

Invalid contract? You can still get payment!

Disputes between organs of the state and service providers due to non-payment of services rendered, frequently appears in the news. Especially where parties allege that government tenders were allocated illegally, arguing that those tender agreements are invalid.

In the matter of Greater Tzaneen Municipality v Bravospan 252 CC (2024) ZACC, the Constitutional Court confirmed that a service provider would be entitled to damages, even if the contract is illegal or invalid.

In this matter, Bravospan 252 CC entered into a fixed-term contract with the Greater Tzaneen Municipality to provide services. The contract's value was R2.7 million. Prior to the expiration of the contract, it was extended by the municipality. The service provider continued to provide the required services during the extension period. The Municipality eventually did not pay for the additional services rendered during the extension period, alleging that the extension did not comply with the internal procurement processes, policies and procedures which are designed to ensure fair and transparent procurement practices.

The extension was valued at R9,6 million for 24 (twenty-four) months.

In its defence of non-payment, the Municipality claimed that the contract was invalid and that they are not obliged to pay the service provider. The Municipality successfully applied to the High Court of Limpopo for a declaratory order declaring the extension of the contract invalid.

Bravospan then issued summons against the municipality for payment of the rendered services. They were successful and received an order for payment.

The Municipality was aggrieved and appealed the decision. The Supreme Court of Appeal held that the High Court was wrong to order Bravospan compensation in terms of the contract between the parties but awarded Bravospan compensation in terms of section 172 (1) (b) of the constitution. Section 172(1) (a) provides that a Court must declare that any law or conduct that is inconsistent

with the Constitution is invalid. Section 172(1)(b) provides that a Court may make any order that is just and equitable.

The matter was then referred to the constitutional court, where the court confirmed that constitutional damages were correctly awarded and that the municipality should pay Bravospan for the services rendered by an innocent contractor.