



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE
SUPREME COURT OF APPEAL

1 June 2012

STATUS: Immediate

Mohammed Cassimjee v Minister of Finance (455/11)

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

The Supreme Court of Appeal (the SCA) today dismissed an appeal with costs from the KwaZulu-Natal High Court, Durban.

The appellant, Cassimjee, operated a transport business and his tankers were seized by officers of the Department of Customs and Excise in 1977. The reason for this seizure was an allegation against the appellant for selling fuel under rebate to people that did not qualify for rebate. The plaintiff issued summons in 1977 and the exchange of pleadings carried on till 1981. From 1981 till 2001, there was no activity in the case till a firm of attorneys pre-maturely placed the matter on the awaiting trial roll. Again, nothing happened for five years until in 2006 when the appellant attempted to amend its particulars of claim. Respondent opposed this amendment with a defective notice that did not set out the grounds for the opposition. The application before the high court was in terms of Rule 30 to set aside the objection as an irregular proceeding. The respondent submitted a counter-application for a dismissal of the main action.

At issue in the appeal was whether the high court had properly exercised its discretion to dismiss the appellant's claim for want of prosecution which depended on the factual question whether the delay was so unreasonable or inordinate as to constitute an abuse of the process of court. The SCA held that there are no hard and fast rules as to the manner in which the discretion to dismiss an action for want of prosecution is to be exercised but listed the following recognised requirements which includes delay in the prosecution of the action; the delay must be inexcusable

and, the defendant must be seriously prejudiced. The SCA stated that the enquiry will involve a close and careful examination of all the relevant circumstances, including, the period of the delay, the reasons and the prejudice, if any, caused to the defendant.

In conducting the factual inquiry, the SCA identified two principal reasons advanced by the appellant for the delay which includes problems in instructing attorneys in the matter, and health problems suffered by the appellant. The SCA held however that the appellant's inactivity during the 20 year period from 1981 was not adequately explained and was characterised by a profound absence of detail. The SCA also considered whether the delay would cause prejudice to the respondent, if there was any delay on the respondent's part and whether the respondent availed itself of the remedies which it might reasonably have been expected to do in order to bring the action expeditiously. The SCA held that to permit the appellant an opportunity to revive the action would be extremely prejudicial to the respondent since among other facts, a number of officials who were tasked with investigating the matter were deceased or could not recall the events in question. The SCA held that the conclusion must inevitably be reached that it is the appellant's failure to expeditiously prosecute the action that is the primary cause of the respondent's prejudice and there was a substantial risk that a fair trial of the issues will not be possible.

The SCA held that appellant had failed to demonstrate that the discretion exercised by the court below which is a discretion 'in a strict sense' was not judicially exercised or was based upon a wrong principle of law or wrong facts.

The SCA consequently dismissed the appeal with costs.

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