

THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED:
Date: 29th June 2022 Signature: _____	

CASE NO: A5035/2021

In the matter between:

AFRICAN NATIONAL CONGRESS

Appellant

and

EZULWENI INVESTMENTS (PTY) LIMITED

Respondent

Coram: Makume, Twala *et* Adams JJ

Heard: 02 March 2022 – The ‘virtual hearing’ of the Full Court Appeal was conducted as a videoconference on the *Microsoft Teams* digital platform.

Delivered: 29 June 2022 – This judgment was handed down electronically by circulation to the parties' representatives *via* email, by being uploaded to the *CaseLines* system of the GLD and by release to SAFLII. The date and time for hand-down is deemed to be 10:00 on 29 June 2022.

Summary: Contract – oral agreement for the supply of material and the rendering of related services – resolving factual disputes – proper, contextual and

purposive interpretation of agreement – conduct of contracting parties before, after and during agreement instructive –

The doctrine of estoppel and the principle of ostensible authority discussed – direct authority found, as well as ostensible authority – estoppel also applicable
Appeal dismissed.

ORDER

On appeal from: The Gauteng Division of the High Court, Johannesburg (Bhoola AJ sitting as Court of first instance):

- (1) The appellant's appeal against the order of the Court *a quo* is dismissed with costs, including the costs of the application for leave to appeal to the High Court and the application for leave to appeal to the Supreme Court of Appeal, as well as the costs consequent on the employment of two Counsel, one being a Senior Counsel.
 - (2) The order of the court *a quo* is confirmed.
-

JUDGMENT

Adams J (Makume *et* Twala JJ concurring):

[1] Ezulweni Investments (Pty) Ltd (Ezulweni), the respondent in this appeal, brought an application in the Gauteng Division of the High Court, Johannesburg, (the high court), in which it sought judgment against the African National Congress (ANC), the appellant, for payment of the sums of R100 050 000 and R2 415 000, together with interest on these amounts and costs of suit. These amounts were claimed by Ezulweni allegedly for services rendered and material supplied at the special instance and request of the ANC during 2019. Bhoola AJ granted the order sought and refused a subsequent application for leave to appeal, which leave to appeal to this court was ultimately granted by the Supreme Court of Appeal (SCA) on 22 April 2021.

[2] In issue in this appeal is whether the high court was correct in rejecting the ANC's defence to the claims based on the fact that, according to the ANC, the contract for the rendering of the services and the supply of material was invalid because of non-compliance with the requirements of the internal supply chain policy of the ANC. Put another way, the issue which requires adjudication in this appeal is simply whether there was in place a valid oral agreement between the ANC and Ezulweni in terms of and pursuant to which the ANC, during the period in the run-up to and during the 2019 national election, purchased from Ezulweni, which agreed to sell and supply to the ANC PVC banners, to be installed and later removed by them.

[3] The ANC pleaded that no contract came into existence. It claimed its internal requirements for the conclusion of the contract in question were flouted. The internal requirements, so the ANC averred, are laid down in its Supply Chain Policy, which required that the provision of services in relation to the election was conditional on (1) approval by the elections committee, (2) approval by its Treasurer-General (TG), and (3) the issue of a purchase order. There was no compliance with these prescriptive requirements, which means, so the ANC argues, that a valid contract did not come into existence. In any event, so the ANC further argues, its contracting officials (Messrs Mabaso and Nkholise) had no authority to bind it.

[4] The high court found in favour of Ezulweni, holding that an oral agreement, as contended for by Ezulweni, for the supply and installation of the banners was in fact concluded. This conclusion was reached by the high court after finding that the evidence did not support the existence of the preconditions contended for by the ANC and that its officials had the requisite authority.

[5] On appeal, the ANC's contentions were directed primarily at persuading the court that final relief should not have been granted in favour of Ezulweni as, applying the *Plascon Evans* rule, the court *a quo* should have accepted, without more, its version to the effect that Messrs Mabaso and Nkholise did not have the necessary authority to conclude the agreement on behalf of the ANC.

