

Supreme Court of Appeal of South Africa

MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 28 September 2007

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

KWAZULU CMS MONITORING SYSTEMS

v

KWAZULU-NATAL GAMBLING BOARD AND OTHERS

The Supreme Court of Appeal today upheld an appeal by Kwazulu CMS Monitoring Systems (PTY) Ltd ('CMS Monitoring') against a decision of the Pietermaritzburg High Court declaring that the Kwazulu-Natal Gambling Board did not have the authority to enter into a contract with CMS Monitoring for the provision of a central electronic monitoring system (CEMS). The SCA held that the board did have the authority.

The facts were these: Pursuant to a public tender process CMS Monitoring concluded a contract with the board for the provision of a CMS in March 2004. The function of the CMS was to assist the board to monitor the functioning of some 5000 gambling machines, known as limited payout machines. The machines were to be located at sites outside casinos and bingo halls and each would be connected to and would transmit information to the CEMS. Shortly after the conclusion of the contract, the board allegedly repudiated it. This resulted in CMS Monitoring suing the board for damages. One of the disputes which arose is whether the board had had the authority to enter into the contract.

The dispute was over the interpretation of regulation 156(8) of the regulations promulgated under the Kwazulu-Natal Gambling Act 10 of 1996. It has now been replaced. At the time of the contract's conclusion it read as follows:

'The electronic monitoring system referred to in this regulation shall be a single one operated by the Province or entity contracted by the Province which shall have no other interest in respect of gaming in the Province.'

The High Court interpreted the words 'operated by the Province or entity contracted by the Province' to mean that the provincial executive, not the board, had the authority to enter into the contract. The SCA, however, interpreted it differently. It found that the regulation did not take away the board's authority to enter into the contract, which was implicit in the preceding regulations, reg 156(1) to 156(7). It also held that the word 'Province' was defined in the Act to mean the 'Province of Kwazulu-Natal' and did not mean the provincial

executive. Furthermore it held that to confer the authority on the provincial executive as a political entity, as the High Court's interpretation had, is inconsistent with the purpose of the Act which is to place the responsibility for gambling in the hands of an independent board.

The interpretation of reg 156(8) was the only issue that the High Court and SCA considered. The remaining issues are pending in the High Court.