



CONSTITUTIONAL COURT OF SOUTH AFRICA

Department of Transport and Others v Tasima (Pty) Ltd Tasima (Pty) Ltd and Others v Road Traffic Management Corporation and Others

CCT 182/17 and CCT 240/17

Date of judgment: 17 July 2018

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

On 17 July 2018 at 10h00, the Constitutional Court handed down a unanimous judgment in two consolidated applications for leave to appeal against decisions of the High Court of South Africa, North Gauteng, Pretoria (High Court) as per Potterill J (CCT 182/17) and Tuchten J (CCT 240/17). Both cases have their genesis in the extension of an agreement between Tasima (Pty) Limited (Tasima) and the Department of Transport (DoT) in terms of which Tasima was to operate and administer the electronic National Information System (eNaTIS system) on behalf of the DoT, and the subsequent declaration of invalidity of the extension of the agreement by this Court in *Department of Transport v Tasima (Pty) Limited* 2017 (2) SA 622 (CC) (*Tasima I*) on 9 November 2016.

In *Department of Transport v Tasima* (CCT 182/17), the background facts were that Tasima approached the High Court after the initial hearing of this Court in *Tasima I* but before judgment was delivered. Tasima approached the High Court to execute the order of the Supreme Court of Appeal pending the final determination of the dispute in *Tasima I*. The High Court (per Basson J) ordered the DoT to approve certain purchase requisitions presented by Tasima and make payments to Tasima for its services in operating and administering the eNaTIS system. The DoT sought to appeal this decision, but the parties later settled the matter before the application for leave to appeal was heard, and the subsequent settlement agreement was made an order of the High Court.

In *Tasima v Road Traffic Management Corporation* (CCT 240/17), a dispute arose between Tasima and the Road Traffic Management Corporation (RTMC) as to the time-frame within which Tasima was required to handover the eNaTIS system and its accessories. The mandated hand-over was a direct result of the Constitutional Court's order in *Tasima I*, however, the parties had divergent interpretations of the court order.

The dispute in CCT 182/17 concerns Tasima's successful application to the High Court in which it was awarded an order in terms of section 18(3) of the Superior Courts Act to execute the order of the Supreme Court of Appeal (which upheld the validity of the extension of the agreement) despite it being the subject of an appeal, and an order made by agreement between Tasima and DoT to regulate the interim situation pending the outcome in *Tasima I*.

Before the Constitutional Court, the DoT sought leave to appeal against the order of Potterill J in terms of which she held that the two previous orders by Basson J were unaffected by the Constitutional Court's judgment in *Tasima I* and that the Constitutional Court's order, properly construed, had no bearing on the DoT's obligation to comply with all previous court orders issued after 23 June 2015 but before 9 November 2016.

In a unanimous judgment written by Petse AJ, the Constitutional Court held that both orders had legal force and effect from the time they were granted and for so long as the declaration of invalidity – effective from 23 June 2015 – had not been made. Although the declaration of invalidity made by the High Court was confirmed by the Constitutional Court in *Tasima I* on 9 November 2016, this confirmation has retrospective effect from 23 June 2015. Accordingly, Tasima had no legal basis to enforce the orders by Basson J in the face of the judgment of the Constitutional Court in *Tasima I*.

The Constitutional Court considered the specific nature of each order. An order in terms of section 18(3) of the Superior Courts Act serves only to regulate the interim position between the litigants from the time when such an order is made until the final judgment on appeal is handed down. An order granted by agreement between the parties is still to be interpreted using the normal tools of interpretation. Where such an order expressly states its interim nature, the order will not be enforceable upon the final decision in respect of the underlying dispute between the parties by an appeal court.

The Constitutional Court therefore upheld the DoT's appeal and set aside the decision of the High Court. The Constitutional Court also set aside the costs orders of the Supreme Court of Appeal and the High Court in the DoT's applications for leave to appeal in those courts and granted the DoT a favourable costs order in relation to those applications.

The dispute in CCT 240/17 concerned the proper interpretation of the Constitutional Court's order in *Tasima I* where it confirmed the invalidity of the extension agreement with effect from 23 June 2015, and ordered Tasima to hand over the eNaTIS system and related services to the RTMC within 30 days of its order. The order also provided that unless an alternative transfer management plan was agreed to by the parties within 10 days of the order, the hand over was to be conducted in terms of the migration plan set out in schedule 18 of the Turnkey Agreement.

Before the Constitutional Court, leave to appeal was sought against the order of the High Court (per Tuchten J) which directed Tasima forthwith to vacate the eNaTIS system premises and to hand over the system to the RTMC. Tasima was satisfied that the RTMC is to remain in occupation of the premises and to continue to operate the eNaTIS system. However, Tasima sought certain declarators from the Constitutional Court, which it argued would potentially avoid future litigation.

Again, in a unanimous judgment also written by Petse AJ, the Constitutional Court held that the matter was moot as the relief sought by Tasima would have no practical effect and rejected Tasima's argument that the matter was not moot because a definitive pronouncement by the Constitutional Court would assist in eliminating or reducing further litigation. The Constitutional Court also held that given the factual matrix, it was not in the interests of justice to hear the envisaged appeal.

The Constitutional Court dismissed Tasima's application for leave to appeal and granted a costs order against Tasima.