[6] All the same, the issues are to be decided in this appeal against the factual backdrop, as set out in the paragraphs which follows. In my view, the material facts are for the most part common cause, as supported by uncontested and unchallenged contemporaneous communiqués, notably successive *WhatsApp*¹ messages between 29 April and 6 May 2019, reporting on different phases of performance of the oral agreement.

[7] During January 2019, Ezulweni's chief executive officer, a Mr Renash Ramdas, and Mr Mabaso, the ANC's financial manager, met for purposes of a presentation by Ezulweni for the supply of branded goods to the ANC for the 2019 election campaign. The national elections were scheduled for 8 May 2019. The meeting took place at the ANC headquarters at Luthuli House. At the meeting, Mr Mabaso introduced Ramdas to Mr Nkholise, who had been appointed as the person responsible for procurement on behalf of the ANC for the duration of the election campaign. On 11 February 2019, Ezulweni provided Mr Nkholise with a quotation, listing the prices of each of the items in respect of which it had made a presentation at the January meeting, which included 'PVC banners'. A follow-up meeting took place on 20 February 2019 with Mr Ramdas, attended by Messrs Mabaso and Nkholise on behalf of the ANC. At this meeting Messrs Mabaso and Nkholise placed an order with Ezulweni to supply the ANC with 30 000 PVC banners, which Ezulweni agreed to supply and install, and remove after the elections, for an agreed amount of R70 per banner in addition to the unit price per banner. Ezulweni would arrange for the installation of the banners in prominent positions on street poles and at polling stations. At that time, the national election was less than three months away.

[8] Shortly after the meeting of 20 February 2019, Ezulweni commenced with the production and manufacturing of the banners.

[9] The ANC admits the meetings and what was discussed at these meetings, but denies that Messrs Mabaso or Nkholise represented that they had authority to bind the ANC. Moreover, the ANC confirms that they were kept abreast of the

¹ *WhatsApp* is defined by *Business Insider* (Grace Eliza Goodwin) as a multiplatform messaging app that allows one to inter alia send text messages.

developments throughout the course of the production of the banners, which reports also took the form of pictures being sent to the ANC by Ezulweni, depicting banners which had already been put up on street poles and other structures around the country.

[10] On 8 March 2019, as a result of the very substantial financial outlay which Ezulweni had to commit itself to in the manufacturing process, Ezulweni sought assurance from the ANC in the form of a 'formal order' or a 'demonstrative command', without it being required to be in written form. In response, the ANC provided Ezulweni with a letter on an ANC formal letterhead dated 2 April 2019, signed by the head of elections, Mr Fikile Mbalula, and addressed to the TG, Mr Paul Mashatile. A Comrade Mahlalela and Mr Mabaso were copied in on the letter, which reads as follows:

'Re: Signing of Election's Money

Dear Comrades

This communiqué serves to inform the Finance department that Comrade Lebohang Nkholise has been assigned as the signatory for bookings and money for the duration of the Elections Campaign.

Yours Comradely,

(Signed)

Head of Elections

F A Mbalula'

[11] By providing this letter, contends Ezulweni, the ANC clearly sought to convey that Nkholise, the person with whom Ezulweni had been dealing, had the necessary delegated authority to deal with the matter and to bind the ANC in respect of election-related expenditure during the election campaign. This is so because Nkholise had been appointed as the person responsible for procurement on behalf of the ANC. The letter and, more importantly, its provision to Ezulweni are not disputed by the ANC.

[12] On 4 April 2019, Ezulweni forwarded to Mr Nkholise two invoices, one in respect of the manufacture and sale of the banners, and the other in respect of the installation and removal of the banners. It is not in dispute that the ANC

received both invoices and at no point prior to these proceedings raised any objection to them.

