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Eastern Cape departments lose another battle in long-running legal dispute

Damages for Ikamva Architects continue to swell as health and public works officials refuse to concede defeat

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The Eastern Cape public works and health departments have, once again, lost a major legal skirmish in their decade-and-a-half long litigation war to avoid heeding a judgment to pay Ikamva Architects more than R100m in damages.

A number of judges from the Eastern Cape bench, the Supreme Court of Appeal and the Constitutional Court, over more than 12 years, have ruled against the two departments, whose farcical legal and other blunders in this matter have earned them stern judicial condemnation — and yet they battle on.

This week, the Constitutional Court dismissed an application for leave to appeal against a judgment of the Supreme Court of Appeal which went against

the two departments.

The original damages of R41m ordered in a default judgment handed down in 2014 has swollen to an estimated R120m with interest.

This is after one of the departments' earlier legal blunders when they inexplicably agreed to waive a century-old legal rule in terms of which the interest on a judgment debt can never amount to more than double the capital amount.

Had they not done so, the damages, even with interest, could not have increased to a final payout of more than R82m, no matter how long they spun out the legal process.

If Ikamva Architects succeeds in finally getting paid out, it will get well over R100m despite, through no fault of its own, not having done a day's work on the 2003 tender it won to carry out the architectural consultancy work on the R1.3bn Frere Hospital upgrade.

Shortly after being appointed and the contract signed in 2003, the work was again advertised



LEGAL WARFARE: Frere Hospital is at the centre of a long-running legal dispute between the Eastern Cape departments of health and public works and Ikamva Architects. Picture: MARK ANDREWS

and another firm of architects was appointed.

Ikamva said in court papers that this constituted a repudiation of the agreement and sued the departments for R41m in damages.

The two departments' initial legal blunders included ignoring court orders to discover certain documents before the case even began.

This led to their defence being struck out by the court and, ultimately, default judgment being granted against them to the tune of R41m.

Since then the departments have lost every application to rescind and appeal against that default judgment.

They have been to the SCA and the Constitutional Court twice along the way.

The courts have repeatedly criticised the departments for

what they termed their serial default, recklessness and repeated failure to comply with court orders.

Already in 2014 judge Murray Lowe described the entire legal debacle as a sorry tale with a protracted and contentious history.

In 2017, judge Belinda Hartle, in dismissing a rescission application, unequivocally told the departments they had burnt their bridges and had nowhere left to go.

Not deterred by this the departments battled on, unsuccessfully appealing against her refusal to rescind the default judgment.

In dismissing that appeal in 2019 a full bench of the high court described the case as having a long and torturous history.

The departments then tried a

different legal tactic, asking the court to set aside their own 2003 decision to award the tender to Ikamva in the first place, which failed.

In 2021, judge Thamie Beshe ruled that the departments were simply trying to revisit an issue already decided by the court.

She refused them leave to appeal, so the departments once again petitioned the SCA.

Unusually, in refusing the petition, the SCA gave a full judgment instead of its usual one-page order.

In the majority judgment the court said the departments were trying to use the SCA in an effort to undermine the dignity and authority of the courts by rendering nugatory a perfectly valid, binding, enforceable, extant judgment.

Despite this the departments

again appealed to the Constitutional Court.

In a one-page order the court this week declined to hear an appeal against the SCA judgment, saying it held no prospect of success.

But the departments are still not done.

They have now applied to rescind a 2011 judgment ordering them to produce certain documents which they say started the series of events. Judgment on that one is still outstanding.

Besides the roughly R120m the departments may have to pay Ikamva, the legal costs of their failed legal warfare at this stage must be astronomical.

The case has involved numerous attorneys, correspondent attorneys and senior and junior counsel for more than 15 years.