



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal

DATE 2 October 2017

STATUS Immediate

National Director of Public Prosecutions v Kalmar Industries SA (Pty) Ltd

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 SCA today dismissed an appeal by the National Director of Public Prosecutions (NDPP) against the dismissal of his application for an order that a lifting platform and tools and equipment, be forfeited to the State in terms of the provisions of the Prevention of Organised Crime Act 121 of 1998 (POCA). The NDPP claimed that the platform and equipment were instrumentalities of an offence (theft) and the proceeds of unlawful activities as contemplated in POCA.

The SCA held that the NDPP should not have brought proceedings under POCA because the platform and equipment were the subject of a commercial dispute between two contracting parties, Q6 Management Projects Africa (Pty) Ltd (Q6) and Kalmar Industries SA (Pty) Ltd (Kalmar). Both had claimed ownership of the platform and equipment in terms of an agreement between them. This commercial dispute was far removed from the objectives of POCA: to combat organised crime, money laundering and criminal gang activities. The dispute had nothing to do with the purposes of civil forfeiture of property under POCA, which include removing incentives for crime and deterring persons from using property in crime. Moreover, the platform and equipment were not instrumentalities of the crime of theft, but the very things alleged to have been stolen. Neither were they the proceeds of unlawful activities: they did not constitute property or a benefit derived as a result of crime.

The SCA found that the NDPP should not have become involved in the commercial dispute between Q6 and Kalmar. Consequently, scarce public resources and valuable time were wasted on an application for a preservation order; and thereafter a forfeiture order, both of which were doomed to failure from the outset, because the platform and equipment were neither instrumentalities of crime, nor the proceeds of unlawful activities. The SCA also found that the NDPP's decision to apply for preservation of property and forfeiture orders under POCA was inexplicable, irrational and had to be severely deprecated.

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