[13] In accordance with the oral agreement between the parties, on 9 April 2019 Mr Nkholise forwarded to Mr Mabaso the ANC's final design of the banner. Mr Mabaso in turn forwarded the email containing the final design to Ezulweni. This transmission of the final design for the banner to Ezulweni is confirmed in the answering affidavit. Moreover, On the same day, being 9 April 2019, a letter was addressed by Mr Mbalula, as the ANC Head of Elections, to Mr Mashatile, which reads as follows:

'RE: OUTSTANDING PVC BANNERS

Dear Paul Mashatile

This letter serves to request your office to assist us with the payment for 30 000 PVC banners required for the election campaign. The total costs is R87 000 000, R2900 per PVC banner.

This letter is accompanied by an invoice from Ezulweni Investments.

Comradely yours

(Signed)

Cde Fikile Mbalula

Head of Elections

African National Congress'

[14] The letter is on an ANC letterhead. It represents, so it was submitted on behalf of Ezulweni, a clear acknowledgement by the Head of Elections, of the ANC's liability in terms of the invoice that had been received from Ezulweni. This letter corresponds with the invoice, which was sent under cover of the said letter. It mentions the same amount due in respect of the banners – R87 000 000 (exclusive of VAT). This letter was provided to Ezulweni to provide reassurance that the ANC accepted liability in terms of the oral agreement.

[15] Mr Mabaso in the ANC's answering affidavit says that the letter was prepared by Mr Nkholise, who had attached to it the electronic signature of Mr Mbalula. The idea was, so Mr Mabaso alleges, that the letter would at some point be placed before Mr Mbalula for confirmation. This apparently never happened as Mr Nkholise never got the opportunity to discuss the contents of the letter with

Mr Mbalula before the elections. This then means, so the version of the ANC continues, that the order and the contents of the said letter was never confirmed by Mr Mbalula, nor seen or approved by the Elections Committee or the TG.

[16] This is a material factual dispute between the parties – that is the authenticity of this letter and its contents. In my view, the version of the ANC on this aspect of the matter can and should be rejected on the papers, if for no other reason than the fact that it is far-fetched and implausible. The ANC's side of the story in that regard needs only to be stated for it to be rejected. Additionally, as correctly argued by Mr Dodson SC, who appeared for Ezulweni, with Mr Lubbe, this version is not confirmed under oath by Mr Mbalula nor by Mr Mashatile.

[17] I therefore accept as a fact that this letter was in fact sent by Mr Mbalula on the 9 April 2019, and it is yet another factor to be taken into consideration when deciding on whether the oral agreement, as alleged by Ezulweni, was indeed concluded between the parties. This was also what Mr Nkholise thought, hence his request to Mr Mbalula to ask Mr Mashatile that payment of the invoice be effected. Importantly, it belies the claim by the ANC that at the meeting on 20 February 2019 between Mr Ramdas and Messrs Mabaso and Nkholise, it was conveyed to Mr Ramdas, on behalf of Ezulweni, that they had no authority to represent the ANC and that the ANC would only conclude a contract once there was approval by the TG and after a purchase order had been produced.

[18] On 27 April 2019 Mr Ramdas sent a WhatsApp message to Mr Nkholise confirming that 20 000 of the 30 000 PVC banners could already be made available at that date. This message was in fact sent on a group, which Mr Ramdas had formed under the chat group name 'ANC 2019'. This means that the message from Mr Ramdas was in fact sent to and receive not just by Mr Nkholise, but also by Mr Mabaso. On the same day, namely 27 April 2019, Mr Nkholise responded with a 'thumbs up' emoji, implying at least his approval for what Ezulweni was doing and the fact that it was able to provide 20 000 banners at that time. On 29 April 2019 Mr Ramdas sent a WhatsApp message to both Messrs Nkholise and Mabaso attaching photographs of the banners that were awaiting erection, along with photos of banners already erected on street

posts. Such further reports, in the form of pictures were also sent subsequently. So, for instance, on 30 April 2019 Mr Ramdas sent, by WhatsApp, photographs of the posters that were erected on street poles on that day. On the same day Mr Ramdas sent a WhatsApp advising Messrs Mabaso and Nkholise that Ezulweni had paid the balance of the airfreight in the amount of R1.2 million in order to cover the cost of the importation of the PVC banners from China.

