



THE SUPREME COURT OF APPEAL  
REPUBLIC OF SOUTH AFRICA

**MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL**

Case number: 641/06

In the matter between

**VOLCANO AGROSCIENCE (PTY) LTD                      APPELLANT**

**and**

**THE MINISTER OF AGRICULTURE                      FIRST RESPONDENT**  
**ERNEST MOKANTLA NO                                      SECOND RESPONDENT**

From:        The Registrar, Supreme Court of Appeal  
Date:        2007-11-26  
Status:      Immediate

1.    On 26 November 2007 the SCA gave judgment in this appeal which turned on the interpretation of s 16(6)(a) of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947. Broadly stated, the section affords an illegal importer of agricultural pesticides and other substances controlled by the Act, the option to remove the substance from the Republic or to have it forfeited to or destroyed by the State.

2.    The appellant in this matter (Volcano) imported a controlled pesticide called Aldicarb illegally and subsequently purported to sell it, in further contravention of the Act, to a distributor in South Africa. In the light of these contraventions, the Aldicarb was seized and retained by the Department of Agriculture. Volcano then brought an application based on s 16(6)(a) of the Act against the Minister responsible for that Department in the Durban High Court for an order which would enable it to export the Aldicarb to Zimbabwe.

3. The Durban High Court concluded, however, that on a proper interpretation of s 16(6)(a) the option afforded by the section is not available to an illegal importer who contravened some other provision of the Act as well. Since Volcano also sold the Aldicarb in contravention of another provision of the Act, so the High Court concluded, it could not rely on the section with the result that the Aldicarb automatically became forfeited to the State.

4. On appeal the SCA did not agree with this interpretation. The purpose of s 16(6)(a), so the court held, is not to penalise the illegal importer but to prevent the contravening substance from entering the Republic. Consequently, the option afforded by the section is available to every illegal importer in the position of Volcano and it matters not that some other provision of the Act had been contravened as well. In the result the Department of Agriculture was directed to do all things necessary to enable Volcano to exercise its option in terms of s 16(6)(a)(i) of the Act by exporting the Aldicarb to another country.