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Title: Departments fail in bid to escape paying R100m to architect firm

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Author: Adrienne Carlisle

● **Saga over Frere Hospital upgrade contract has dragged on for almost two decades**

Departments fail in bid to escape paying R100m to architect firm

Adrienne Carlisle

The Eastern Cape public works and health departments will have to dig deep to pay more than R100m in damages to an architect firm after they lost yet another legal bid to avoid doing so.

Yesterday's decision by the Supreme Court of Appeal must surely be the final nail in the coffin of a matter that has dragged through the courts for close on two decades, with the government losing every step of the way.

At issue is a 2015 Makhanda high court default judgment in

terms of which the departments were ordered to pay Ikamva Architects R41m in damages.

The "damages" arose after the public works department reneged on a contract it had signed with Ikamva in terms of which the company was appointed to do the consulting work on the huge Frere Hospital upgrade project.

Ikamva was never allowed to do the work it was contracted to do.

Since then, the two departments failed in numerous bids to appeal or have the default judgment rescinded.

The damages amount has more than doubled with interest since then and now stands at well more than R100m.

In 2019, the departments tried to tackle the matter from another angle.

They asked the court to set aside their own 2003 decision to award the tender to Ikamva in the first place.

They wanted the tender award and subsequent contract set aside. They also wanted an order in terms of which they were absolved from making any further payment to Ikamva.

The Makhanda high court last year dismissed this applica-

tion and refused the departments leave to appeal.

Judge Thamié Beshe ruled that the departments were simply trying to revisit an issue already decided on by the court.

The departments did not deny this, indicating the fiscus would be denuded of desperately needed funds for public health care if they had to pay Ikamva for work that they admitted they never allowed the firm to do.

Not content with Beshe's decision, the departments petitioned the SCA for leave to appeal. But that court refused yesterday, saying their appeal had

no prospect of succeeding.

Judge Trevor Gorven, with judge Ian van der Merwe, and acting judges of appeal Anneli Basson, Leonie Windell and Gayaat Salie-Hlophe agreeing, said the 2015 default judgment remained intact and had to be implemented.

Gorven said the departments had been transparent about why they had resorted to "self-review" as they wanted to "render nugatory" the 2015 default judgment.

If granted, it would have the effect of "permanently preventing execution by Ikamva of a valid and binding judgment

granted in its favour". Gorven found it was not permissible for a court to excuse payment of a valid and binding order of court under the circumstances put forward by the departments.

"The departments attempted to enlist the assistance of the court in their efforts to undermine the dignity and authority of the courts by rendering nugatory a perfectly valid, binding, enforceable, extant judgment. In my view, this can and should not be countenanced."

He ordered the departments to pay the costs of the application. — *Daily Dispatch*

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