their legal representatives led to the departments ignoring court orders to produce documents.

Their defence was in 2015 unceremoniously thrown out by the fed-up court and default judgment granted against it.

The departments opted to appeal.

They inexplicably simultaneously sought to have the judgment rescinded.

They failed at both, and the legal costs mounted.

More than a year later and the damages payment had swollen to R82m.

Luckily for the taxpayer there is an old legal rule in place which says no matter how long a case drags on, the interest can never exceed the capital amount.



HELP NEEDED: Frere Hospital in East London is yet to be upgraded. Picture: SIBONGILE NCALWA

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So, the R41m could, over time, double with the interest but that was the end of it.

The departments opted to fight on.

Like a double-headed Goliath, perhaps they thought they could crush the relatively small firm with legal costs.

The dogged little firm fought on through appeals to a full bench of the high court, to the Supreme Court of Appeal and finally the Constitutional Court.

At some point the most astonishing thing happened.

The firm's legal counsel argued that Ikamva was being financially prejudiced by the length of time the legal war being waged was taking.

In an unprecedented move, the departments' legal team agreed to waive the rule which restricts interest on the capital amount.

It was a concession that cost them dearly.

In 2019, their case was boot-ed out by the Constitutional Court.

This was surely — as I had reported several times — the end of the road.

By now the unrestricted in-

terest had swollen the amount to roughly R120m and was accumulating at a rate of about R50,000 a day.

Undeterred by all the judgments that went against it, the public works department has now decided to try a different legal route.

It has started the case all over again.

This time it is asking the court to review and set aside its own 2003 decision to award the contract to Ikamva Architects in the first place.

Unfortunately, while the department seeks to dig itself out of a very deep legal hole of its own making, the 2015 judgment remains intact — meaning even if it succeeds in this new case, its obligation to pay out Ikamva some R120m does not simply vanish.

It may turn out to be the most expensive academic exercise in history.

The gift that keeps on giving to the lawyers is one that is sucking the fiscus dry to the tune of an additional R50,000 every day.

And no-one seems to care. Watch this space for the next instalment.