



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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RTS Industries and Others v Technical Systems (Pty) Ltd and Another (145/2021) [2022] ZASCA 64 (5 May 2022)

Today the Supreme Court of Appeal (SCA) handed down a judgment striking down a matter from the roll, with costs, an appeal against the Western Cape Division of the High Court, Cape Town (the high court).

The issues before the SCA were whether the 2015 order was 'final in effect' and was therefore appealable even if its stated character was interim; and secondly, whether the interests of justice warranted that an appeal against the order in issue should be entertained.

This appeal turns on the appealability of the order made by the Western Cape Division of the High Court, Cape Town (the high court) on 9 March 2020 (the 2020 order), enforcing the terms of the order – granted by agreement between the parties – on 2 June 2015 (the 2015 order). The 2020 order confirmed the 2015 order and ordered compliance therewith.

The third appellant, Mr Christiaan Arnoldus Kurtz (Mr Kurtz), was previously employed by the first respondent as a plant engineer and, in the course of his employment, gained intimate knowledge of the manufacturing processes of the first respondent. He had unfettered access to the first respondent's technical drawings and technical data relating to the manufacturing processes. As part of Mr Kurtz's conditions of employment with the first respondent, he was obliged to enter into a confidentiality undertaking and restraint of trade agreement in favour of the first respondent.

In 2009, Mr Kurtz left the employ of the first respondent. Shortly thereafter, rumours emerged of a competitor in the market selling a product similar to that of the first respondent. The competitor's product was offered for sale at a lower price than that of the first respondent. The competing entity appeared to be RTS Industries, the first appellant, but the first respondent could not ascertain the identity of the individual who was the first appellant's controlling mind for some time. It was only in July 2014 that the first respondent was able to confirm the involvement of Mr Kurtz with RTS Industries, and as a result, the 2014 application, which culminated in the 2015 order, was launched.

Following the launch of the 2014 application, the first respondent came into possession of technical drawings prepared by the appellants. It was then discovered that those drawings infringed the copyright of the first respondent in 1179 of its technical drawings. The appellants had made reproductions and adaptations of the copyrighted work. It became clear from the discovery process that the second appellant, CGC Industries (Pty) Ltd, and Mr Kurtz had unlawfully competed with the first respondent between 2009 and June 2015. Thereupon, they had no choice but to capitulate and accede to the 2015 order.

In terms of the 2015 consent order, the appellants recognised the confidentiality of the first respondent's production process for the production of auger. The order interdicted the respondents from using this information for as long as it retained its confidentiality. They were also interdicted from infringing the copyright of the first respondent in its artistic works comprising its 1179 technical drawings for a period

of three years from the date of the granting of the order. The 2015 order obliged the appellants to deliver up to the first respondent all works infringing the latter's copyright for destruction. In addition, the appellants were restrained from competing in the field of manufacturing, marketing and sale of flat wire, auger and auger coiling machinery.

The respondents then launched the 2019 proceedings seeking a rule nisi interdicting and restraining the appellants from manufacturing, processing, marketing for sale or selling flat wire and auger, pending the completion of the process stipulated in the 2015 order. They also sought an order declaring the appellants to be in contempt of the 2015 court order and their committal to prison, alternatively payment of a fine.

On the date of the hearing of this appeal, the respondents made an application in terms of s 19(b) of the Superior Courts Act 10 of 2013 (the Act) for leave to adduce further evidence and ancillary relief. On this point for leave to adduce new evidence, the SCA found that a court of appeal should, in the normal course, decide whether the judgment appealed from was right or wrong according to the existing facts and not according to new circumstances. Moreover, the SCA found that the evidence in Mr Kühn's founding affidavit that the applicants seek to introduce on appeal was clearly controversial. It was not only disputed by the respondents but was also not germane to the issues raised in this appeal. Accordingly, there was no basis for its admissibility. As a result, the SCA found that the application to adduce such evidence fell to be dismissed.

In dealing with the question of whether the 2020 order was appealable, the SCA held that on this score, it bore mentioning that this Court was alive to the fact that it was under no obligation to entertain an appeal against an unappealable order merely because the appellants were granted leave to appeal by this Court. Moreover, If it found that the 2020 order was not appealable, then it would not be necessary to deal with the merits of the appeal.

In addition, the SCA held that what gave rise to this appeal was the 2015 order granted by agreement between the parties. The respondents sought to ensure compliance with the 2015 order. The SCA held that it was not in dispute that the appellants were in breach of that order in that they were manufacturing and selling flat wire and auger before completion of the process envisaged in paragraph 24 of the 2015 order. According to the SCA, the March 2020 order was manifestly an interim interdict pending the finalisation of the process provided for in paragraphs 23 to 25 of the 2015 order.

Finally, the SCA found that, evidently, until the process ordained in paragraph 24 was completed, the proposed production facility of the appellants would be out of service for the commercial production of auger. Furthermore, considering the evidence relating to background facts and 'surrounding circumstances', it was clear that the 2020 order was not final in effect and was thus open to alteration by the court of first instance. Hence, the SCA held that all of this meant that, in its view, the order of the high court was not appealable. As a result, the SCA held that in such an instance, the appropriate order was that this application be struck from the roll.

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