



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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Giftwrap Trading (Pty) Ltd v Vodacom (Pty) Ltd and Others (1009/2020) [2023] ZASCA 47 (4 April 2023)

Today the Supreme Court of Appeal (SCA) dismissed an appeal against a decision of the Gauteng Division of the High Court of South Africa, Pretoria (the high court).

The appellant, Giftwrap Trading (Pty) Ltd (Giftwrap), was an online store trading in corporate gifts and clothing. As a result of the nature of the business it fell victim to a type of internet fraud called 'click fraud' which lead to Giftwrap losing a lot of revenue. To combat that fraudulent activity, and hold the culprits accountable, Giftwrap through the assistance of an IT specialist compiled a list of IP addresses suspected of having perpetrated click fraud. These IP addresses were customers of various service providers, Vodacom being one. In June 2019, Giftwrap, relying on s 42(1)(c) of the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 (RICA), launched an application in the high court against the service providers seeking the disclosure of the customer information in respect of each of the listed IP addresses. Vodacom opposed that application and contended that the provisions of RICA precluded the disclosure which Giftwrap sought. The high court ruled in favour of Vodacom. Giftwrap appealed that decision.

In essence, the issue that the Court had to decide on was whether Giftwrap was entitled to the disclosure of the customer information in respect of the listed IP addresses?

The SCA found that Giftwrap required the customer information to identify the perpetrators of click fraud in order to take legal action against them. However, s 42(1)(c) conveyed that the information must at the time of its disclosure be required as evidence in a court of law. It therefore envisaged disclosure of information which was required as evidence in proceedings that were pending in a court of law. On that basis the SCA found that information required to investigate whether legal proceedings could be instituted, fell outside the ambit of s 42(1)(c). Furthermore, that stance was supported by the context provided by s 42(1)(d) where it expressly provided that information may be disclosed for purposes of 'an investigation with a view to the institution' of (criminal or POCA-related) proceedings. The absence of a similar provision in s 42(1)(c) indicated that disclosure for the purpose of an investigation or identification of wrongdoers was excluded from s 42(1)(c). Thus, it followed that the appeal had to fail.

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