[19] On 2 May 2019 – some six days before the elections – Mr Ramdas sent a WhatsApp message to Messrs Mabaso and Nkholise, advising them that the logistics involved in the matter were huge and that Ezulweni had employed one hundred teams with each team having to install 300 banners. Thereafter, between 3 May and 6 May, a number of WhatsApp messages were sent to Messrs Mabaso and Nkholise informing them, and providing photographic proof of the operation by Ezulweni in erecting the banners on the street poles throughout South Africa. There was confirmation of receipt of these messages by Mr Nkholise, who, by the use emojis, approved what had been done by Ezulweni up to that point.

[20] On 4 May 2019 a meeting was held at the Garden Court Hotel in Eastgate between Ramdas and Messrs Mabaso and Nkholise at which they discussed the progress of the project and on which day he updated them on the installation of the PVC banners. The ANC admits the meeting but claims that the discussion at the meeting was merely aimed at advising Ezulweni that no contract could be concluded without the approval of the TG and the issue of a purchase order. This assertion is patently untrue if regard is had (a) to the content of the WhatsApp messages exchanged before and after this date as well as the communiques from the office of the ANC's Head of Elections, (b) to the fact that the election was four days away and (c) to what is said below regarding the absence of any such requirements in the supply chain policy.

[21] On 9 May 2019, the day after the elections, Ezulweni again sent the two invoices, this time correctly reflecting both the VAT amounts due, together with a combined statement reflecting the total amount due of R102 465 000. After the election and in accordance with the contract, Ezulweni caused all of the banners to be removed and placed in storage. The banners were then available to the

ANC for future use. However, despite Ezulweni's compliance with its obligations in terms of the agreement, no payment was forthcoming from the ANC, despite numerous requests by Ezulweni to the ANC that they settle their account, including numerous meetings with the ANC at which payment was requested.

[22] The only response received from the ANC to the numerous requests for payment was on 13 August 2019, when the ANC's TG acknowledged receipt of a request for payment and advised that 'the matter is receiving attention, I will revert to you in due course'. However, no such further response was forthcoming.

[23] It bears emphasising that the ANC had never disputed its indebtedness to Ezulweni, whether it be in discussions, conversations or meetings with Messrs Mabaso and Nkholise, or in correspondence addressed by them to Ezulweni. The ANC never, prior to the filing of its answering affidavit, disputed the authority of either Mabaso or Nkholise to bind it, despite various demands for payment. The fact that the denial first emerged in the answering affidavit speaks volumes. This validates a finding of authority on the part of Mabaso and Nkholise to act and the belated denial thereof is merely an afterthought.

[24] This brings me back to the primary question which requires an answer in this appeal, that being whether an oral agreement was concluded between Ezulweni and the ANC in terms of which branded material for the national elections on 8 May 2019, including PVC banners, were to be supplied and installed by Ezulweni to the ANC at an agreed fee of over R100 million. Related to and subsumed into this question is the issue whether or not the agreement was properly authorised by the ANC.

[25] This, in turn, requires this appeal court to interpret the agreement or the arrangement between the parties, which calls for a legal conclusion. It is trite that the proper interpretation of a contractual relationship between parties and the terms and conditions of such a contract is a legal and not a factual inquiry, which is to be done contextually and purposively, in addition to regard being had to what was expressly agreed upon by the contractors. As was said by the Constitutional

Court (per Khampepe J) in *University of Johannesburg v Auckland Park Theological Seminary and Another*² at para 69:

[69] What the preceding discussion clearly shows is that, to the extent that the Supreme Court of Appeal in the current matter purported to revert to a position where contextual evidence may only be adduced when a contract or its terms are ambiguous, it erred. Context must be considered when interpreting any contractual provision and it must be considered from the outset as part of the unitary exercise of interpretation. (My emphasis).

