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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**



Case number: 42817/2019

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHERS JUDGES: YES/NO
(3) REVISED

2/8/2021
DATE


SIGNATURE

In the matter between:

**INDEPENDENT COMMUNICATIONS AUTHORITY
OF SOUTH AFRICA**

FIRST APPLICANT

**ACTING CHAIRPERSON, INDEPENDENT
COMMUNICATIONS AUTHORITY OF
SOUTH AFRICA**

SECOND APPLICANT

and

PRIMEDIA (PTY) LTD

RESPONDENT

JUDGMENT APPLICATION FOR LEAVE TO APPEAL

TOLMAY J

[1] The Applicant (ICASA) applied for leave to appeal against the whole of the judgment handed down on 19 May 2021 to the Supreme Court of Appeal alternatively the Full Court.

[2] The application for leave to appeal is premised on three grounds. Firstly it was contended that no reviewable decision was taken and that therefore the review was premature. Secondly, it was argued that the respondent's (Primedia) exemption ceased to exist upon the expiry of its broadcasting license. Thirdly ICASA argued that there exist compelling reasons why the appeal should be heard in terms of section 17(1)(a)(ii) of the Superior Courts Act, 2013.

[3] It is trite that section 17(1)(a)(ii) of the Superior courts Act, 2013 has raised the bar in applications for leave to appeal and such applications will now only be granted if a judge is of the opinion that the appeal would have a reasonable prospect of success.

[4] For the reasons as set out in the judgment there is no merit in the argument that ICASA did not take a decision and that the review is premature. It needs to be emphasized that ICASA's own resolution dated 19 February

stated that the council held the view that the exemption cannot extend beyond the validity period of the license. The letter of 13 March 2019 required Primedia to submit an exemption application before its renewal application could be determined and stated that the council held the view that the exemption could not extend beyond the validity of the license. On 20 March 2019 Primedia requested reasons for ICASA's decision, the reasons were provided on 16 April 2019 and stated that ICASA required the submission of an exemption application. ICASA at that point did not deny that a decision was taken.

[5] ICASA also argued that the Court failed to apply *Bhugwan v JSE Limited*.¹ The facts in that matter however are distinguishable from the facts in this case. It was clear that no decision at all was taken in the matter of *Bhugwan*. In this instance ICASA did not state that it had information in its possession that indicated that Primedia would need to apply for an exemption. It formally resolved that Primedia needed to submit an exemption application and then proceeded to give effect to the resolution by requiring an application. *Bhugwan* endorsed the principle that the overarching question in determining the ripeness of a decision is whether prejudice has already resulted, or is inevitable, irrespective of whether the action is complete or not.² As a result a decision was taken and the review was not premature.

[6] The second ground relied on was that the court erred in concluding that Primedia's exemption did not cease to exist or expire upon the expiry of

¹ 2010(3) SA 335 (GSJ) (Bhugwan)

² Bhugwan at para 11

Primedia's license. There is no merit in this argument for the reasons set out in the judgment.³ The interpretation given by the Court, gives maximum effect to ICASA's powers and does not impinge on its role as regulator.

[7] ICASA furthermore argued that the Court should not have relied on *Private Security Industry Regulatory Authority v Anglo Platinum Management Services Ltd*⁴, as a different statute and different functionaries were involved. There is no merit in this argument as the legal principles applied are exactly the same and this Court is bound by the judgment of the Supreme Court of Appeal.⁵

[8] The third ground ICASA relied on was that there exist compelling reasons why this appeal should be heard. In *Caratco (Pty) Limited v Independent Advisory (Pty) Limited*⁶ the Supreme Court of Appeal held that a compelling reason include, an important question of law, or a discreet issue of public importance, that will have an effect on future disputes. However, it also states that the merits remain vitally important and often decisive.

[9] In this instance the matter is on all fours with the decision in the *Private Security* matter, as such the question of law has already been determined by the Supreme Court of Appeal and the argument that the granting of an exemption which lasts in perpetuity somehow undermines the regulator and its statutory and constitutional powers have already been rejected by the Supreme Court of Appeal.

³ High Court judgment at para

⁴ [2007] 1 All SA 154 (SCA) (*Private Security*)

⁵ *Private Security* at paras 19 and 21

⁶ 2020(5) SA 35 (SCA) at para 2

[10] The matter also has no public significance as not all exemptions are indefinite. Every exemption would be judged on its own merits and ICASA has the power to grant exemptions of limited or unlimited duration.

[11] In the light of the aforesaid the application for leave to appeal is dismissed.

[12] The following order is made:

1. The application for leave to appeal is dismissed.
2. The applicant to pay the costs of the application, which costs will include the costs of two counsel.



R G TOLMAY

JUDGE OF THE HIGH COURT

DATE OF HEARING: 22 JULY 2021
DATE OF JUDGMENT: 2 AUGUST 2021

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