



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: 14 DECEMBER 2021

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

Former Way Trade and Invest (Pty) Ltd t/a Premier Service Station and Another v Bright Idea Projects 66 (Pty) Ltd t/a All Fuels (1140/2020) [2021] ZASCA 175 (14 December 2021)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing the appeal against and order of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the high court), which held the first appellant, Former Way Trade and Invest (Pty) Ltd t/a Premier Service Station, in contempt of court and committed the second appellant, Mr Lee Bentz, to a suspended term of imprisonment.

Bright Idea Projects 66 (Pty) Ltd t/a All Fuels (the respondent), and the first appellant became parties to a franchise agreement. In terms thereof, the first appellant operated a Caltex filling station at premises owned by the respondent and with fuel products supplied to it by the respondent. At all times relevant hereto, the second appellant, was the sole shareholder and director of the first appellant. During 2017, however, a dispute arose between the parties to the franchise agreement. The respondent took the stance that the franchise agreement would come to an end on 31 December 2017. The first appellant, on the other hand, alleged that a new franchise agreement had been entered into which conferred on it the right to continue to conduct business on the premises for a period of five years from 1 March 2015, with a right of renewal.

The respondent consequently launched an application in the high court for the eviction of the first appellant from the premises. The first appellant, in turn, filed a counter-application in which it sought an order enforcing the alleged new franchise agreement, alternatively a stay of the application pending an arbitration that the first appellant had initiated. The main application and counter-application came before Poyo-Dlwati J on 22 January 2018. The parties managed to reach an agreement. By consent, Poyo-Dlwati J made that agreement an order of court (the consent order). It provided that the parties shall conduct themselves as if the franchise agreement remains of full force and effect and comply with their respective obligations. Furthermore, the consent order provided that the first appellant shall source all its petroleum product from the respondent. However, after July 2019, the first appellant proceeded to source various petroleum products from foreign distributors and dispensed them from the premises of the respondent, using the respondent's equipment and brand name, Caltex. As a result, the respondent approached the high court on an urgent basis for a rule nisi operating as an interim interdict. The rule nisi *inter alia* called upon the first appellant to show cause why it should not be held in contempt of the consent order. The high court subsequently confirmed the rule nisi and committed the second appellant to prison for a period of 30 days, wholly suspended on condition that the first appellant complies with the consent order.

The SCA held that the consent order clearly provided that pending the final determination of the main application and counter-application and without prejudice to the first appellant's rights, it would continue to operate a Caltex filling station as before, that is as if the franchise agreement remained of full force and effect. Thus, as an interim measure, the first appellant was bound not only to source all the

requirements in respect of petroleum products from the respondent, but also to pay the invoiced prices for these products, as it had done since 2015. Furthermore, the SCA held that it is not in the interest of the litigants and the courts to bring an appeal to the SCA which does not involve an important question of law or requires consideration by this Court. This was such a matter and it should have been referred to the full court.

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