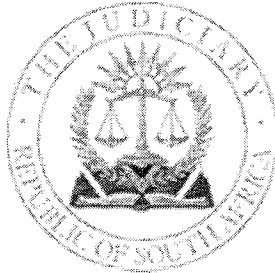


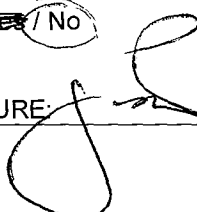
REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
LOCAL SEAT, JOHANNESBURG

CASE NO: A 5068/2018

DATE: 23 OCTOBER 2019

DELETE WHICHEVER IS NOT APPLICABLE	
1. Reportable: Yes / No	
2. Of Interest To Other Judges: Yes / No	
3. Revised	
DATE: 11/10/2019	SIGNATURE: 

In the matter between:

MINGS DISTRIBUTORS CC

APPELLANT

and

**THE INTERNATIONAL TRADE
ADMINISTRATION COMMISSION**

FIRST RESPONDENT

**THE MINISTER OF TRADE AND
INDUSTRY**

SECOND RESPONDENT

THE MINISTER OF FINANCE

THIRD RESPONDENT

**THE SOUTH AFRICAN REVENUE
SERVICE**

FOURTH RESPONDENT

THE SOUTH AFRICAN RESERVE BANK

FIFTH RESPONDENT

JUDGMENT

THE COURT

1. The appellant company imports used clothing, cuts this clothing into rags and sells the rags. It has, on some twelve occasions from 2004 received the benefit of a rebate on import duty. The import duty is in place to protect local industry and the rebate has been granted where the first respondent Commission assesses that granting the rebate will encourage job growth over the period of the grant of the rebate for a particular importer.
2. The appellant sought a rebate for the anticipated period of April 2016 to March 2017 in a signed application dated 28 April 2016. The Commission refused the rebate in a letter dated 30 June 2016. The appellant launched an urgent application in the High Court in Pretoria on 28 July 2016 under case number 60180/16 seeking the review of the refusal. By agreement, made an order of court the Commission undertook to

reconsider the application for a rebate. The Commission did so and refused the application for a rebate in a letter dated 14 September 2016. The appellant launched an application to review the second refusal and the matter came before Molahlehi J. My learned brother dismissed the application on the ground of mootness. The present appeal is brought with his leave. In this appeal the appellant seeks only an order that the mootness order be overturned and the matter be sent back to Molahlehi J to be dealt with on its merits.

3. In the urgent Pretoria High Court application, the sole member of the appellant deposed to the founding affidavit dated 28 July 2016 saying that “ *If the rebate permit is not issued by the end of August 2016, the Applicant’s business faces financial ruin and all its employees will have to be retrenched.* “ The deponent went on to say that “ *The Applicant has enough raw material to keep it in production until the end of August 2016, whereafter the Applicant will have to close its business and retrench all its employees.*”
4. In paragraph 13 of the founding affidavit, dated 25 November 2016 in the present case the same deponent says “ *I respectfully refer the court to my founding application [in the Pretoria High Court urgent application] and request that it reads the content as if specifically incorporated herein.* “
5. In the replying affidavit in the present case, dated 14 July 2017 the same deponent, between paragraphs 99 to 101 attempts to suggest that the doomsday scenario sketched in the founding affidavit in the urgent application with the purpose of persuading the court to hear the case as an urgent matter was not actually all that pessimistic a scenario.
6. We have two difficulties with the replying affidavit on this point. Firstly, the appellant seems to be changing tack to suit the wind as it blows on urgency and then as it blows on mootness. Secondly, in paragraph 99 the deponent, on 14 July 2017 says “ *At the time that the statement was made the applicant’s sole business was the production of wiping rags and cleaning cloths. Since October 2016 and due to the rebate permit not being granted, the applicant, as a temporary measure to honour its obligations in terms of contracts with customers, and in anticipation that it will be in a position to*

continue producing wiping rags and cleaning cloths when it is granted a permit, applied to ITAC for an import permit to import the finished product from Europe. " In paragraph 100 the deponent says " Ten of the sixteen employees, who were employed as cutters were retrenched as at 31 October 2016. Six others were retained to carry on the revised interim business. "

7. The appellant, in paragraphs 99 -100 of its replying affidavit in the present case deposed to on 14 July 2017 read with paragraph 13 of the founding affidavit in the present case put forward a case which it knew, by the end of October 2016 and therefore by the time of its founding affidavit deposed to on 25 November 2016 was not accurate.
8. In **City of Tshwane Metropolitan Municipality v NUM BT Technologies (Pty) Ltd** [2016 JOL 34972 [SCA] it was held that a court has a discretion notwithstanding that an appeal has become moot, to hear and dispose of it on its merits. The usual ground for exercising that discretion in favour of dealing with it on its merits is that the case raises a discrete issue of public importance that will have an effect on future matters. I see no issue of public importance in this matter. The fact that the appellant, in its application for leave to appeal alleged that a determination of the application on its merits " *would be relevant to a future claim for damages against the first respondent* " muddies the mootness argument by allowing one to suspect that a court preview of a damages claim, rather than true public importance drives the appeal.
9. At best for the appellant, were we to allow the appeal and send it back to the judge below and if the appellant were to succeed, what the Commission would be considering, in perhaps a year's time would not in essence be the application for a rebate for 2016/17. The Commission would need updated information. What the Commission would really be doing is considering a fresh application for a rebate for say, the 2020/21 period. The decision sought to be reviewed is history. It is open to the appellant to apply for a rebate in future for a future period and to bring review proceedings if so minded if its application is turned down. What the appellant cannot seek now is a blueprint from this court on various grounds of refusal in the 2016/17 rebate application to be waved under the nose of the Commission in future

applications for rebate. We would be going too far were we to suggest on what basis future applications for rebates should be granted or declined by the Commission.

ORDER

The appeal is dismissed with costs including those of two counsel.

FRANCIS J

HIGH COURT JUDGE

GAUTENG LOCAL DIVISION, JOHANNESBURG

WRIGHT J

HIGH COURT JUDGE

GAUTENG LOCAL DIVISION, JOHANNESBURG

FISHER J

HIGH COURT JUDGE

GAUTENG LOCAL DIVISION, JOHANNESBURG

Appearances:

On behalf of the Appellant: Adv GD Wickins

Instructed by: KWA Attorneys
011 728 7728

On behalf of the
Respondents: Adv F Ismail and Adv JL Griffiths

Instructed by: State Attorney Pretoria
Ref: 9035/16Z13

Date of Hearing: 23 October 2019

Date of Judgment: 11 November 2019