

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Investigating Directorate: Serious Economic Offences and others v Hyundai Motor Distributors (Pty) Ltd and others

Case CCT 1/00

Decided on 15 October 2004

Media Summary

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

This case deals with the important issue regarding the circumstances under which judicial officers may grant a warrant of search and seizure for the purposes of investigating criminal activity. The matter arose when the respondents, including Mr Rautenbach and the 'Wheel of Africa' group of companies, applied to the Transvaal High Court for relief following a raid on their offices in November 1999 during which a large quantity of documents and computer records were seized. In the High Court, Southwood J declared section 29(5) read with sections 28(13) and (14) of the National Prosecuting Authority Act 32 of 1998 ('the Act') unconstitutional to the extent that these provisions permitted the authorisation of a search warrant by a judicial officer in the absence of reasonable grounds to suspect that an offence had been committed. The matter was referred to the Constitutional Court for confirmation of the order declaring these provisions unconstitutional. The appellants lodged an appeal against this order.

The Act creates a framework for the establishment of specialised bodies, called Investigating Directorates, to investigate certain specified offences. Three Investigating Directorates have been established since the commencement of the Act. In order to fulfill their mandate of successfully investigating and ultimately prosecuting offenders of these specific crimes, Investigating Directorates may conduct two types of investigatory procedure, an 'inquiry' and a 'preparatory investigation'. Section 29 grants the Investigating Directorates powers to search and seize property, in order to facilitate its investigations. Limitations are placed by the Act on the exercise of such powers and one of these is a requirement that the search and seizure of property must occur only once a warrant has been issued by a judicial officer. A search warrant may only be granted if the evidence before the judicial officer meets an appropriate standard. This standard in the context of an inquiry clearly requires a reasonable suspicion that a specified offence has been committed. The exact nature of the standard set by section 29(5) in the context of a preparatory investigation and the constitutional validity thereof is the subject of challenge in this case.

The Constitutional Court, in a unanimous decision of Langa DP, declined to confirm the order of the High Court. It was held that the right to privacy is clearly violated in a search

and seizure operation envisaged by the Act. However, according to a proper interpretation of section 29(5), an adequate justificatory basis has to be provided for the suspicion that an offence has been committed before a judicial officer may authorise a search warrant for purposes of a preparatory investigation. Langa DP held that the section provides sufficient safeguards against an unwarranted invasion of privacy and thus meets the requirements of the limitations clause.

In order to reach the conclusion that section 29(5) was consistent with the Constitution, a proper interpretation of this section had to be arrived at. This interpretive exercise had to be performed in light of the principle of constitutional interpretation that judicial officers must prefer interpretations of legislation that fall within constitutional bounds over those that do not, provided that such an interpretation can be reasonably ascribed to the section. Under the new constitutional order, statutes must be interpreted through the prism of the Bill of Rights and, in particular, in light of its 'spirit, purport and objects'.

Langa DP went on to undertake a detailed analysis of the relevant provisions. Upon a reading of section 29(5) in the context of a preparatory investigation, it appeared that there was indeed a requirement that a judicial officer should only issue a warrant where there are reasonable grounds to believe that an article connected with a preparatory investigation is on certain specific premises. The Act was, however, not explicit regarding the class of offences in respect of which the reasonable suspicion must exist. The purpose of a preparatory investigation is to determine whether there are reasonable grounds to believe that a specified offence - which falls within the jurisdiction of an Investigating Directorate - has been committed. It is clear that, as a result, a precondition for the issue of a warrant for purposes of a preparatory investigation must be something less than a reasonable suspicion that a specified offence has been committed.

There could be instances where an Investigating Directorate wishes to search and seize property for purposes of a preparatory investigation in order to determine whether an offence that has come to its attention is in fact a specified offence that falls within its jurisdiction. In those circumstances, there may well be a reasonable suspicion that an offence, which might be a specified offence, has been committed. Thus, a requirement that there be reasonable grounds to suspect that an offence had been committed is not inconsistent with the purpose of a preparatory investigation.

The effect of this decision is that the Act is to be read in future by judicial officers as conferring on them the authority to grant search and seizure warrants for purposes of a preparatory investigation only in circumstances where there are reasonable grounds to believe that an offence, which might be a specified offence, has been committed. In such circumstances, a balance is struck between protecting the right to privacy of individuals and promoting the important interest of the state in the effective investigation of criminal activity so as to curb the high incidence of crime in our society. The appeal accordingly succeeded and the court declined to confirm the order of the High Court.