

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

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*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*

***Powell v Honourable Mr Justice WJ van der Merwe***

The Supreme Court of Appeal has upheld the appeal of insolvency practitioner Mr Oliver Powell concerning search and seizure operations that took place at his Johannesburg home and business, and his Ellisras farm, in October and November 1999. The operations were carried out under the National Prosecuting Authority Act 32 of 1998. The Act gives the Investigating Directorate for Serious Economic Offences (IDSEO) wide powers to investigate scheduled and related offences.

The Pretoria High Court dismissed Powell's complaints, but the SCA reversed this judgment. It found unanimously that the preparatory investigation launched in October 1999 by advocate Jan Swanepoel, then head of IDSEO, was not properly instituted, because he specified no offence to be investigated, and instead purported to initiate an investigation that ranged wider than the statute permitted.

The SCA also held unanimously that the search warrants issued were over-broad and invalid and had to be set aside. It set out the history of the scrutiny of search warrants by the South African courts since 1891 under rights and powers that are now entrenched in the Constitution.

The majority of the Court agreed with the Pretoria High Court on one aspect of the case, namely that the Directorate had submitted

sufficient information to the Judge who issued the original warrant. One member of the SCA held on this point that the member of IDSEO applying for the warrant had misrepresented the situation to the judge, and that the warrants should be set aside also on this additional ground.

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