

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: Friday 28 March

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*

**Street Pole Ads Durban v Ethekwini Municipality (06/07) [2008]  
ZASCA 33 (28 March 2008)**

In a judgment delivered today, the Supreme Court of Appeal has confirmed a judgment of the Durban High Court granting the Ethekwini municipality an order that an agreement between the first appellant, Street Pole Ads Durban, and the University of KwaZulu-Natal (the second appellant) was not enforceable against the municipality.

The legal battle had its genesis in an agreement between the municipality and the university in May 1999, launching the university's 'adopt a light' fundraising initiative. The parties agreed that the municipality would make available street poles for the university to hire out to 'sponsors'. The university would pay the municipality a royalty of 90% of gross income received – and the

municipality agreed to devote the bulk of this to community development projects.

At first the university's Centre for Innovation and Business Germination steered the project, but after difficulties in running it, the university no longer regarded it as part of its 'core business'. It therefore brought in Street Pole Ads, who in a second agreement contracted with the university to obtain the exclusive use of all the street poles covered in the first agreement. Thereafter Street Pole Ads, and not the university, would obtain 'sponsors' (advertisers) for the street poles, who would deal with it – and pay it direct – rather than the university.

But under this agreement, Street Pole Ads paid the university only 20% of its gross turnover – though the university continued to pay the municipality 90% of what it received. The municipality therefore received 90% of 20% of Street Pole Ads's gross turnover.

When the municipality objected to the second agreement in 2004, it started removing Street Pole Ads's material from its poles. But in November 2004, Street Pole Ads obtained an interim order from the Durban High Court requiring that the municipality restore the unilaterally removed advertisements.

The municipality now joined issue in the litigation, contending that the second agreement was unenforceable against it. In a judgment by Cameron JA, with which the remaining members of the court concurred, the SCA has substantially confirmed the approach of the Durban High Court. There was no technical or procedural bar to the municipality raising the enforceability of the second agreement. And that agreement violated the 'no subcontracting' prohibition the first agreement contained. The first

agreement plainly envisaged that the university would have a continuing role in the execution and furtherance of the 'adopt a light' project – whereas the second agreement entailed the university's wholesale abdication from that role.

This the first agreement did not allow the university to do without obtaining the express prior written consent of the municipality – which was never done.

The appeal was therefore dismissed with costs, including the costs of two counsel.