[26] The more modern approach to interpreting contractual instruments that was started by decisions such as *Natal Joint Municipal Pension Fund v Endumeni Municipality*³ and *Bothma-Batho Transport (Edms) Beperk v S Bothma and Seun Transport (Edms) Beperk*⁴ and carried through into judgments such as, for example, *Novartis SA (Pty) Limited v Maphil Trading (Pty) Limited*⁵, has conveniently been summarised as follows in *North East Finance (Pty) Limited v Standard Bank of South Africa Limited*⁶:

'The court asked to construe a contract must ascertain what the parties intended their contract to mean. That requires a consideration of the words used by them and the contract as a whole, and, whether or not there is any possible ambiguity in their meaning, the court must consider the factual matrix (or context) in which the contract was concluded.'

[27] Whilst the foregoing principles generally apply to written instruments and contracts, they find equal application in oral agreements and, importantly, in an assessment relating to the existence of a contractual arrangement between parties. The point is that the manner in which the parties themselves not only understood but implemented their contractual obligations is a very important aid in the interpretative process.

² *University of Johannesburg v Auckland Park Theological Seminary and Another* (CCT 70/20) [2021] ZACC 13; 2021 (8) BCLR 807 (CC)

³ *Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA)

⁴ *Bothma-Batho Transport (Edms) Beperk v S Bothma and Seun Transport (Edms) Beperk* 2014 (2) SA 494 (SCA)

⁵ *Novartis SA (Pty) Limited v Maphil Trading (Pty) Limited* 2016 (1) SA 518 (SCA)

⁶ *North East Finance (Pty) Limited v Standard Bank of South Africa Limited* 2013 (5) SA 1 (SCA)

[28] That brings me back to a discussion of the facts in the matter, to give context to the contractual arrangement between the parties, and the application to those facts of the foregoing principles. It can confidently be said that the conduct of the parties, especially that of the ANC, supports a conclusion that the agreement, as contended for by Ezulweni, was entered into between the parties. This conclusion explains the correspondence between them, including the transmission to the ANC of the invoices from Ezulweni, as well as the internal ANC communiqués from the Office of the Head of Elections to the Office of the Treasurer-General. It also explains why at no stage before the issue of the application in the court *a quo* – for a period from January to August 2019 – the ANC did not raise the supposed lack of proper procedures and authority in the conclusion of the agreement. It also explains why Ezulweni during the period leading up to the elections reported to the ANC on the progress made in the production, supply and installation of the banners, supported by photographic evidence. The ANC was told of a national roll-out of the elections material and everybody in the organization would no doubt have been aware that Ezulweni was responsible for that part of the election campaign.

[29] The foregoing, in my view, does not lend any credence to the version of the ANC that no agreement had been entered into – far from it. If no such agreement was entered into, why then did Ezulweni, seemingly with the blessing of the ANC, go to the trouble of embarking on this project which assumed epic proportion? I ask this question rhetorically.

[30] For this reason alone, I am of the view that the court *a quo* was correct in her finding that there came into existence an oral agreement, acted upon by Ezulweni, and in accordance with which the ANC is liable to it for the amounts claimed in the opposed application in the high court.

[31] It does not avail the ANC to rely on a letter dated 8 March 2019 from Ezulweni to it, which reads as follows:

'We thank you for the opportunity of having being requested to quote for the 2019 elections.

We also wish to inform you that due to time constrictions we urgently request that a formal order be issued so that manufacturing and delivery can begin in earnest.

We are now bordering the cut-off date for manufacture and we seek a definitive command as to whether or not to proceed.

Payment arrangements can be made thereafter as long as the initial quantities for production can be determined. We cannot stress the urgency of our request enough.

The Ezulweni Team would like to wish the African National Congress well as the 2019 elections draw closer.

We trust that all is well and look forward to hearing from you all soon.

Kindest regards,'

[32] As submitted on behalf of Ezulweni, this letter, like any document, should be interpreted contextually and purposively, rather than literally, taking into account a conspectus of all the evidence. (*Natal Joint Municipal Pension Fund v Endumeni Municipality*⁷; *University of Johannesburg v Auckland Park Theological Seminary and Another*⁸; *President of the Republic of South Africa v Democratic Affiance and Others*⁹).

