



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

DATE 24 October 2022

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

*Nesongozwi v Commissioner for SARS (838/2021) [2022] ZASCA 138
(24 October 2022)*

MEDIA STATEMENT

The Supreme Court of Appeal (SCA) today dismissed the appeal of Mr J M Nesongozwi (the taxpayer) against the Commissioner for the South African Revenue Service (the Commissioner).

The taxpayer sold his shares in a company, the Nesongozwi Mining Corporation (Pty) Ltd, to the Nesongozwi Family Trust for a purchase price of R547 275. When the Commissioner issued an assessment that took into account this transaction, he took the view that the purchase price bore no relation to the market value of the shares. He imposed donations tax on the difference between the purchase price and his valuation of the market value of the shares, as well as capital gains tax. The total tax liability that he imposed on the taxpayer was R48 635 677.49.

The taxpayer objected to the assessment. He did so on the basis that the value of the shares had been 'grossly overstated' by the Commissioner and that, in fact, they had a much lower value. The Commissioner engaged the services of two sets of experts to value the shares afresh. They differed to an extent and the Commissioner accepted the lower valuation of R274 050 000. On this basis, he dismissed the taxpayer's objection.

The taxpayer then appealed to the tax court. After the commencement of the proceedings, the expert witnesses of both sides met and agreed on the valuation method as well as the base valuation of the shares. They differed only in respect of the effect on the value of the characterisation of certain underlying mineral resources and of a consultancy agreement. The tax court dismissed the taxpayer's appeal. He applied for leave to appeal. The tax court granted him leave to appeal to a full court of the Gauteng Division of the High Court, Johannesburg. Leave had been sought only

in respect of two issues: the effect of the consultancy agreement on the value of the shares; and the costs order made by the tax court.

When the matter was heard by the full court, the taxpayer applied from the bar to amend his notice of appeal to include an attack on the valuation method, and to revisit the characterisation of the mineral resources. The full court refused the application for an amendment in respect of the first issue but granted the amendment in respect of the second issue. It proceeded to dismiss the appeal with costs.

With the leave of the SCA, the taxpayer appealed once more. The primary issue before the SCA was whether the valuation method was properly before it. The SCA found that it was not because it had not been raised as an issue in the taxpayer's objection to the assessment or in the tax court. Indeed, it was an issue that was common cause, the parties having, in effect, settled this issue. It was consequently not appealable. There was also no merit in the other grounds raised by the taxpayer, with the result that his appeal was dismissed with costs, including the costs of two counsel.