THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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Kasselman and Others v The South African National Road Agency SOC Ltd (SANRAL) and Others (297/2024) [2026] ZASCA 02 (12 January 2026)

Today the Supreme Court of Appeal (SCA) upheld, with costs, an appeal against the judgment of the Gauteng Division of the High Court, Pretoria, Francis-Subbiah J sitting as court of first instance (the high court).

The appellants wanted to construct and operate a filling station and rest facilities on the road between Klerksdorp and Wolmaransstad. Because SANRAL is the registered servitude holder of the road reserve next to that piece of road, the appellants negotiated with SANRAL during 2016. At the time and in terms of a SANRAL policy that applied in 2016 (the 2016 policy), a fee structure was in place, according to which SANRAL could levy 0.5% on the gross sale of petroleum products and 1% on the gross sale of all other products on the property. By the time the process to obtain permission had gone through all the necessary stages, SANRAL sent a draft agreement to the appellants for purposes of signature in January 2021. This agreement however included increased levy percentages of 2.5% on petroleum products and 6% on all other products. These levy percentages, SANRAL said, were in accordance with a new fee structure adopted by its Board and set out in the new policy guidelines (the 2021 policy). The 2021 policy was the result of the so-called Horizon 2030 strategy, which envisaged, amongst other things, to maximise the return of SANRAL's assets to generate alternative funding sources. The revised levy percentages would not only mean that the filling station planned by the appellants would not be commercially viable anymore, but such an increase would also have a far-reaching effect on the whole fuel retailing sector, generally regulated by the Regulatory Accounting System (RAS) distribution matrix. Before the draft agreement, the appellants were not aware of the new policy, nor was it published in the Government Gazette for public input. It was eventually established that an advertisement of the increased levy percentages was published in the Rapport newspaper of 18 July 2021 and the 2021 policy document was uploaded on SANRAL's website after this date. In order to reach an amicable agreement that would make the filling station viable, settlement discussions proceeded until 28 February 2022 when the attorneys on behalf of SANRAL indicated that the settlement proposal of the appellants was not acceptable. The appellants subsequently brought an application, to review and set aside the decision of SANRAL adopt and retrospectively apply its new roads policy with increased levy percentages, in the high court on 2 June 2022. The high court dismissed the application and held that the aim of the 2021 policy was to generate revenue for SANRAL and the rate of the levy was determined at the sole discretion of the Board.

The main question before the SCA was whether the decision by SANRAL to adopt the new policy and retrospectively apply the increased levy percentages in a proposed agreement was reviewable under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) or the principle of legality. Flowing from this, the SCA had to consider (a) whether SANRAL exercised a public power, and in particular, whether the impugned decisions constituted administrative action as defined in PAJA; (b) whether there was an undue delay in instituting the review proceedings and if so, whether the delay should be condoned; (c) if it is found that SANRAL exercised a public power and the decisions were indeed administrative action, whether the appellants was obliged to first exhaust the internal remedies provided for in s 57 of the South African National Road Agency Limited and National Roads Act 7 of 1998 (the SANRAL Act) before bringing a review in terms of PAJA; and (d) if the first three issues are determined in favour of the appellants, whether the impugned decisions ought to be reviewed in terms of PAJA, alternatively the principle of legality.

The SCA, with reference to *SARFU*, *Cape Metro* and *Logbro*, confirmed that whether conduct is 'administrative action' is determined by the nature of the power he or she is exercising. SANRAL is a State-Owned Entity (SOE) with the State as its sole shareholder. The SCA emphasised that a failure to recognise the public power and constitutional obligations of boards of SOEs open the door to abuse and mismanagement, which in turn impacts on the obligations of the state and its obligations towards citizens. Because SANRAL performs public functions that are in the public interest, the SCA held that it is therefore an organ of state as defined in the Constitution. Relying on *Transnet Ltd v Goodman Brothers* the SCA held that SOEs, like Transnet and SANRAL, may be companies in form, but are subject to public law when exercising public powers.

The SCA accordingly expressed in strong terms that there can be no doubt that, despite counsel for SANRAL's insistence to the contrary, SANRAL is an organ of state and performs public functions, and its decisions will generally be subject to review under PAJA or the principle of legality.

The SCA, in respect of the question of undue delay, found in favour of the appellants and held that they only became aware of the reasons for the decision on 28 February 2022 and met the requirements of s 7 of PAJA by instituting action within 180 days on 2 June 2022.

The SCA confirmed the principle in regard to the exhaustion of internal remedies, that s7(2) of PAJA requires that all internal remedies be exhausted unless exceptional circumstances exist and the person concerned brings an application to be exempted from the requirement. The internal remedy relied on by SANRAL is contained in s 57 of the SANRAL Act. The Trust argued that s 57 did not apply, because the permission was not conditional. The SCA explained that neither of the parties referred to s57(3) that states that the appeal must be lodged in the manner, form and time limit determined by the Minister. A perusal of the principal and subordinate legislation reveals that the Minister has not prescribed the manner, nor the form, nor the period in which such an appeal should have been lodged. Relying on *Koyabe & others v Minister for Home Affairs* the SCA held that the remedy available must be effective. The remedy, in the absence of compliance by the Minister with s 57(3), is not readily available, nor can it be pursued without obstruction. There was simply no effective internal remedy available for the Trust to pursue. Therefore, it may be concluded that no effective internal remedy existed that could have been exhausted.

The SCA underscored the principles set out in *South African National Roads Agency Limited v Cape Town City* and held that they apply to the present case, namely the importance of administrative bodies adhering to statutory requirements to ensure fairness and accountability in decision-making processes. Neither the Board nor the Transport Minister can act outside the confines of the SANRAL Act.

The SCA therefore found that the appropriate remedy was to refer to remit the matter to the original decision-maker for reconsideration. This approach respects the principle of separation of powers, as it allows the administrative body to exercise its expertise and discretion. There were also no exceptional circumstances in the case that allowed it to determine the appropriate levies to be charged.

As a result, the SCA upheld the appeal with costs, including the cost of two counsel and replaced the order of the high court with an order that referred the matter back to SANRAL for reconsideration and compliance with the SANRAL Act.