THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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The Commissioner for the South African Revenue Service v Cornucopia Trust (469/2025) [2026] ZASCA 116 (7 September 2026)

Today the Supreme Court of Appeal (SCA) dismissed, by a majority, an appeal by the Commissioner for the South African Revenue Service (SARS) against a judgment of the Tax Court of South Africa, Western Cape. The appeal, which was before the SCA with the leave of the tax court, concerned whether raising fees incurred by the respondent, Cornucopia Trust (Cornucopia), constituted finance charges similar to interest within the meaning of the definition of 'interest' in s 24J(1) of the Income Tax Act 58 of 1962 (the Act), and were therefore deductible under s 24J(2).

Cornucopia is a trust which conducts the business of property investment and property leasing in Bloemfontein. It acquired two commercial properties, one leased to Absa Bank Limited and the other to Life Healthcare Limited, at market value from a related trust. The acquisitions and the subsequent refinancing of the debt were funded in full by various Sanlam entities in terms of facility agreements concluded between 2011 and 2019. Each facility attracted a raising fee, fixed by a fee letter at two percent of the capital. The fee was payable upfront to Sanlam Capital Markets as facility agent and constituted a precondition to any drawdown on the facility. In its returns for the 2019 and 2020 years of assessment Cornucopia claimed portions of those fees as deductions of interest under s 24J, spreading each deduction over the duration of the facility to which it related. SARS disallowed the deductions. The tax court upheld Cornucopia's appeal against that disallowance.

The issue turned on an amendment introduced by the Tax Laws Amendment Act 15 of 2016, which substituted the word 'similar' for the word 'related' in the definition of 'interest' in s 24J(1), so that the definition now embraces the gross amount of any interest or similar finance charges. It was common cause that the amendment was a response to the decision of the SCA in *Commissioner, SARS v South African Custodial Services (Pty) Ltd*, in which a range of charges connected with the obtaining of loans had been held to be 'related finance charges', and that its object was to narrow the reach of the definition. It was also common cause that the raising fees were finance charges and that 'similar' does not mean 'identical'. The sole question was whether a raising fee resembles interest in a relevant respect.

The majority (per Nicholls JA, with Mocumie JA and Steyn and Zilwa AJJA concurring) held that it does, on the facts of this case. Interest is not confined to the time value of money; it is the functional cost of credit, comprising the consideration for the extension of credit together with compensation for the risk assumed by the lender. Where a raising fee is calculated as a percentage of the loan, is linked to the period of the facility, and must be paid before the credit will be advanced, it is not merely consideration for the work of arranging the loan but forms part of the indivisible cost of raising credit and bears the same characteristics as interest. That the fee is paid upfront and once-off does not distinguish it from interest, since the definition in s 24J expressly contemplates an amount payable as a lump sum. The majority held that the purpose of the 2016 amendment was to exclude charges such as legal fees and financial advisory fees, which are incidental to, but not strictly necessary for, the obtaining of a loan; it was not to confine the deduction to interest and to charges that are interest in disguise, which would deprive the phrase 'or similar finance charges' of content. The appeal was accordingly dismissed with costs, including the costs of two counsel.

Matojane JA delivered a dissenting judgment, in which he would have upheld the appeal. In his view the defining incidents of interest are that it is a return payable to the lender, measured by reference to the amount advanced and the period for which the advance remains outstanding. The fee in this case was a single charge payable in advance to the facility agent, payable in full whether or not the whole facility was drawn and irrespective of early settlement, bearing no relation to the term of the loan, and payable to an entity which in certain of the facilities advanced none of the money lent. It was the cost of procuring capital rather than the price of its retention over time. The dissent found support for that distinction in para 20(2)(a) of the Eighth Schedule to the Act, which enumerates interest as contemplated in s 24J and raising fees as separate species of borrowing cost, and in s 8FA, which places outside the deduction an amount denominated interest precisely because it is untethered from the time value of money. To treat a raising fee as similar to interest would, in the dissent's view, undo the narrowing which the 2016 amendment was intended to achieve, since a raising fee is the paradigm of a charge related to the obtaining of a loan. The dissent would have set aside the order of the tax court and confirmed the additional assessments for the 2019 and 2020 years of assessment.

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