



# SUPREME COURT OF APPEAL OF SOUTH AFRICA

## MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**FROM** The Registrar, Supreme Court of Appeal  
**DATE** 29 September 2011  
**STATUS** Immediate

*Please note that the media summary is for the benefit of the media and does not form part of the judgment.*

### ***Clear Enterprises (Pty) Ltd v SARS (757/10) [2011] ZASCA 164 (29 September 2011)***

#### **Media Statement**

On 2 September 2011 the Supreme Court of Appeal (the SCA) acting in terms of s 21A of the Supreme Court Act struck an appeal by Clear Enterprises (Pty) Ltd, a Botswana based company, against a judgment of the North Gauteng High Court, Pretoria from the roll and ordered each party to pay its own costs. It indicated then that reasons would follow. Today it furnished those reasons.

The appellant owned three trucks which were detained by the first respondent, the South African Revenue Services (SARS) in terms of the Customs and Excise Act. SARS alleged that the vehicles were imported into South Africa in contravention of the Customs and Excise Act and the International Trade Administration Act. Two separate applications were launched by Clear Enterprises in the high court for the trucks to be restored to its possession. The International Trade Administration Commission (ITAC) seized the same trucks from SARS before the applications were argued in the high court. The high court dismissed both applications but granted leave to appeal to the SCA.

Section 21A of the Supreme Court Act provides that an appeal may be dismissed if the issues before the court are of such a nature that the judgment sought will have no practical effect or result. Clear Enterprises argued that the SCA should entertain the appeal because there were other pending matters where the questions of law were similar to those to be determined in the present appeal.

The SCA stated that once the vehicles had been seized by ITAC the present matter had become academic. In respect of the pending cases, the SCA held that it is trite that every case has to be decided on its own facts. According to the SCA, the parties

had misconceived the position, as the enquiry was a fact-based one as opposed to being a discrete point of statutory construction.

The SCA also stated that neither the parties nor the high court appreciated that the dispute which occupied them in both applications may not have been live or an existing one. The SCA held that courts should and ought not to decide issues of academic interest only. The SCA held that the present case is moot and found that the cumulative consequence of all the factors in the case is that no practical effect or result can be achieved in the case.

The SCA ordered each party to pay its own costs since neither party was an unwilling participant in the appeal and the decisive point on appeal was raised by the court and not one of the parties.

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