



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: 28 March 2024

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

Highway Junction (Pty) Ltd and Others v Di-Thabeng Truck and Taxi (Pty) Ltd and Others
(Case no 946/2022) [2024] ZASCA 31 (28 March 2024)

Today the Supreme Court of Appeal dismissed a cross-appeal from a judgment of the Free State Division of the High Court, Bloemfontein (the high court). The high court had granted an interdict against Di-Thabeng Truck and Taxi (Pty) Ltd and associated companies (the Di-Thabeng entities) preventing them from trading at all from a property (the property) adjacent to that of Highway Junction (Pty) Ltd and the other two appellants (the appellants). The appellants had sought four interdicts, of which they persisted in two. Their essential complaint was that the Di-Thabeng entities, which held a licence to wholesale fuel, were unlawfully in fact retailing fuel from the property.

The Di-Thabeng entities were granted leave to appeal against the grant of the interdict but their appeal lapsed. The appellants were granted leave to cross-appeal against the refusal to grant the second interdict sought. The cross-appeal was the only appeal heard by the Supreme Court of Appeal.

The legislation governing the sale of fuel defines wholesaling as selling in bulk. That means that no less than 1 500 litres of fuel must be sold at any one time. The Di-Thabeng entities developed a scheme whereby they would sell a minimum of 1 500 litres but would not require the full quantity to be delivered simultaneously with the sale. The real issue is whether the regulation envisages that a transaction comprises the simultaneous sale and delivery of a minimum of 1 500 litres of fuel or whether it comprises the sale of a minimum of 1 500 litres without the need for contemporaneous delivery. The appellants contended for the former and the Di-Thabeng entities for the latter interpretation. The second interdict sought to enforce the latter interpretation.

Before the Supreme Court of Appeal, the appellants conceded that the present interdict against trading until the requisite planning permissions had been obtained protected their rights sufficiently. They submitted, however, that the high court had made a finding on the interpretation of the legislation which supported the contention of the Di-Thabeng entities and that, therefore, if the Di-Thabeng entities were able to obtain the requisite permissions to trade from the property, the appellants would be unable to approach a court for the second interdict since the issue of interpretation had been decided. The Supreme Court of Appeal held that the issue had not been decided. There was no live issue to decide and no other factors in favour of dealing with the interpretation issue. For that reason, the cross-appeal was dismissed, without any costs order being made.