



THE SUPREME COURT OF APPEAL  
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE  
SUPREME COURT OF APPEAL

29 March 2012

STATUS: Immediate

**Phillips v South African Reserve Bank (221/11)**

*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*

The Supreme Court of Appeal (the SCA) today upheld an appeal with costs against a costs order made by the Gauteng North High Court. The appellant had launched a review and a constitutional challenge in respect of certain exchange control regulations in the high court. The appellant had to give notice of his constitutional challenge in terms of Uniform rule 16A(1). The notice had to contain a clear and succinct description of the constitutional issue concerned and had to be placed on the court's notice board by the registrar for a period of 20 days. The high court held that there was no proof that the notice had been displayed for the requisite 20 days and that the description of the constitutional issue as being one of 'constitutional invalidity' was not sufficient. The high court held that, as a consequence of this non-compliance with Rule 16A(1), the appellant had the choice of either abandoning his constitutional challenge or of having the matter postponed at his costs in order to file a proper Rule 16A(1) notice. In view of the appellant's refusal to abandon his constitutional challenge, the high court postponed the matter and ordered the appellant to pay the wasted costs occasioned by the postponement. On appeal the SCA held that the matter was appealable and that the high court had erred in finding that there had been inadequate proof of the display of the notice for the requisite 20 days. The majority held that the notice did not, however, comply with Rule 16A(1)(b) inasmuch as it had to provide particulars of the constitutional issue concerned. A mere description of 'constitutional invalidity' was insufficient. The minority held that the notice did in fact comply with Rule 16A(1)(b) and that the aforementioned description was adequate. The SCA was unanimous in its finding that the general rule pertaining to costs orders in constitutional litigation, namely that unsuccessful litigants in proceedings against the State ought not to be ordered to pay costs, also

apply in ancillary matters, such as the present one. The majority held that in view of its finding that there has not been compliance with Rule 16A(1)(b), it would uphold the appeal with costs and set aside the high courts costs order (with the effect that each party would bear its own costs in the high court). The minority held that, in view of its finding that there had been proper compliance with Rule 16A(1)(b), it would also uphold the appeal with costs, but order the respondents to pay the appellant's costs in the high court.

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