



CONSTITUTIONAL COURT OF SOUTH AFRICA

Tulip Diamonds FZE v Minister for Justice and Constitutional Development and Others

Case CCT 93/12

Date of Hearing: 26 February 2013

Date of Judgment: 13 June 2013

MEDIA SUMMARY

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

Today, the Constitutional Court handed down a judgment dismissing an appeal against a decision of the Supreme Court of Appeal (SCA), which held that the applicant, Tulip Diamonds FZE (Tulip), did not have standing to challenge the respondents' decisions to give effect to a request from Belgian authorities to collect evidence in South Africa.

In 2008, Belgian authorities issued a letter of request to the South African authorities for evidence concerning an ongoing criminal investigation in Belgium. The request sought evidence from Brinks Southern Africa (Brinks), pertaining to, amongst other things, Brinks' business with Tulip. The Minister for Justice and Constitutional Development, upon a recommendation from his Director-General, approved the request. A Magistrate then issued a subpoena to Brinks ordering that the evidence be disclosed. Tulip challenged the lawfulness of the respondents' decisions arguing that giving effect to the Belgian request without affording it an opportunity to be heard violated its constitutional rights to just administrative action and privacy, and was inconsistent with the principle of legality. Both the South Gauteng High Court, Johannesburg and the SCA dismissed Tulip's challenge, finding that it did not have standing to bring the application.

In a judgment written by Van der Westhuizen J, in which Moseneke DCJ, Froneman J, Khampepe J, Mhlantla AJ and Skweyiya J concurred, the majority of the Constitutional Court granted leave to appeal, but dismissed the appeal. The majority found that Tulip could not meet the requirements to establish own-interest standing under section 38 of the Constitution. The majority reasoned that Tulip had not laid a basis to show that any of its purported interests – privacy, confidentiality or proprietary rights – existed in the information sought by the Belgian authorities. Further, even assuming valid interests

existed, Tulip had not demonstrated that any of its interests would be directly affected by the respondents' decisions. The majority held that the merits of Tulip's challenge did not compel the Court to overlook its absence of standing in this case.

In a dissenting judgment by Jafta J, in which Nkabinde J and Zondo J concurred, the minority would have granted leave to appeal and upheld the appeal. The minority found that Tulip had established standing under the common law based on its purported right to ownership over the documents sought by Belgian authorities. The minority also concluded that Tulip had established standing under section 38 of the Constitution because the subpoena threatened its rights to privacy and confidentiality. On the merits, the minority held that the subpoena was invalid because the issuing Magistrate did not have proper territorial jurisdiction and because he acted in terms of an incorrect empowering provision.