[33] As explained by Ezulweni in its papers, time was of the essence. In order to properly implement the project, it was necessary to immediately commence with the manufacturing of the banners. There was a mere three months available to complete the printing, manufacturing and installation of the banners. After the meeting on 20 February 2019, work on the manufacturing of the banners commenced. Ezulweni ordered the steel and other materials for the frames and employed additional staff to assist in the production. The project required a substantial investment and a number of suppliers of material required deposits. The ANC, because of them experiencing cash-flow constraints, so Mr Nkholise explained at the time, was unable to assist with upfront funding of the project, but assured Mr Ramdas that Ezulweni would be paid immediately after the election campaign.

[34] This letter therefore does not, as contended by the ANC, indicate that no agreement was concluded between the parties, because no reference is made in

⁷ See footnote 3 supra;

⁸ See footnote 2 supra;

⁹ *President of the Republic of South Africa v Democratic Affiance and Others* 2020 (1) SA 428 (CC) at paras 76-79.

the letter to such agreement. This contention, in my view, is misguided. Interpreted contextually, the letter is consistent with the oral agreement. The work on the project, pursuant to the agreement, was about to begin. What is apparent from the letter is that it is Ezulweni merely looking for comfort, given the very substantial outlay that was going to be required.

[35] In interpreting the letter in the way that it does, the ANC also loses sight of what transpired subsequent to the letter, notably: (1) Ezulweni was provided with a copy of the letter dated 2 April 2019, in which the Head of Elections confirmed with the TG that Mr Nkholise had been assigned 'as the signatory for bookings and money for the duration of the Elections Campaign'; (2) On 4 April 2019 Ezulweni forwarded to Nkholise two invoices, one in respect of the manufacture and sale of the banners, and the other in respect of the installation and removal of the banners; and (3) On 9 April 2019 Mr Nkholise forwarded to Mr Mabaso the ANC's final design of the banner, who in turn forwarded the email containing the final design of the poster to Ezulweni; (4) Also, on 9 April 2019, the letter was addressed by Mr Mbalula to Mr Mashatile, requesting to assist with the payment for the 30 000 PVC banners; (5) A number of WhatsApp messages (several accompanied by photographs of banners already erected or awaiting erection) from Mr Ramdas to the contracting officials of the ANC between 27 April 2019 and 6 May 2019; and (6) On 4 May 2019 A meeting was held between Mr Ramdas and Messrs Mabaso and Nkholise at which they discussed the progress of the project and on which he updated them on the installation of the PVC banners.

[36] What is more is that a meeting was held on 11 June 2019 between Mr Ramdas and Mr Mabaso at which the latter acknowledged the ANC's indebtedness and undertook to resolve the matter. The ANC's interpretation of the 8 March 2019 letter is therefore inconsistent with its own subsequent conduct.

[37] The same can be said of the ANC's reliance on the letter dated 2 April 2019, which confirmed that Mr Nkholise had been assigned 'as the signatory for bookings and money for the duration of the Elections Campaign'. This letter was provided in response to a request by Ezulweni for an official letter of undertaking or an official order from the ANC. To argue, as the ANC does, that the letter does

not constitute 'conduct' on the part of the ANC from which an inference of direct authority could be drawn, is misplaced and ignores the context. The mere fact that the letter was purposefully presented to Ezulweni, constitutes conduct on the part of the ANC. The letter specifically makes mention of Nkholise's 'assigned' authority. Bear in mind that he was the person responsible for procurement during the election campaign.

[38] As was found by the court *a quo*, by providing the 2 April 2019 letter to Ramdas, the ANC sought to convey that Mr Nkholise, the very person who had ordered the banners together with Mr Mabaso, had the necessary delegated authority to deal with the matter and to bind the ANC in respect of election-related expenditure during the election campaign.

