

# Public works loses yet another bid to get out of paying R115m in damages

**ADRIENNE CARLISLE**

The Eastern Cape public works department lost yet another court bid to avoid paying an architect firm more than R115m in damages for work the department never allowed it to perform.

The department has been bruised and bloodied by the more than decade-long legal war it has waged against East London-based Ikamva Architects.

The case has traversed the high court, Supreme Court of Appeal, and the Constitutional Court with the department losing every step of the way.

The original damages amount of R41m — which the high court in Makhanda ordered the department to pay Ikamva in 2015 has, over six years, increased to more than R115m with interest. The interest increases by thousands of rand every day.

At some point during the court proceedings, the department inexplicably waived the century old in duplum legal rule in terms of which the interest on a judgment debt can never amount to more than double the capital amount.

If the department had not waived this rule, the accrued damages could never have amounted to more than R82m.

Instead, the department will continue to pay the full 15.5% per annum interest until the debt is paid in full.

To date, lawyers for Ikamva have estimated the interest has amounted to more than R74m bringing the total owed to more than R115m — almost treble the original damages. This will continue to grow by about R17,000 a day until it is paid in full.

The debacle started with an absurd administrative bungle in 2003 when public works initially appointed Ikamva to do

the consulting work on the massive Frere Hospital upgrade project.

Soon after the contract was signed and sealed, the provincial health department, via its implementing agent, the Coega Development Corporation, advertised and appointed another firm to do the same work.

Ikamva successfully sued for R41m damages for unlawful repudiation of the contract. This is the profit it says it would have made on the project.

After appealing all the way up to the Constitutional Court, the department attempted to revisit the matter in the high court in 2019 using a different strategy.

It asked the high court to review and set aside its own 2003 decision to award the multimillion-rand contract to Ikamva Architects in the first place as it claimed no proper tender procedure had been followed.

But judge Thami Beshe ruled

the department was effectively trying to revisit an issue which had already been decided on by the court. She dismissed its application. In doing so, she criticised the delays caused by the department in the matter saying it would cause huge prejudice to the public purse.

This was a “bitter pill to swallow given the needs of the majority of the people of the Eastern Cape and the lack of resources”, she said.

This week she refused the department leave to appeal against her judgment, ruling there was no prospect of it succeeding on appeal.

But, Ikamva cannot quite yet collect on its debt. The department has also sought to restrain it from executing against the massive debt.

This application will be argued before a full bench of the high court sitting in Makhanda on May 14.

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