



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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The Lion Match Company (Pty) Ltd v Commissioner, South African Revenue Service (1047/23 and 1067/23) [2025] ZASCA 112 (28 July 2025)

Today, the Supreme Court of Appeal (SCA) struck from its roll an application for reconsideration, in terms of s 17(2)(f) of the Superior Courts Act 10 of 2013 (Superior Courts Act), of an order, issued by two judges of the SCA denying a petition for special leave to appeal. The petition was lodged by the Lion Match Company (Pty) Limited (Lion Match) against the judgment and order of the Gauteng Division of the High Court, Pretoria (the full court) which dismissed its application for postponement of an appeal Lion Match brought against a decision of the Johannesburg Tax Court (the tax court). Following such refusal by the full court to postpone the matter, that court dealt with the appeal in the absence of Lion Match's legal representation in terms of rule 44(7) of the Tax Court Rules. Lion Match simultaneously appealed the decision made by the full court in its absentia, which the SCA dismissed too (the appeal). The appeal was before the SCA with leave on the issue whether the full court was correct in upholding the respondent, the Commissioner of the South African Revenue Service's (SARS) cross appeal.

Lion Match owned shares in Kimberley-Clark Southern Africa (Pty) Limited (KCSA) and Kimberley-Clark Southern Africa Holdings (Pty) Limited (KCSA Holdings) that were acquired prior to 1 October 2001, when taxable capital gain was introduced into South African tax law. The shares were therefore pre-valuation date shares. During the 2008 year of assessment, Lion Match disposed of 3 788 250 shares in KCSA and 85 329 shares in KCSA Holdings. In determining its capital gain tax, Lion Match calculated the base cost of the assets (shares) disposed of using the market value of the assets as at 1 October 2001. It did so based on a KPMG report that was completed in September 2001.

On 30 April 2012, SARS issued an additional assessment in respect of Lion Match's 2008 year of assessment (the additional assessment), in relation to the base cost of the shares disposed of by Lion Match in calculating its taxable capital gain. SARS determined the market value of Lion Match's shares in KCSA to be amounts lower than those Lion Match relied on. Lion Match approached the tax court to appeal the decision by SARS.

On 17 October 2019, Lion Match's attorneys withdrew from the case. Until the date of the trial, Lion Match had not informed SARS of its new legal representatives, nor had any attorneys entered appearance on its behalf. On Monday morning, 18 November 2019, when the appeal was set to begin in the tax court, adv LC Morland appeared on behalf of Lion Match on instruction for postponement only. The tax court refused the postponement on grounds that Lion Match had not proffered sufficient reasons for warranting postponement, specifically that no good cause had been shown and proceeded with the appeal.

Lion Match subsequently appealed the decision of the tax court dismissing its application for a postponement to the full court, and SARS cross-appealed the tax court's finding that it could not entertain SARS' case to have the assessment upwardly adjusted once Lion Match's appeal had been 'withdrawn'. On 29 May 2023, in a unanimous judgment, the full court dismissed Lion Match's appeal with costs. The full court agreed with the trial court on the reasoning for refusing the postponement and upheld SARS' cross appeal.

The SCA on the reconsideration application, found that there existed no exceptional circumstances – a requisite factor – for the Court to reconsider the decision of its two judges on the issue of postponement. The SCA said further that no case had been made out by Lion Match that it would suffer a grave injustice, or that the interests of justice dictated, or that the administration of justice would be brought into disrepute, if it was not granted special leave to appeal the dismissal of its application for a postponement in the tax court.

On the appeal, the SCA found that the tax court was wrong in its interpretation of the pertinent provisions of the Tax Administration Act 28 of 2011 (TAA). The Court highlighted that s 107 and ss 129(1) and (2) were not susceptible to such interpretation. The SCA expressed that it could not be said that the taxpayer's (Lion Match) appeal was withdrawn once Lion Match's legal representatives had withdrawn from the proceedings. The Court pointed out that rule 44(7) of the Tax Court Rules allows a matter to proceed in the absence of a party's representation.

The SCA found nothing wrong with the expert evidence that the full court relied on. It explained that if the evidence presented in the tax court does not support the amount in a tax assessment, then as long as constitutional rights are respected, the taxpayer gets a fair hearing, and the basic reason for the tax does not completely change, the tax court can adjust the assessment either up or down, based on the powers it has under s 129(2)(b) of the TAA.

The SCA also pointed out that one of the expert witnesses clearly showed that the method and assumptions SARS used to recalculate the extra tax were basically the same as those used in the original assessment. It added that the full court accepted this expert evidence, even though the tax court itself had not properly evaluated it. As a result, the appeal was dismissed with costs.