[39] For all of these reasons, I am of the view that the high court was correct in its finding that, on the evidence before it, the ANC is liable to Ezulweni on the basis of an oral agreement concluded between them.

[40] Even if I am wrong in my assessment relating to the existence of the oral agreement, as was found by the high court, the appeal still stands to be dismissed on the basis of the principles of estoppel and ostensible authority.

[41] The general rule relating to authority, in the context of the law of agency, is that, where one party to a contract purports to act in a representative capacity, but in fact has no authority to do so, the person whom he or she purports to represent is obviously not bound by the contract simply because the unauthorised party claimed to be authorised. That person (the principal) will however be bound by the contract if his or her own conduct justified the other party's belief that authority existed. (*South African Eagle insurance Co Ltd v NBS Bank Ltd*¹⁰).

[42] As submitted by Mr Dodson, the question therefore is whether the ANC's conduct *in casu* misled Ezulweni into believing that Messrs Mabaso and Nkholise had authority; or whether the same misrepresentation led to an appearance that they had authority to act on behalf of the ANC.

¹⁰ *South African Eagle insurance Co Ltd v NBS Bank Ltd* 2002 (1) SA 560 (SCA) at para 27.

[43] In answering this question, one needs look no further than the fact that the ANC appointed Mr Mbalula as its Head of Elections. This entailed him representing the ANC in the conduct, planning, organisation and implementation of the ANC's election campaign. Mr Mbalula in turn confirmed that Mr Nkholise had been assigned as the signatory for bookings and money for the duration of the Elections Campaign. It cannot be said clearer than this that Mr Nkholise was authorised to bind the ANC in a contract as the one in issue in this matter. If his authority was narrower than that, this ought to have been communicated to any party likely to contract with the ANC in relation to its procurement processes in the election campaign. There was no such communication, which means that there was a representation on the part of the ANC that Mr Nkholise had the necessary authority to enter into the agreement in question. This conduct on the part of the ANC, constituting the representation that Mr Nkholise had the necessary authority, entitled Ezulweni to hold the ANC to the representation of authority created.

[44] As alleged by Ezulweni, these statements and conduct, when taken as a whole, including omissions, by the ANC, its elections head, Messrs Mabaso and Nkholise, reasonably conveyed to a person in the position of Ezulweni, that Messrs Mabaso and Nkholise had the necessary authority.

[45] It is for these reasons that I would nevertheless, even in the absence of direct authority of Messrs Mabaso and Nkholise to act for the ANC, find that the ANC is bound by the agreement on the basis of the doctrine of estopped or that they had ostensible authority to do so.

[46] The appeal must therefore fail.

Costs of Appeal

[47] The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so. See *Myers v Abramson*¹¹.

¹¹ *Myers v Abramson*, 1951(3) SA 438 (C) at 455

[48] I can think of no reason to deviate from the general rule. The ANC should therefore pay Ezulweni's costs of the appeal.

Order

[49] In the result, the following order is made: -

- (1) The appellant's appeal against the order of the Court *a quo* is dismissed with costs, including the costs of the application for leave to appeal to the High Court and the application for leave to appeal to the Supreme Court of Appeal, as well as the costs consequent on the employment of two Counsel, one being a Senior Counsel.
- (2) The order of the court *a quo* is confirmed.



L R ADAMS
Judge of the High Court
Gauteng Local Division, Johannesburg

HEARD ON:	2 nd March 2022 – in a ‘virtual hearing’ during a videoconference on the <i>Microsoft Teams</i> digital platform.
JUDGMENT DATE:	29 th June 2022 – judgment handed down electronically
FOR THE APPELLANT:	Adv Kennedy Tsatsawane SC, with Advocate H N Moloto
INSTRUCTED BY:	Mncedisa Ndlovu & Sedumedi Attorneys, Illovo, Sandton
FOR THE RESPONDENT:	Adv Alan Dodson SC, together with Advocate Jan Lubbe
INSTRUCTED BY:	Sarlie & Ismail Incorporated, Johannesburg