



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Bechan and Another v SARS Customs Investigations Unit and Others (1196/2022) [2024] ZASCA 20 (05 March 2024)

Today the Supreme Court of Appeal (SCA) dismissed an appeal with costs including those of two counsel. The appeal emanated from the Gauteng Division of the High Court, Pretoria (the high court) and was launched by the first appellant Mr Kapeel Bechan (Mr Bechan) who is the sole director of the second appellant, Bechan Consulting (Pty) Ltd against the first to fourth respondents who are SARS' officials and SARS' divisions (the first and second appellants are referred to collectively as the appellants).

On 28 March 2022, SARS applied to the high court without notice to the appellants for a warrant in terms of s 59 of the Tax Administration Act 28 of 2011 (the TAA). The high court issued the warrant, in terms of s 60 of the TAA, on the basis that there was reason to believe that Bullion Star had, amongst others, committed various tax offences. The warrant authorised SARS officials to search the premises identified as 62 Wessels Road, Rivonia, Johannesburg (the premises). It furthermore authorised them, 'in carrying out the search and seizure of the premises, to open or cause to be opened or remove and open, anything which the officials suspect to be relevant material of Bullion Star'.

SARS' version of the events is that on 29 March 2022 its officials arrived at the premises at approximately 11h25, but were granted access only at approximately 11h50. Whilst SARS officials were at the gate awaiting access to the premises, they saw people removing items from the building and placing them in vehicles. They were, however, unable to identify the nature of these items. Upon entering the premises, SARS officials noticed a Toyota Fortuner motor vehicle (the Fortuner) parked on the premises. They saw numerous files and notebooks as well as electronic equipment inside the Fortuner. Upon being informed that Mr Bechan owned the Fortuner, SARS officials requested him to unlock it to enable their search for material relevant to Bullion Star. When Mr Bechan indicated that he could not find its keys, SARS officials obtained the services of a locksmith to unlock the Fortuner (and other vehicles on the premises). On opening it, they invited Mr Bechan to participate in, and be present during, the search.

SARS compiled inventories of the items found in the Fortuner. These included: 10 laptop computers; 4 cellular phones; and various financial documents pertaining to Bullion Star, including purchase files, and bank statements. However, in their notice of motion, the appellants claimed the return of only two laptop computers and two cellular phones. Despite the exchange of numerous letters in which SARS

tendered the return of the seized items on proof of ownership, the appellants disavowed any knowledge of the other laptops and cellular phones.

On 4 April 2022, the appellants applied to the high court for the return of the items listed in paragraph 2 of the notice of motion by way of the spoliation remedy. The appellants contended, in this regard, that SARS had unlawfully seized their property of which they were in peaceful and undisturbed possession; that the seized property was not found on the premises but was stored in the Fortuner which was parked in 'a general carpark' outside the premises; and that the scope of the warrant was limited to Bullion Star's property for the specified period of assessment, and did not extend to their property. SARS opposed the application. Its core defence was that it did not unlawfully dispossess the appellants of the items in question, because it had acted in accordance with the terms of a validly issued warrant under s 60 of the TAA. It pointed out that it had returned some items to the appellants but was unwilling to return the two laptop computers and two cellular phones because, without access to their passwords, it was unable to determine whether they contained material relevant to Bullion Star. The high court dismissed the application.

The issue before the SCA was ultimately whether a warrant issued in terms of s 60 of the TAA may be executed against third parties.

In coming to a conclusion, the SCA reasoned that the phrase 'to search the premises and any persons present on the premises and seize relevant materials' in s 59(1) of the TAA, was a clear indicator that SARS officials may, on the authority of a warrant issued under s 60, search the taxpayer as well as any third parties on the premises, and seize any relevant material in their possession - it is immaterial that the seized items are not in the possession of the taxpayer when seized. The SCA further held that s 61(3) of the TAA does not limit the execution of a warrant to the business of the taxpayer. Properly construed, it contemplates that, in executing a warrant, SARS officials may search anything on the premises identified in the warrant, if they suspect that it contains relevant material.

In the result, the SCA concluded that SARS had a statutory right to dispossess the appellants of the property found in the Fortuner and that the appellants were, therefore, not entitled to the relief sought in the spoliation application.

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