



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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From: The Registrar, Supreme Court of Appeal

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Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

SARS v MORESPORT (360/08) [2009] ZASCA 63 (29 MAY 2009)

The Supreme Court of Appeal today upheld an appeal against an order in the High Court, Pretoria in terms of which the High Court granted an order setting aside a warrant issued by a magistrate, in Cape Town in an *ex-parte* application on 14 September 2006. The warrant authorised the seizure, removal, detention and collection of 5015 pairs of beach sandals incorporating and embodying the Crocs copyright design to which Crocs Inc (third appellant) is the copyright holder.

The footwear had been purchased by Moresport (first respondent) from Holey Soles Vancouver. A customs officer employed by the SARS (the first appellant) detained the consignment after she examined its contents and discovered that the shoes inside were replicas of the Crocs shoes by virtue of their shape and general resemblance in design. Samples of the shoes were sent to the Crocs Inc who confirmed that the shoes were indeed counterfeit.

On 4 September 2006, Moresport's attorneys responded to correspondence from Croc Inc's attorneys and disputed Moresport's right to seek protection in terms of the Act. The letter also stated that Moresport had a defence to the continued seizure of the goods. On 14 September 2006, the SARS obtained a warrant from the magistrate in chambers. The letter dated 4 September 2006, from the Moresport's attorneys, was not disclosed to the magistrate when the *ex parte* application was made. Consequent to the issuing of the warrant, the SARS seized the goods on 3 October 2006.

Moresport applied for an order (amongst others) setting aside the warrant. The learned judge in the court below found that the defence raised by Moresport in the letter was relevant and material and should have been disclosed to the magistrate. The learned judge consequently found that his failure was such that it rendered the warrant susceptible to be set aside. The SCA held that the high court erred because the courts have frowned upon the failure by the

applicants in *ex parte* applications to disclose relevant and material facts and not the failure to disclose that the respondent claims to have a defence, as was the case in this matter.

Although the dispute had been settled between Crocs Inc and Moresport, the court accepted the submission by the SARS that the judgment has far-reaching consequences for the SARS in the performance of their duties such that it necessitates the exercise of the court's discretion in terms of s 21A of the Supreme Court Act 59 of 1959.

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