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 Tuesday 2 April 2019 at 10h00, the Constitutional Court handed down judgment in an application for leave to appeal against a decision of the Supreme Court of Appeal. The Supreme Court of Appeal upheld an appeal by Waymark Infotech (Pty) Limited (Waymark) against the dismissal of its claims against the Road Traffic Management Corporation (RTMC) by the High Court of South Africa, Gauteng Division, Pretoria (High Court). The High Court upheld the defence raised by the RTMC that it was not bound by the terms of a service level agreement (the agreement) that it had concluded with Waymark because the agreement was not authorised by the Minister of Finance (Minister) and no ministerial approval was in fact sought.

On 31 March 2009, the RTMC and Waymark entered into the agreement pursuant to a valid procurement procedure in terms of which Waymark undertook to develop and install an Enterprise Resource Planning System for the RTMC. The agreement set delivery milestones beyond the financial year in which it launched the tender process. The Minister did not approve the agreement.

On 20 May 2014, following a dispute about payment and after partially performing its contractual obligations, Waymark purported to cancel the agreement with the RTMC. Waymark launched an action for damages flowing from the RTMC’s alleged repudiation of its contractual obligations. The RTMC counter-claimed that it is not bound by the agreement, relying on two provisions in the Public Finance Management Act (Act).
In a unanimous judgment penned by Petse AJ, the Constitutional Court granted leave to appeal, but dismissed the appeal by the RTMC. It held that the agreement would only have needed the authorisation of the Minister if it was an agreement to borrow money, issue a guarantee, indemnity or security, or if the agreement was any other transaction that binds or may bind a public institution to any future financial commitment. In the context of the facts of this case, the agreement in question was not such an agreement. It was an agreement that was not in any way similar to a credit or security agreement. Instead, it was a procurement contract. To read the Act as requiring authorisation for such agreements would frustrate the scheme of the Act and impose unnecessary burdens on the administration. Ministerial authorisation was also unnecessary given the numerous other checks imposed by the Act on transactions of this nature.